

# THURINGOWA CITY COUNCIL

## LOCAL LAW NO. 12M (CONTROL OF NUISANCES) 2003

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## PART 1 - PRELIMINARY

### Short title

1. This local law may be cited as *Local Law No. 12M (Control of Nuisances) 2002*.

### Objects

2. The objects of this local law are to protect public health, safety and convenience, by eliminating or reducing nuisances resulting from:-
  - (a) fire and wind-borne materials; and
  - (b) visual pollution resulting from unsightly accumulations of objects and materials; and
  - (c) vegetation overgrowth; and
  - (d) uncovered wells.

### Definitions

3. In this local law:-

“**the Act**” means the *Local Government Act 1993*.

“**authorised person**” means a person who is authorised by the local government to exercise the powers of an authorised person under this local law.

“**fire hazard**” means anything that, because of its flammable nature, its position, or its quantity, exposes property to significant risk of damage or destruction by fire and includes anything that is declared under the subordinate local laws to be a fire hazard.

“**occupier**” of a place means the person who has the control or management of the place and includes the owner or a person in charge of activities in the place that may result in contravention of, or a nuisance under, this local law.

“**vegetation**” includes a tree, bush, shrub, plant or grass.

“**well**” means a hole or shaft sunk in the ground to reach water or a spring and includes an underground tank, cistern or other device for holding liquids.

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## Application

4. (1) The powers given by this local law must be exercised in a way that is consistent with environmental protection policies, environmental management programs, environmental protection orders under the *Environmental Protection Act 1994*, and any approvals issued under the *Integrated Planning Act 1997*.

*Examples:-*

- *A subordinate local law could not fix a standard to be applied under this local law that falls below a relevant minimum standard fixed by an environmental protection policy under section 28 of the Environmental Protection Act 1994.*
- *In making a judgment about the existence or likely effect of a nuisance under this local law, an authorised person must have regard to relevant indicators, parameters, factors or criteria stated in an environmental protection policy under section 28 of the Environmental Protection Act 1994.*

(2) This local law does not apply to anything authorised by an environmental authority under the *Environmental Protection Act 1994*.<sup>1</sup>

## PART 2 - REPEAL OF LOCAL LAW NO. 12M (CONTROL OF NUISANCES)

5. *Local Law No. 12M (Control of Nuisances)* adopted by resolution of the Council of the City of Thuringowa on the 19th of May 1999 is hereby repealed in its entirety.

## PART 3 - FIRES AND FLAMMABLE MATERIALS

### Division 1 - Fire hazards

#### Fire hazards

6. (1) The occupier of land must keep the land free from fire hazards.

Maximum penalty-50 penalty units.

*Examples of fire hazards:-*

- *Live cinders or hot ash that is/are not contained in a fireproof receptacle.*
- *A substantial accumulation of grass clippings that is liable to spontaneous combustion.*
- *Dry vegetation that could be easily ignited or other flammable or combustible materials.*

(2) The local government may, by subordinate local law, declare matter, objects or things to be a fire hazard.

### Division 2 - Nuisances

#### Nuisances

7. A person must not light or maintain a fire if the fire exposes property to the risk of damage or destruction by fire.

Maximum penalty-50 penalty units.

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<sup>1</sup> An environmental authority is an approval or licence under the *Environmental Protection Act 1994 (Chapter 4, Part 3)*.

### Division 3 – Compliance Notices

#### Compliance Notices

8. (1) An authorised person may, by written notice given to the occupier of land, require the occupier to:-

- (a) extinguish a fire on the land that has been lit or maintained in contravention of this Part; or
- (b) take specified action, within a specified time, to remove a fire hazard on the land.

(2) A person must comply with a notice under this division.

Maximum penalty-50 penalty units.

## PART 4 - MISCELLANEOUS NUISANCES

### Division 1 - Visual pollution

#### Prohibition of visual pollution

9. (1) An occupier on whose land objects or materials are brought, or allowed to accumulate, that seriously detract from the visual amenity of the land, commits a nuisance.

*Examples of objects that may seriously detract from the visual amenity of land:-*

- *discarded or disused machinery or machinery parts;*
- *broken-down or severely rusted vehicles;*
- *discarded bottles, containers or packaging;*
- *refuse or scrap material.*

(2) If an occupier commits a nuisance under this section, an authorised person may, by written notice given to the occupier, require the occupier, within a time stated in the notice, to:-

- (a) remove unsightly objects or materials from the land; or
- (b) take other specified action to abate or ameliorate the nuisance.

*Example of action that might be required under paragraph (b):-*

*The notice might require the occupier to erect an appropriate structure to screen unsightly objects or materials from public view.*

(3) An occupier must comply with a notice under this section.

Maximum penalty-20 penalty units.

### Division 2 - Overgrown land

#### Overgrown land

10. (1) If land is overgrown with vegetation so the vegetation becomes unsightly or likely to attract reptiles or vermin, the occupier of the land commits a nuisance.

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(2) If an occupier commits a nuisance under this section, an authorised person may, by written notice given to the occupier, require the occupier, within a time stated in the notice, to clear the vegetation to an extent specified in the notice.

(3) An occupier must comply with a notice under this section.

Maximum penalty-20 penalty units.

### **Division 3 - Air-borne hazards**

#### **Air-borne hazards**

11. (1) If there are objects or materials on land that are:-

- (a) unsecured or inadequately secured; and
- (b) likely to be carried away in high winds with resulting risk of personal injury or property damage;

an authorised person may, by written notice given to the occupier, require the occupier to take, within a time stated in the notice, specified action to secure the objects or materials or to remove them to a safe place.

(2) An occupier must comply with a notice under this section.

Maximum penalty-20 penalty units.

### **Division 4 – Uncovered Wells**

#### **Uncovered Wells**

12. (1) If there is on any land a well which:-

- (a) is uncovered or inadequately covered or secured; and
- (b) presents a hazard to persons or animals;

an authorised person may, by written notice given to the occupier, require the occupier to take, within a time stated in the notice, specified action to cover or otherwise secure the well so that it no longer presents a hazard to persons or animals.

(2) An occupier must comply with a notice under this section.

Maximum penalty-20 penalty units.

(3) However, if there is a serious and imminent danger of personal injury or risk to life, the authorised person may, instead of giving a notice under subsection (1), enter the land under section 1070 of the Act with assistants, vehicles and equipment the authorised person considers necessary to cover or otherwise secure the well to the extent necessary to remove the danger.

## PART 5 - MISCELLANEOUS

### Local government's power to have work carried out

13. If a person fails to have work required by a notice under this local law carried out, the local government may itself have the work carried out.

### Powers of entry and cost recovery

14. (1) The local government may enter land to perform the work under section 1066 of the Act.

(2) If the occupier is the owner of the relevant land, the amount properly and reasonably incurred by the local government in performing the work is recoverable (together with interest) under sections 1066, 1067 and 1068 of the Act.

(3) If the occupier is not the owner of the relevant land, the amount properly and reasonably incurred by the local government is recoverable as a debt from the occupier (together with interest) on the same basis as applies to an owner of land under section 1067 of the Act.<sup>2</sup>

### Authorised person to be suitably qualified

15. The local government may appoint a person as an authorised person under this part only if:-

- (a) the local government considers the person has the necessary expertise or experience for the appointment; or
- (b) the person has satisfactorily finished training approved by the local government for the appointment.

### Defences

16. It is a defence to any breach or non-compliance of any provision contained in this local law if a person has a reasonable and lawful excuse.

## PART 6—REVIEW

### Reviewable decisions

17. A decision of the local government or an authorised person under this local law is reviewable unless it is:-

- (a) a decision made by resolution of the local government; or
- (b) a decision to dispose of goods that has been implemented; or
- (c) a decision made on an earlier application under section 18.

### Application for review

18. (1) A person who is aggrieved by a reviewable decision may apply to the local government for a review of the decision.

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<sup>2</sup> Section 1067 (2) of the *Local Government Act 1993* provides for the payment of interest on the same basis as for an overdue rate.

(2) An application for review of a decision must:-

- (a) be in writing; and
- (b) state the reasons why the applicant considers the decision should be reviewed; and
- (c) be lodged at the office of the local government within 28 days after the day on which notice of the decision was given to the applicant or within a further period allowed by the local government (before or after the end of that period).

### Carrying out review

19. (1) The local government must either:-

- (a) carry out a review at a meeting of the local government; or
- (b) have the review carried out by an authorised person.

(2) An authorised person who carries out a review under subsection (1)(b) must not be the original decision maker and must be a person who is no less senior than the original decision maker.

### Decision on review

20. (1) On completing a review, the local government may confirm, vary or reverse the decision under review.

(2) The local government must give the applicant written notice of the result of the review.

(3) If the local government does not decide an application for review within 28 days after receiving the application, the local government is taken to have confirmed the decision under review.

## PART 7 - SUBORDINATE LOCAL LAWS

### Subordinate local laws

21. The local government may make subordinate local laws about:-

- (a) fire hazards; or <sup>3</sup>
- (b) other matters about which this local law specifically allows for the making of subordinate local laws.

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*This and the preceding 6 pages bearing my initials is a certified copy of Local Law No. 12M (Control of Nuisances) 2003 made in accordance with the provisions of the Local Government Act 1993, by the Thuringowa City Council by resolution dated 4<sup>th</sup> February, 2003.*

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Chief Executive Officer

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<sup>3</sup> See section 3 for definition of 'fire hazard', and section 6(2).