

Guidance Notes

Model Local Law No. 3 (Community and Environmental Management) 2010

Version 1.3

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These guidance notes have been compiled for your information only and should not be treated as an exhaustive statement on the subject. Nor should they be considered as rendering to you legal or professional service. The department recommends that independent legal advice be sought on any matter of interpretation of the model local laws or template subordinate local laws. The information is provided on the basis that you are responsible for making your own assessment of the topics discussed.

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Purpose

These guidance notes aim to assist local governments interpret and implement the set of seven model local laws gazetted on 25 June 2010. They provide explanatory commentary on each model local law and its relevant subordinate local law template.

The guidance notes set out the scope and purpose of each part of the model local law and associated provisions within the relevant template subordinate local law and explain how the model is intended to be applied. The notes also identify:

- how linkages between the different model local laws form an integrated regulatory regime
- how the model laws link with other relevant legislation including the *Local Government Act 2009* (LGA).

A set of guidance notes is available for each model local law and should be read in conjunction with the relevant model local law and template subordinate local law.

Context – Model local laws 2010

The model local laws were developed following consultation with stakeholders undertaken in 2007–08. The model local laws cover a range of matters considered appropriate for local government to regulate such as:

- undertaking prescribed activities in a local government area
- bathing reserves
- parking
- community and environmental matters
- animal management and the regulation of other activities on local government controlled areas, facilities and roads.

See Appendix 1 for the full list of models.

The model local laws are presented as an integrated package with Model Local Law No.1 (Administration) 2010 (the Administration Model) being the framework for all other model local laws.

The Administration Model sets out common approval processes for:

- undertaking specific activities
- legal proceedings
- enforcement provisions
- miscellaneous matters upon which the other model local laws rely.

This means there is only one set of provisions for obtaining a local government's approval on a matter, rather than duplicating these provisions within each model local law. It ensures the model local laws are streamlined but flexible, enabling local governments to make local laws on new issues in the future without having to repeat relevant approval and enforcement provisions. It also means that a local government needs to adopt the Administration Model to enable any other model local law adopted to have effect.

There are a number of overarching principles upon which all model local laws are based. These include a requirement that a model local law should not duplicate state legislation and it should be necessary and enforceable. A full list of the principles upon which all models are based are set out in the guidance notes for the Administration Model.

Template subordinate local laws 2010

A template subordinate local law is available for each model local law as an additional support tool for local governments adopting the model local laws.

Subordinate local laws are essential to the successful implementation of the model local laws. In recognition of the diversity of local governments throughout the state, and to avoid limiting the application of the model local laws, subordinate local laws provide the means for local governments to specify the details of regulatory requirements that meet their particular needs.

It is intended local governments use the templates as a guide when developing subordinate local laws appropriate for their areas for each model local law adopted. The template provides a subordinate local law structure that is consistent with the heads of power provided in the model local law. While the templates include examples and suggestions for subordinate local law content in italicised text, this text is not intended to provide an exhaustive list of matters for inclusion.

Commentary on model provisions and template subordinate

Model Local Law No. 3 (Community and Environmental Management) 2010 (the CEM Model) updates and combines matters previously covered by model local laws No. 8 (Control of Pests) 2004 and No. 9 (Overgrown and Unsightly Allotments) 2000. It has been drafted to complement existing state legislation dealing with pest management, fires, public health and environmental protection. The matters covered by this model are those considered most likely requiring regulation.

The Administration Model provides the framework for issuing compliance notices under the CEM Model, as well as setting out the offence provisions for not complying with these notices. Section 26 of the Administration Model clarifies that where a compliance notice is given to the owner of a property and requires action to be taken in relation to that property, then it will constitute a remedial notice under section 138(2) of the *Local Government Act 2009* (LGA).

Section 142 of the LGA sets out the local government's power to enter property and take action that is required under a remedial notice, including the ability to recover associated costs. See Appendix 2 for a summary of the offences and corresponding penalties in the CEM Model.

Part 1 - Preliminary

S2. Purpose and how it is to be achieved

The CEM Model enables local governments to protect the environment, public health, safety and amenity of their local government area by regulating a range of nuisances which may result from:

- certain pest animals and plants
- vegetation overgrowth
- visual pollution
- airborne hazards
- fires and fire hazards
- community safety hazards
- noise that exceeds noise standards.

S3. Definitions – the dictionary

The dictionary defines all relevant words used in the model and is designed to be consistent with state legislation. Definitions are included based on the following approach for all the models:

- where a term is used in only one section of the model local law it is defined in that section and not repeated in the dictionary
- where a term is defined in the Administration Model and also used with the same meaning in another model local law, the definition is not repeated in the dictionaries of the other model local laws. Instead the term will be signposted in the other model local law dictionaries to refer the reader to the definition in the Administration Model
- generally, where a term is defined in the LGA it is not replicated in the model local law dictionaries. The first instance of the term's use in the model is footnoted to alert readers to refer to the LGA for its definition
- where a term is defined in another Act and the model local laws rely on the meaning given to the term in that Act, specific reference is made to this effect in the model local law.

S4. Relationship with other laws

The CEM Model operates in conjunction with the LGA and several other key pieces of state legislative including the:

- *Land Protection (Pest and Stock Route Management) Act 2002*
- *Public Health Act 2005*
- *Fire and Rescue Service Act 1990 and Regulation 2001*
- *Environmental Protection Act 1994 and Regulation 2008.*

The *Land Protection (Pest and Stock Route Management) Act 2002* provides for the declaration and management of the most common pest animals and plants in Queensland. This legislation also delegates the responsibility for declaring any additional 'local' pests to local governments. The CEM Model therefore sets out a process by which local governments may declare 'local' pests by subordinate local law.

The *Public Health Act 2005* provides for the control of vermin such as rats and mice. The CEM Model is purposely silent in relation to vermin to avoid duplication with this legislation. It instead provides for local governments to regulate overgrown allotments to retain the visual amenity of the local government area, protect public health and safety risks, and reduce the harbour other pests.

The *Fire and Rescue Service Act 1990* (FRSA) and Fire and Rescue Service Regulation 2001 regulates the lighting and control of fires in Queensland. Section 63 of the FRSA provides for the Fire and Rescue Services Commissioner to authorise, by notification, the lighting of fires for specific purposes and in certain circumstances. Such notification was issued on 6 August 2004, stating the types of fires that could be lit without a permit issued by a fire warden. It specified that adequate precautions should be taken to prevent the spread of fire and that it conforms with local law. The CEM Model therefore provides the framework for local governments to regulate these types of fires by subordinate local law.

The *Environmental Protection Act 1994* (EPA) and Environmental Protection Regulation 2008 (EPR) are the key legislative instruments for regulating environmental nuisance matters. This legislation makes local governments responsible for enforcing all 'environmental nuisance' matters (apart from some exceptions outlined in the EPR). As defined in the EPA, 'environmental nuisance' is unreasonable interference or likely interference with an environmental value caused by either:

- (a) aerosols, fumes, light, noise, odour, particles or smoke
- (b) an unhealthy, offensive or unsightly condition because of contamination or
- (c) another way prescribed by regulation.

Local governments may regulate these environmental nuisance matters in several ways:

- by enforcing the EPA and EPR provisions using the EPA penalty and enforcement tools

- by making a local law in relation to an environmental nuisance matter and enforcing the matter under the local law provisions. In this case the EPA would no longer apply to that nuisance matter.

In addition the EPA (Schedule 1 section 3) provides for exclusions to environmental nuisance offences where an authority has been given for an act or omission (that would otherwise cause an offence) under a local law. This means that a condition placed on an approval for a prescribed activity could over-ride a standard in the EPA dealing with an environmental nuisance. In this instance enforcing breach of conditions occurs through the local law rather than the EPA. The Administration Model (section 10(4)) provides for this scenario.

A variation to these alternatives is possible in relation to enforcement of noise emission standards. The EPR provides for local governments to alter the default noise emission standards by local law. Section 440O(3) EPA states that any such revised noise standards will apply as if it were a noise standard under that Act. This means that local governments can use the broader and more flexible penalty and enforcement provisions of the EPA for breaches of the noise standards prescribed by local law. The CEM Model therefore provides the framework for alternative noise standards to be prescribed by subordinate local law.

However, the CEM Model does not duplicate the EPA provisions in relation to any other environmental nuisance matters, which are considered to be more appropriately regulated and enforced under the EPA. Should local governments choose to regulate such matters they may do so by making a separate local law on the matter.

It should be noted that the regulation of nuisance noise from barking dogs is not covered in the CEM Model or within the default noise emission standards under Chapter 8, Division 3, Part 3B of the EPA. Instead, barking dogs are regulated as nuisance noise under the general nuisance provisions in section 440 of the EPA. The previous specific provisions dealing with animal noise were removed during the recent overhaul of the EPR as they had proven ineffective and difficult to apply.

The revised EPR applies the general emission criteria and the noise emission criteria in determining whether noise from an animal is a nuisance. This approach provides greater flexibility for a broader range of considerations to be applied in determining whether the noise is causing a nuisance. Alternatively local governments may regulate noise from barking dogs by developing and adopting a separate local law on the matter. This would be enforced under the local law regime and not the EPA.

Similarly, there are no provisions in the CEM Model dealing specifically with nuisance trees on private land. However, the community safety hazard provisions of the CEM Model enable local governments to regulate dangerous trees on private land. The Department of Justice and the Attorney-General recently conducted a state-wide Review of Neighbourly Relations that focused on dividing fences, nuisance trees and remedies available to deal with disputes. New laws are currently being drafted on these matters.

See Appendix 3 for a list of legislation, in addition to the Local Government Act 2009, that is relevant to the CEM Model and CEM Subordinate.

Part 2 – Declared pests

S5. Application of part

This provision clarifies that this part, providing for the declaration of local pests, does not apply to pests already declared under sections 36-37 of the *Land Protection (Pest and Stock Route Management) Act 2002* (LPA) or section 4 of the *Plant Protection Act 1989* (PPA) or noxious or diseased fisheries resources declared under section 94 of the *Fisheries Act 1994* (FA). This provision is necessary to avoid any inconsistency or duplication with state legislation.

S6. Declaration of local pests

This provision gives local governments the authority to declare an animal or plant to be a local pest by subordinate local law without conflicting with the provisions of the LPA or the FA regarding declared pests and noxious fisheries resources. The LPA provides for the management of the most common pests therefore the declaration of ‘local’ pests by subordinate local law is not expected to be used often.

Before making a subordinate local law to declare a local pest, the local government must consult with the chief executive of the department administering the LPA on the desirability of the declaration. Local governments should also consider notifying any relevant agencies if the declaration may impact on any research or other activities being undertaken within the local government area.

The CEM Subordinate provides for local governments to list in schedule 1 the details of any such declared local pest, whether the declaration applies generally or only in specific circumstances and the areas to which the declaration applies. In this way, local governments are given the flexibility to develop localised solutions for controlling or reducing the risk of the localised occurrence of particular pest species within the whole or part of the local government area.

As the CEM Model provides local governments with considerable powers of entry to search for declared local pests, judicious use of these declaration provisions and the emergency declaration provisions provided in section 7 is required to avoid unwarranted affects to the rights and liberties of individuals.

S7. Emergency declarations

Emergency situations may arise where local governments need an expedited process for declaring local pests to minimise an immediate risk of environmental harm from a pest. In these circumstances, the local government may use the emergency declaration provisions to declare an animal or plant to be a local pest by a resolution of the local government.

This is done by publishing the declaration in a newspaper circulating in the local government area. They operate for a temporary period of three months from the date of publication. This enables local governments to regulate any unanticipated short-term or seasonal occurrences in a timely manner. In administering these provisions, local governments should also be aware of the protection afforded to flora and fauna under the *Nature Conservation Act 1992*.

The term 'environmental harm' used in section 7(1) has the same meaning as the EPA definition. This provides operational consistency for local government officers, who will be familiar with the EPA definition as a consequence of the devolved responsibilities under that Act to local governments.

S8. Application of declaration

Local governments may apply a local pest declaration to the whole or part of a local government area. The declaration may be applied generally or only in specified circumstances — for example, within a certain distance of a watercourse or stock watering points or when a certain density of infestation is reached. This provides local governments with the flexibility to manage and control animal and plant pests in a responsive and localised manner.

The applicable parts of the local government area to which the local pest declarations apply must be detailed in a subordinate local law. Schedule 1 of the CEM subordinate provides an example. Where the declaration does not apply to the whole of the local government area, the relevant parts may be identified by reference to the real property description, reserve description, physical description of the land, description of a road or reference to a map included in the subordinate local law. It is not necessary to include in the subordinate local law pests that have been declared under the *Land Protection (Pest and Stock Route Management) Act 2002*.

S9. Power to search for declared local pests

To effectively enforce local pest declarations local governments need appropriate authority to enter and inspect land where it is reasonably considered declared pests may exist. This provision creates a more flexible process for local governments to inspect properties for declared local pests rather than relying on the more onerous 'approved inspection program' provisions in section 133 of the LGA. It is similar to the powers of entry in section 132 of the LGA for 'entry under a notice', which is currently constructed too narrowly to cover the pest inspection notices issued under section 9(2).

Under this provision, an authorised officer may enter a property and take reasonable action to search for declared local pests without the permission of the occupier, as long as reasonable written notice has been provided to both the owner and the occupier of the property.

Reasonable written notice is defined in the dictionary to mean a written notice given at least seven days before a property is to be entered. It informs the owner and occupier of the intention to enter the property, the reason for entering the property and the days and times when the property will be entered. Upon entering the property, the authorised person must also inform any occupier of the property of the reason for entering and may only enter a home on the property with the permission of the occupier of the property.

S10. Pest control notices

This provision provides local governments with the means to control declared pests by making land occupiers responsible for destroying or controlling a declared pest on their property. The local government may issue a compliance notice to the owner requiring them to take action to control the declared local pest. This provision sets out a range of potential actions that may be required of owners to control declared local pests from their destruction to removing their harbour.

Compliance notices issued under section 10 of the CEM Model are then enforced under section 27 of the Administration Model, which states the requirements of the notice and sets out the penalty for not complying with the notice. In these instances a compliance notice constitutes a remedial notice under the LGA (See footnotes 15 and 11 of the CEM Model). This means that if the compliance notice is not complied with, local governments can rely on the powers under section 142 LGA to enter the property, take actions required under the compliance notice and recover the costs of performing those actions.

S11. Prohibition on sale

The local law further provides for local governments to regulate local pests by also making it an offence for a person to sell, supply, offer or display for sale a declared local pest. This provision is intended to target pet and nursery businesses found offering declared local pest animals and plants for sale.

S12. Prohibition on declared local pests

The introduction, propagating, breeding and harbouring of any declared local pests is prohibited under the local law. The local government also has the flexibility to exempt particular organisations from this prohibition by listing such organisations in a subordinate local law if the reason for having a particular pest is for scientific, education or entertainment purposes. Relevant organisations would include CSIRO, universities, zoos or circuses.

Section 6 of the CEM Subordinate provides for such exempted people or organisations to be listed in Schedule 2 of the CEM Subordinate.

Part 3 – Overgrown and unsightly allotments

S13. Overgrown allotments

The CEM Model enables local governments to regulate overgrown allotments to retain the visual amenity of the local government area, protect public health and safety, and reduce the harbour for reptiles. The CEM Model is purposely silent in relation to vermin such as rats and mice, to avoid duplication with the *Public Health Act 2005*. It is expected that local governments will use the powers available to them under section 23 of that legislation to enforce the control of rats and mice.

Under this provision, a local government may provide the responsible person of an allotment with a compliance notice requiring them to clear overgrown vegetation where it has seriously affected the visual amenity of the allotment or is likely to attract or harbour reptiles. The notice may specify the extent of clearing required, giving local governments the scope and flexibility to provide the responsible person with guidance or impose limitations on how the vegetation is to be managed or removed. In administering these provisions, local governments should also ensure consistency with the requirements of the *Vegetation Management Act 1999*.

The term responsible person is defined in the CEM Model as a person who has control or management of the place, including the person in charge of activities or structures in the place that may result in a contravention of the local law.

This means in terms of an overgrown allotment, that if the land is occupied or being used lawfully under some form of agreement (such as a lease) by someone other than the owner, that person is the responsible person. If that is not the case, the owner is the responsible person. This distinction ensures responsibility for complying with the local law, and any compliance notice issued for contravention of the local law, is appropriately imposed on the person who is responsible for the activity or structure that is found to have breached the local law.

Whether overgrown vegetation has ‘seriously affected’ the visual amenity of the allotment is based on the opinion of the authorised person. In forming this opinion, the authorised person needs to consider whether a reasonable person would consider the visual amenity of the allotment to be ‘seriously affected’.

This compliance notice issued under section 13(2) of the CEM Model is then enforced under section 27 of the Administration Model, which states the requirements of the notice and sets out the penalty for not complying with the notice. Sections 140 and 141 of the LGA apply where the compliance notice is given to the owner and the owner is not the occupier of the property. If the notice is not complied with, local governments may then rely on the powers under section 142 LGA to enter the property and take actions required under the notice and recover the costs of performing those actions.

S14. Accumulation of objects and materials on allotments

Local governments have the power to regulate objects or materials accumulating on allotments in order to retain the visual amenity of the local government area, protect public health and safety, and reduce harbour for reptiles. This provision is intended to cover objects such as building materials, broken machinery or motor vehicles that may be unsightly or provide harbour for reptiles. Under this provision, local governments may issue a compliance notice to the responsible person¹ requiring them to remove accumulated objects and materials or take other specified actions.

¹ For an explanation of the term *responsible person*, see the commentary to section 13 – Overgrown allotments.

This compliance notice is then enforced under section 27 of the Administration Model, which states the requirements of the notice and sets out the penalty for not complying with the notice. If the notice is not complied with, local governments may then rely on the powers under section 142 LGA to enter the property and take actions required under the notice and recover the costs of performing those actions.

It should also be noted that the *Public Health Act 2005* and Public Health Regulation 2005 provide local governments with the regulatory power to ensure rats and mice are not harboured on land around a dwelling.

The issue of graffiti is not addressed within the context of visual pollution in the CEM Model, as the *Summary Offences Act 2005* currently addresses graffiti management.

Part 4 – Fires and fire hazards

S15. Regulation of lighting and maintaining fires in the open

The CEM Model provides local governments with the power to regulate the lighting and maintaining of fires within the local government area, subject to the *Fire and Rescue Services Act 1990*, which regulates the lighting and control of fires generally. Section 63 of this legislation provides for the Fire and Rescue Services Commissioner to authorise by notification the lighting of fires for specific purposes and in certain circumstances. On 6 August 2004, the Fire and Rescue Services Commissioner issued a notification allowing the following fires to be lit without a permit issued by a fire warden. Adequate precautions must be taken to prevent the spread of fire and the fire conforms with any local law. The types of fires are:

- a fire in which neither the height, width nor length of the material to be consumed exceeds 2 metres
- a fire lit for the purpose of burning the carcass of a beast
- a fire lit at a sawmill for the purpose of burning sawdust or other residue resulting from the operation of a sawmill
- a fire lit outdoors, if enclosed in a fireplace so constructed as to prevent the escape of fire or any burning material there from.

This notification therefore identifies the types of fires that local governments may regulate by local law. Consequently, section 15 of the CEM Model allows local governments to prohibit or restrict the lighting and maintaining of such fires by subordinate local law in either the whole local government area, or just within parts of the local government area. This is achieved by listing the prohibition or type of restriction, as well as the areas to which the prohibition or restriction applies, in a subordinate local law. Schedule 3 of the CEM Subordinate provides an example.

Smoke and other products of combustion that are likely to cause irritation, annoyance or distress to others are not addressed in the model, as the term ‘smoke’ is encompassed in the definition of ‘environmental nuisance’ under the *Environmental Protection Act 1994* (EPA).

The CEM Model is purposely silent on these matters to avoid duplication.

S16. Fire hazards

Local governments are empowered to regulate fire hazards within the local government area. This provision defines fire hazards as:

- anything that, because of its flammable nature, its position or its quantity, exposes property to significant risk of damage or destruction by fire
- a thing that is declared under a subordinate local law to be a fire hazard.

Section 8 of the CEM Subordinate shows how specific local fire hazards can be listed. The CEM Model provides an authorised person with the power to issue a compliance notice to the responsible person² for an allotment requiring them to take specific action to reduce or remove the fire hazard. Given the broad range of things that may be construed as a fire hazard, local governments should give careful consideration to defining in the CEM Subordinate the special features or level of risk that warrants the use of these enforcement powers.

A compliance notice issued under this provision is enforced under section 27 of the Administration Model, which states the requirements of the notice and sets out the penalty for not complying with the notice. If the notice is not complied with, local governments may then rely on the powers under section 142 LGA to enter the property and take actions required under the notice and recover the costs of performing those actions.

There is a need to retain the apparent duplication between the model and section 69 of the *Fire Rescue and Service Act 1990* (FRSA), which provides for the control of fire hazards. The FRSA provides for the Queensland Fire and Rescue Service Authority (QFRS) to issue a gazette notice outlining what constitutes a fire hazard. To date, no such notice has been issued by QFRS. The CEM Model is therefore required to provide the head of power for local governments to deal with local fire hazards. However, the CEM Model provisions are subject to any future notification made under section 69 FSRA regarding fire hazards and may require amendment should such a notification be made. It is also understood that Queensland Fire and Rescue Services can assist local governments in the identification of potential fire hazards where required.

² For an explanation of the term *responsible person*, see the commentary in section 13 – Overgrown allotments.

Part 5 – Community safety hazard

Local governments may wish to regulate the use and location of certain types of fences to ensure that they do not present a safety hazard, for example, electric fences and barbed wire fences near a public place/park or reserve. This is considered a more appropriate option, rather than adding ‘dangerous fencing’ to the list of prescribed activities in the Administration Model as it is not considered necessary to make the matter subject to formal approval processes.

S17. What is a community safety hazard

This provision empowers local governments to regulate and manage community safety hazards such as dangerous fencing and materials that may become airborne in periods of high wind. The definition of community safety hazard also includes anything the local governments may declare by subordinate local law to be a community safety hazard. For example, local governments could use this provision to regulate dangerous trees that are considered to pose a significant risk of causing injury to a person or damage to a property.

Section 9 of the CEM Subordinate provides for local governments to list other things that may constitute a community safety hazard in its local government area such as disused wells or an unfenced dam adjacent to a public park or reserve.

In view of the considerable powers available to local governments under the Administration Model and the LGA, careful and judicious use of any further declarations is required to ensure that fundamental legislative principles are adequately catered for. The rights of individuals need to be balanced with the level of risk to the community. As such, declarations on airborne hazards may be more applicable in cyclone prone areas.

Local governments should give careful consideration in the development of the CEM Subordinate to relevant state legislation to ensure the provisions avoid duplication and are not construed as ultra vires.

It should be noted that local governments have additional powers in relation to community safety matters under the *Disaster Management Act 2003* and the LGA in emergency or potentially dangerous situations. For example, section 145(1) of the LGA provides local government workers with the power to enter a property (other than a home on the property), at any time without the permission of the occupier of the property, in a potentially dangerous situation exists where they need to take urgent action. For instance to cut down a tree that was blown over in a storm and is in danger of falling and injuring someone or damaging property.

S18. Power to enter property to inspect for community safety hazards

It is recognised that local governments need appropriate authority to enter and inspect a property to identify and assess whether community safety hazards are present. This provision creates a more flexible process for local governments to inspect properties for community safety hazards rather than relying on the more onerous ‘approved inspection program’ provisions in section 133 of the LGA. It is similar to the powers of entry in section 132 of the LGA for ‘entry under a notice’, which is currently constructed too narrowly to cover the community safety hazard inspection notices issued under section 18(2). The enforcement of any subsequent community safety hazard (compliance) notices issued under section 19(2) of the CEM Model would rely on the entry powers in section 132(1)(d) of the LGA.

Under this provision, an authorised person may enter a property and take reasonable action to inspect for community safety hazards without the permission of the occupier, as long as reasonable written notice has been provided to both the owner and the occupier of the property. Reasonable written notice is defined in the dictionary to mean a written notice given at least seven days before a property is to be entered and informs the owner and occupier of the intention to enter the property, the reason for entering the property and the days and times when the property will be entered. Upon entering the property, the authorised person must also inform any occupier of the property of the reason for entering and may only enter a home on the property with the permission of the occupier of the property.

S19. Removal or reduction of community safety hazards

An authorised person of the local government may give the responsible person³ for a property (or a structure within a property) a written notice requiring them to take action to remove a community safety hazard or reduce the level of risk to persons or property. This compliance notice is then enforced under section 27 of the Administration Model, which states the requirements of the notice and sets out the penalty for not complying with the notice. If the notice is not complied with, local governments may then rely on the powers under section 142 of the LGA to enter the property, take actions required under the notice and recover the costs of performing those actions.

³ For an explanation of the term *responsible person*, see the commentary in section 13 – Overgrown allotments.

S20. Prescribed requirements

A local government may prescribe by subordinate local law the requirements that must be met by a responsible person for a property (or a structure within a property) in relation to community safety hazards. Any such requirements should be reasonable and appropriate for the level of risk exposed. It will also be important to ensure the requirements are stated clearly and are specific enough to be enforceable. Some examples might include:

- the minimum type and size of signage indicating an electric fence
- the minimum standard for constructing and maintaining a dangerous fence.

Section 10, the CEM Subordinate provides for local governments to list the prescribed requirements for any such community safety hazards in Schedule 4 of the CEM Subordinate.

Part 6 – Noise standards

S21. Prescribed noise standards

The EPA (s44oO) provides for local governments to prescribe noise standards by subordinate local law, in place of the default noise standards outlined in Chapter 8, Part 3B, Division 3 of the EPA. The EPA gives local governments the flexibility to change noise standards to accommodate local needs, while still relying on the broader and more flexible penalty and enforcement provisions of the EPA. Any amended noise standard prescribed by subordinate local law applies as if it were a noise standard made under the EPA and is therefore enforced under the EPA and not under the local law.

The CEM Model provides local governments with an enabling provision to vary the default noise standard by prohibiting the making of a stated noise in Schedule 5 of the CEM Subordinate. This means that the provision is only activated if a local government includes a varied noise standard in the CEM subordinate.

It should be noted that prescribing a noise standard in this way will completely replace the default provision in the Act, so even if a local government wants only to modify the default provision, it would need to restate the entire EPA provision, including any modifications where desired. It is not possible to simply amend the default standard by referring to part of it— rather, a whole new standard must be substituted in its place.

Under the Administration Model, local governments may give approvals for prescribed activities in which conditions (including those relating to noise) may be imposed to protect community amenity. Under section 440 of the EPA, local governments have a broad power to regulate nuisance matters by a local law or an authority or approval granted under a local law. The interaction of these powers may lead to inconsistency between the applicable noise standard and a noise condition that may be applied to an approval under the Administration Model. To resolve this potential problem section 10(4) of the Administration Model clarifies that a noise standard varied by subordinate local law under this provision or the default noise standard in the EP Regulation does not apply where an authority or approval given under a local law (for example, under the Administration Model) prescribes an inconsistent noise standard as a condition of the approval. This relationship is consistent with the EPA approach pursuant to section 3(a)–(b), Schedule 1, EPA.

Part 7 – Subordinate local laws

S22. Subordinate local laws

Local governments are empowered to make subordinate local laws under sections 6(1), 15(2), 17(c) and 20(1) in relation to the following matters:

- declaring animals or plants of specified species to be local pests
- lighting and maintaining fires in the open
- community safety hazards
- prescribed requirements relating to community safety hazards
- prescribed noise standards for the *Environmental Protection Act 1994*.

However a local government may choose not to regulate one or more of these matters. In this case a subordinate local law on the matter would not be made.

Commentary on the content of the CEM Subordinate is outlined in these guidance notes under each of the relevant authorising provisions of the CEM Model. Local governments should refer to relevant state legislation when making a subordinate local law under the CEM Model to ensure consistency and operational efficiency.

Schedule – Dictionary

The definition of ‘animal’ is purposely inconsistent with the definition in *Model Local Law No. 2 (Animal Management) 2010 (MLL2)*. The distinction in these definitions is necessary as the term within the Animal Management Model, specifically relates to domestic animals kept as pets, whereas use of the term in the CEM Model relates more to non domestic or pest organisms including eggs, etc.

Appendix 1— Model local laws gazetted in 2010

Title	Date of gazettal notice
Model Local Law No. 1 (Administration) 2010	25 June 2010
Model Local Law No. 2 (Animal Management) 2010	25 June 2010
Model Local Law No. 3 (Community and Environmental Management) 2010	25 June 2010
Model Local Law No. 4 (Local Government Controlled Areas, Facilities and Roads) 2010	25 June 2010
Model Local Law No. 5 (Parking) 2010	25 June 2010
Model Local Law No. 6 (Bathing Reserves) 2010	25 June 2010
Model Local Law No. 7 (Indigenous Community Land Management) 2010	25 June 2010

Appendix 2— Summary of offence provisions and maximum applicable penalty

Provision number	Provision heading	Maximum Penalty (in penalty units)
10(1)	Pest control notices (enforced under s27(5) of the Administration Model)	50
11	Prohibition on Sale	50
12(1)	Prohibition on introducing, propagating etc a declared local pest	50
13(2)	Overgrown allotments (enforced under s27(5) of the Administration Model)	50
14(2)	Accumulation of objects and materials on allotments (enforced under s27(5) of the Administration Model)	50
15(3)	Regulation of lighting and maintaining fires in the open	50
15(4)	Compliance with a prohibition or restriction prohibition of lighting or maintaining a fire where it exposes property to risk of damage or destruction	50
16(2)	Fire Hazards (enforced under s27(5) of the Administration Model)	50
19(2)	Removal or reduction of community safety hazards (enforced under s27(5) of the Administration Model)	50
20(2)	Prescribed requirements for community safety hazards	50

Appendix 3— State legislation relevant to the CEM Model

Title of state legislation	Part of model local law affected
<i>Land Protection (Pest and Stock Route Management) Act 2002</i>	Part 2 – Declared local pests Part 3 – Overgrown and Unsightly Allotments
<i>Public Health Act 2005</i>	Part 2 – Declared local pests Part 3 – Overgrown and Unsightly Allotments
<i>Vegetation Management Act 1999</i>	Part 3 – Overgrown and Unsightly Allotments
<i>Fire and Rescue Service Act 1990 and Regulation 2001</i>	Part 4 – Fires and fire hazards
<i>Environmental Protection Act 1994 and Regulation 2008</i>	Part 2 – Declared local pests Part 6 – Noise standards
<i>Fisheries Act 1994</i>	Part 2 – Declared local pests
<i>Plant Protection Act 1989</i>	Part 2 – Declared local pests
<i>Disaster Management Act 2003</i>	Part 5 – Community safety hazards

Note: This list of state legislation is current as at June 2010. As legislation changes, local governments should check current legislation for comprehensiveness and certainty.