

Local Law No. 8 (Unsightly Buildings) 2020

Contents

Part 1	Preliminary	2
1	Short title	2
2	Purposes and how they are to be achieved	2
3	Definitions—the dictionary	2
4	Relationship with other laws	2
Part 2	Unsightly Buildings	2
5	Application	2
6	Duty to maintain Unsightly Buildings	2
7	Show cause notice	3
8	Consideration of submissions	3
9	Application for review	3
10	Review	4
11	Enforceable undertaking	4
Part 3	Graffiti	5
12	Graffiti	5
Part 4	Enforcement	6
13	Compliance directions	6
14	Compliance notices	6
15	Power to require information	6
16	Failure to give information	6
17	Council’s power to have work carried out	7
18	Recovery of cost of work	7
19	Identity of owner	7
20	Giving of notice	8
21	Evidence of matters alleged	8
22	No right to compensation	8
	Schedule 1 Dictionary	9

Unsightly Buildings

Part 1 Preliminary

1 Short title

This local law may be cited as *Local Law No. 8 (Unsightly Buildings) 2020*.

2 Purposes and how they are to be achieved

The purposes of this local law are to protect and enhance local amenity by—

- (a) requiring owners of buildings in designated areas to maintain the presentation of those buildings; and
- (b) requiring owners and occupiers of buildings that have been marked with graffiti to remove the graffiti.

3 Definitions—the dictionary

The dictionary in schedule 1 defines particular words used in this local law.

4 Relationship with other laws¹

This local law—

- (a) is in addition to, and does not derogate from, laws regulating land use planning and development assessment; and
- (b) applies to each of the local government’s local laws subject to any specific provision in a local law that expresses a contrary intention.

Part 2 Unsightly Buildings

5 Application

- (1) Council may designate by subordinate local law areas of the Council’s local government area to which this part applies.
- (2) Council may use diagrams to outline the areas of the Council’s local government area for the purpose of subsection (1).

6 Duty to maintain Unsightly Buildings

- (1) An owner of a building in a designated area must ensure the building is maintained so that the appearance of the building does not detract from the appearances of other buildings or the public realm in the designated area.
- (2) A building is likely to detract from the appearances of other buildings or the public realm in the designated area if it is—
 - (a) in a dirty condition,

¹ This local law and any subordinate local law made under it do not apply to the extent of any inconsistency with a law of the State or the Commonwealth.

- (b) in a state of disrepair,
- (c) in need of repainting, or
- (d) otherwise in a dilapidated condition.

7 Show cause notice

- (1) If Council is of the opinion that an owner of a building has failed to comply with the duty to maintain a building in section 6, then Council may serve on the owner a notice to show cause (“*show cause notice*”) why a compliance notice should not be given.
- (2) A show cause notice must—
 - (a) be in writing,
 - (b) outline the facts and circumstances forming the basis for Council’s opinion,
 - (c) state that a submission may be made about the show cause notice,
 - (d) state how the submission must be made,
 - (e) state a period no shorter than 10 business days, within which the submission must be made.

8 Consideration of submissions

- (1) Council must consider any submissions made under section 7 by an owner.
- (2) After considering the submissions, Council may—
 - (a) issue a compliance notice under section 19,
 - (b) agree to the owner entering an enforceable undertaking under section 11, or
 - (c) take no further action.
- (3) Before taking action under subsection (2) Council must give the owner a notice:
 - (a) advising of its decision under that subsection, and
 - (b) that the owner has a right to a review of that decision under section 9.

9 Application for review

- (1) A person who is given a notice about a decision under section 8(2)(a) or (b) (the *original decision*) may apply to Council for a review of the decision under this part.
- (2) The application (a *review application*) must be made within 10 business days of the day the person is given notice of the original decision, or such longer period as may be allowed by Council.
- (3) The review application must be in writing and—
 - (a) accompanied by a statement of the grounds on which the person seeks the review of the decision;
 - (b) supported by enough information to enable Council to decide the application; and
 - (c) accompanied by the prescribed fee for the application if any applies.
- (4) Council may impose a fee for an application for review under this section.

10 Review

- (1) The review application must be dealt with by—
 - (a) a person other than the person who made the original decision; and
 - (b) a person holding no less senior office than the person who made the original decision.
- (2) Council must within 15 business days after receiving the application—make a decision (the *review decision*) to—
 - (a) confirm the original decision;
 - (b) revoke the original decision; or
 - (c) vary the original decision in a way Council considers appropriate.
- (3) Within 10 business days after making the review decision, Council must give written notice of the review decision to the applicant.
- (4) The notice must include the reasons for the review decision.
- (5) A review application stays the operation of the original decision until the date the notice of the review decision is given to the applicant.

11 Enforceable undertaking

- (1) Council may enter into a written agreement (*enforceable undertaking*) with an owner which may include any or all of the following—
 - (a) that it is entered into under this section;
 - (b) that the owner has failed in their duty under section 6;
 - (c) that the owner will perform specified work to remedy the breach of section 6, including its standard and timing;
 - (d) the estimated value of the work to be performed;
 - (e) that a bond be lodged with Council in a nominated sum for the performance of the work which may be forfeited to Council if the work is not carried out within the time agreed or to the standard required;
 - (f) that Council, its employees and agents may enter the property to perform the work if it is not performed as agreed by the owner;
 - (g) that, if Council performs the work required under the undertaking, then Council may recover the cost of the work;
 - (h) that the undertaking may be varied or withdrawn only with the consent of Council;
 - (i) that Council may cancel the undertaking at any time;
 - (j) that if the owner breaches the undertaking Council may take action in the Court to enforce the undertaking; or
 - (k) any other terms necessary or convenient to ensure the owner's compliance with the duty to maintain the unsightly buildings.
- (2) Council may apply to the Court for enforcement of an undertaking given under this section.
- (3) The Court when making orders for the enforcement of an undertaking given under this section may—

- (a) order the owner to comply with the agreement or a term of the agreement;
- (b) order that the owner or other occupier allow Council employees or agents to enter the property to perform work under the agreement;
- (c) order that the owner put in place suitable signage or advertising relating to the work the owner is required to carry out on the building;
- (d) order the owner pay Council any amount nominated in the undertaking for the work or, if Council has already performed the work, the actual cost in doing so;
- (e) order that the owner pay Council's costs of enforcing the undertaking which may include an award of punitive damages; or
- (f) any other order that the Court considers appropriate.

Part 3 Graffiti

12 Graffiti

- (1) If any building or other structure is marked with graffiti an authorised person may give a written notice ("*graffiti removal notice*") to the owner or occupier of the land on which the building or structure is erected requiring the owner or occupier to remove the graffiti within 14 days of the date of service of the notice.
- (2) If the graffiti is marked on a construction site hoarding erected beyond the boundary of the property on which the construction site is located, the graffiti removal notice may be given to the owner or occupier of the land on which the construction site is located.
- (3) If the graffiti is marked on a billboard or billboard structure, the graffiti removal notice may be given to the owner of the billboard requiring the billboard owner to remove the graffiti within 14 days of the date of service of the notice.
- (4) A graffiti removal notice may be served by post.
- (5) A person must comply with a graffiti removal notice.
- (6) This section shall not apply to —
 - (a) public art commissioned on a commercial basis by or with the consent of the owner of the premises;
 - (b) public art on a wall or structure in a public place designated for its legal application.

Maximum penalty for subsection (5)—50 penalty units.

Part 4 Enforcement

13 Compliance directions

- (1) If a person engages in conduct that is, or is preparatory to, a contravention of this local law, an authorised person may orally direct that person—
 - (a) to stop the conduct; and/or
 - (b) to take specified action to remedy the contravention.
- (2) A direction may be given under this section in addition to any other enforcement action prescribed by this local law.
- (3) A person must comply with a direction under this section.
Maximum penalty—50 penalty units.

14 Compliance notices

- (1) If a person contravenes a requirement of this local law an authorised person may give a notice (a "compliance notice") under this section to the person.
- (2) A compliance notice may—
 - (a) if the contravention is of a continuing or recurrent nature require the person to whom the notice is given to stop the contravention;
 - (b) whether or not the contravention is of a continuing or recurrent nature, require the person to whom the notice is given to take specified action, within a time specified in the notice, to remedy the contravention;
 - (c) require the person to whom the notice is given to pay, within the time specified in the notice, the re-inspection fee specified in the notice.
- (3) A compliance notice may be given under this section in addition to any other enforcement action prescribed by this local law.
- (4) A person must comply with a compliance notice.
Maximum penalty—200 penalty units.

15 Power to require information

- (1) For monitoring or enforcing compliance with this local law an authorised person may, subject to subsection (2), require an occupier of a place, or a person at the place to give the authorised person information to help the authorised person ascertain whether the local law is being complied with.
- (2) When making a requirement mentioned in subsection (1) the authorised person must warn the person it is an offence to fail to comply with the requirement, unless the person has a reasonable excuse.

16 Failure to give information

- (1) A person of whom a requirement is made under section 20(1) must comply with the requirement, unless the person has a reasonable excuse.
Maximum penalty—50 penalty units.

- (2) It is not a reasonable excuse for a person to fail to give the information because giving the information might tend to incriminate the person.
- (3) However, if the person is a natural person, evidence of, or evidence directly or indirectly derived from, the information that might tend to incriminate the person is not admissible in evidence against the person in a civil or criminal proceeding, other than a proceeding for an offence about the falsity of the information.

17 Council's power to have work carried out

If a person fails to comply with a compliance notice or a graffiti removal notice, an authorised person may take all necessary action to ensure compliance with the notice.

18 Recovery of cost of work

- (1) A person who does not comply with a compliance notice or a graffiti removal notice is liable to Council for—
 - (a) any loss damage or expense incurred by Council through the failure of the person to comply with this local law; and
 - (b) any expense associated with inspections conducted to gain or confirm compliance with this local law or a compliance notice given under it; and
 - (c) all other amounts, for which the omission to pay was an element in or was in any way related to such failure to comply with this local law.
- (2) Council must give the person to whom the notice is given an account for the amount for which the person is liable under subsection (1).
- (3) If the amount is not paid on or before a date for payment fixed in the account, Council may recover the amount, as a debt.
- (4) The right to recover costs under this section is in addition to and not in derogation of any right to costs or compensation available under any other law.
- (5) A certificate signed by an authorised person and stating any of the following matters is evidence of—
 - (a) the carrying out of the work by Council under this part;
 - (b) the cost of the work;
 - (c) the delivery of the account required by subsection (2);
 - (d) the amount of any costs and fees unpaid at the date of the certificate

19 Identity of owner

- (1) Where under this local law an obligation is imposed on an owner, the obligation is imposed jointly and severally on each of the persons who is the owner of the land concerned.
- (2) Where under this local law a notice may be given to the owner, the notice may be given to all or any one or more of the persons who is defined as the owner and occupier under this local law and the obligation to comply is imposed, jointly and severally on each of the persons who receives the notice.

- (3) Proceedings for an offence may be taken against any one or more of the persons who fail to comply with a requirement of this local law.
- (4) Persons who meet the definition of owner may be separately convicted of the one offence.
- (5) Council may, by a single action or successive actions, recover amounts payable under this local law from any one or more of the persons who fail to comply with a requirement of this local law, provided that the sum so recoverable does not exceed the sum incurred.

20 Giving of notice

Wherever this local law requires written notice to be given, the provisions of the *Acts Interpretation Act 1954* section 39—Service of documents, and section 39A —Meaning of service by post etc., will apply to the giving of the notice unless otherwise specified in this local law.

21 Evidence of matters alleged

In any prosecution for a breach of the provisions of this local law every allegation or averment contained in the complaint shall be prima facie evidence of the matter so alleged or averred.

22 No right to compensation

Except as provided by the *Local Government Act 2009*, the exercise by Council in good faith of any authority conferred upon it by this local law does not give rise to a claim for compensation by any person.

Schedule 1 Dictionary

In this local law—

authorised person means an appropriately qualified person appointed under the *Local Government Act 2009*.

building means:

- (a) A fixed structure that is wholly or partly enclosed by walls or is roofed.
- (b) The term includes a floating building and any part of a building including a thoroughfare.

Council means the Townsville City Council.

Court means the Magistrates Court.

designated area means the area designated under *Subordinate Local Law No. 8 (Unsightly Buildings) 2020* for the purpose of this local law.

owner includes any person other than Council who is—

- (a) the occupier of premises; or
- (b) the registered proprietor of land.

structure includes a wall or fence and anything fixed to or projecting from a building, wall, fence or other structure.