

Overgrown Properties

Lismore is located in a sub tropical region of Australia and as a result we experience higher than average rainfall. Whilst the rain fall is welcomed in most instances it does encourage rapid growth of vegetation particularly during the spring and summer months. It is during this period that Council receives a significant number of customer requests in relation to overgrown properties.

This fact sheet is designed to help residents understand when and why a property would be considered 'Overgrown' and the compliance action(s) that maybe initiated by Council to ensure the property is maintained to a reasonable standard to ensure that it does not pose a health and safety risk to adjoining properties.

Not all residents have the desire to keep their properties in a 'park like' condition and this should be taken into consideration before a complaint is lodged with Council. Many properties may be considered to be untidy, but untidy does not necessarily mean that the property is in an unsafe or unhealthy condition and in need of Council intervention.

The following dot points are provided to guide to Councils service level for the matter of overgrown vegetation:

- Council **will respond customer to requests** of overgrown vegetation in built up urban areas, villages, industrial and business areas.
- Overgrown Vegetation **does include** vegetation that is considered to be in a state in which it is likely to render the land in an unsafe or unhealthy condition. This would include vegetation that due to the un-kept nature would likely be a harborage for or encourage vermin or presents as a potential fire risk.

- Council **will not respond** to customer requests in relation to overgrown vegetation in rural or rural residential areas.
- Overgrown Vegetation **does not include** vegetation that is protected under the Threatened Species Conservation Act 1995, Native Vegetation Act 2003 or Councils Tree Preservation Order.

Council encourages residents to commit to a good neighbour policy, that is, try to solve the problem amicably by talking to whoever is causing the nuisance. Often people are unaware that their activity or lack of property maintenance is causing a problem and are usually happy to work with you to find a solution.



In the event that neighborhood communications are unsuccessful and Councils assistance is requested Council will proceed with the following:

- We will write an initial letter to the property owner advising of Councils notification and the potential for further action in twenty eight (28) days if vegetation on the property is not maintained to a reasonable standard.

- If at the end of this period further complaints are received, and a site inspection confirms the overgrown nature of the property still exists, formal notices will be issued directing the property owner to manage and maintain the vegetation on-site for a (three (3) year period). Four (4) weeks will generally be required to satisfy the natural justice and administrative provisions of the Local Government Act for this stage.
- If Councils formal notice is not complied with enforcement actions (issuing of penalty notices etc) maybe initiated without further notice.

Therefore the time frame from initial customer request to vegetation being maintained will depend upon a number of variables but most significantly the property owner's willingness to respond to and manage the overgrown vegetation.

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Local Law No. 10 (Overgrown And Unsightly Allotments) 2007

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Part 1 Preliminary

1 Short title

This local law may be cited as *Local Law No. 10 (Overgrown and Unsightly Allotments) 2007*.

2 Object

The object of this local law is to prevent nuisances resulting from—

- (a) vegetation overgrowth; and
- (b) visual pollution resulting from unsightly accumulations of objects and materials.

3 Definitions—the dictionary

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

Part 2 Overgrown and unsightly allotments

Division 1 Overgrown allotments

4 Overgrown allotments

- (1) If an allotment is overgrown with vegetation so the vegetation becomes unsightly or likely to attract reptiles or vermin, the occupier commits a nuisance.
- (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 for subsection (3)—20 penalty units.

Division 2 Unsightly accumulations

5 Prohibition of visual pollution

- (1) If objects or materials are brought onto, or allowed to accumulate on, an allotment so that the visual amenity of the allotment is seriously affected, the occupier of the allotment 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; or
 - (b) take other specified action to stop 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 for subsection (3)—20 penalty units.

Division 3—Interaction with other laws

6 Notice not to affect use of land authorised by statute

A notice under this part cannot prevent a use of land authorised under the *Integrated Planning Act 1997* or the *Environmental Protection Act 1994*.

Part 3 Enforcement

7 Local government's power to have work carried out

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

8 Powers of entry and cost recovery

- (1) The local government may enter land under section 1066 of the Act to carry out work under this part.
- (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 section 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 the land under section 1067 of the Act.¹

¹ Section 1067(2) of the Act provides for the payment of interest on the same basis as for an overdue rate.

Part 4 Authorised persons

9 Appointment

- (1) A local government may appoint any of the following persons as authorised persons for this local law—
 - (a) employees of the local government;
 - (b) other persons who are eligible for appointment as authorised persons under Chapter 15, part 5 of the Act².
- (2) An appointment of a person as an authorised person under this part must state the provisions for which the person is appointed as an authorised person.
- (3) A 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.

10 Limitation on authorised person's powers

An authorised person's powers may be limited in the person's instrument of appointment.

11 Authorised person's appointment conditions

- (1) An authorised person holds office on the conditions stated in the instrument of appointment.
- (2) An authorised person—
 - (a) if the instrument provides for a term of appointment—ceases holding office at the end of the term; and
 - (b) may resign by signed notice of resignation given to the local government; and
 - (c) if the conditions of appointment provide—ceases holding office as an authorised person on ceasing to hold another office stated in the appointment conditions (the *main office*).
- (3) However, an authorised person may not resign from the office of authorised person (the *secondary office*) under subsection (2)(b) if a term of the authorised person's employment to the main office requires the authorised person to hold the secondary office.

12 Authorised person's identity card

- (1) A local government must give each authorised person an identity card.

² Chapter 15, part 5 (Enforcement of Local Government Acts).

- (2) The identity card must—
 - (a) contain a recent photograph of the authorised person; and
 - (b) be signed by the authorised person; and
 - (c) identify the person as an authorised person for the local government; and
 - (d) include an expiry date.
- (3) A person who ceases to be an authorised person must return the person's identity card to the local government within 21 days after the person ceases to be an authorised person.

Maximum penalty—10 penalty units.

- (4) This section does not prevent the giving of a single identity card to a person for this part and for other purposes.

13 Production of identity card

- (1) An authorised person may exercise a power in relation to someone else (the *other person*) only if the authorised person—
 - (a) first produces his or her identity card for the other person's inspection; or
 - (b) has the identity card displayed so it is clearly visible to the other person.
- (2) However, if for any reason it is not practicable to comply with subsection (1), the authorised person must produce the identity card for the other person's inspection at the first reasonable opportunity.

14 Offence

A person must not pretend to be an authorised person.

Maximum penalty—50 penalty units.

15 Protection from liability

- (1) This section applies to—
 - (a) an authorised person; and
 - (b) a person acting under the direction of an authorised person.
- (2) The person does not incur civil liability for an act done or omission made honestly and without negligence under this local law.
- (3) A liability that would, apart from this section, attach to the person attaches instead to the local government.

Part 5 Review

16 Reviewable decisions

A decision of the local government or an authorised person under this local law is reviewable (a *reviewable decision*) unless it is—

- (a) a decision made by resolution of the local government; or
- (b) a decision made on an earlier application for review.

17 Application for review

- (1) A person who is aggrieved by a reviewable decision may apply to the local government for a review of the decision.
- (2) An application for review of a reviewable 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 14 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).

18 Carrying out review

- (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.

19 Decision on review

- (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 6 Miscellaneous

20 Defence of reasonable excuse

If a person is charged with an offence involving a contravention of a provision of this local law, it is a defence to prove that the person had a reasonable and lawful excuse for the contravention.



Schedule Dictionary

section 3

allotment means a separate parcel or piece of land.

authorised person means a person appointed as an authorised person for this local law.

reviewable decision see section 16.

the Act means the *Local Government Act 1993*.

vegetation includes a tree, bush, shrub, plant or grass.

Certification:

This and the preceding seven (7) pages bearing my initials is a certified copy of Local Law No. 10 (Overgrown and Unsightly Allotments) 2007 made, in accordance with the provisions of the Local Government Act 1993, by the Council of the City of Mount Isa resolution dated 14 November 2007.



Michael Dougall
Chief Executive Officer