



**Cairns Regional Council
Local Law No. 3 (Community and Environment) 2016**

Current as at 1 March 2016

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Contents

Part 1 Preliminary.....	1
1 Short title.....	1
2 Purpose and how it is to be achieved.....	1
3 Relationship with other laws.....	1
Part 2 Declared local pests	1
Division 1 Application.....	1
4 Application of part	1
Division 2 Declaration of local pests	2
5 Declaration of local pests	2
6 Emergency declarations.....	2
Division 3 Control of local pests.....	2
7 Power to search for declared local pests	2
8 Pest control notices.....	3
Division 4 Prohibition of sale and propagation.....	3
9 Prohibition on sale.....	3
10 Prohibition on introducing, propagating etc. a declared local pest	3
Part 3 Overgrown and unsightly allotments and nuisances.....	4
11 Overgrown allotments	4
12 Accumulation of objects and materials on allotments	4
13 Maintenance of premises.....	5
Maximum Penalty under subsections (1) or (2) - 50 penalty units.....	5
14 Public nuisances	5
Part 4 Waste management.....	6
Division 1 Waste containers	6
15 Placement and removal of bins.....	6
16 Notices on bins	6
Division 2 Recyclable waste	6
17 Recyclable waste generally	6

18	Subject matter for conditions	7
	Division 3 Waste disposal facility	7
19	Waste disposal facility	7
	Division 4 Littering	7
20	Littering	7
	Part 5 Fires and fire hazards	8
21	Regulation of lighting and maintaining fires in the open	8
22	Fire hazards	8
	Part 6 Community safety hazards	9
23	What is a community safety hazard	9
24	Power to enter property to inspect for community safety hazards	9
25	Removal or reduction of community safety hazards	10
26	Prescribed requirements	10
	Part 7 Noise standards	10
27	Prescribed noise standards	10
	Part 8 Shopping trolleys	11
	Division 1 Requirements for shopping trolleys	11
28	Shopping trolley containment system	11
29	Alternative shopping trolley containment systems	11
30	Identification of shopping trolley	11
	Division 2 Retailers	11
31	Shopping trolleys to remain with retail premises	12
32	Impoundment and collection notices	12
33	Offence to not reclaim impounded shopping trolley	12
34	Claiming a shopping trolley	12
35	Disposal of shopping trolleys	13
36	Offence to fail to collect an abandoned shopping trolley	13
	Division 3 Other persons	13
37	Offence to remove a shopping trolley	13
	Part 9 Miscellaneous	13
38	Subordinate local laws	13

Part 1 Preliminary

1 Short title

This local law may be cited as *Local Law No. 3 (Community and Environment) 2016*.

2 Purpose and how it is to be achieved

- (1) The purpose of this local law is to protect the environment and public health, safety and amenity within the local government's area.
- (2) The purpose is to be achieved by providing for the elimination or reduction of risks and threats to the environment and public health, safety and amenity resulting from:
 - (a) inadequate protection against animal and plant pests;
 - (b) vegetation overgrowth;
 - (c) visual pollution including from accumulation of objects and materials;
 - (d) fires and fire hazards not regulated by State law;
 - (e) community safety hazards; and
 - (f) noise that exceeds noise standards.

3 Relationship with other laws

This local law is:

- (a) in addition to and does not derogate from laws for pest management, regulation of fires and environmental protection;
- (b) to be read with *Local Law No. 1 (Administration) 2016* which contains provisions and definitions that apply to all local laws; and
- (c) made under Chapter 3 of the LGA.

Part 2 Declared local pests

Division 1 Application

4 Application of part

- (1) This part does not apply to:
 - (a) an animal or plant that is a declared pest under the *Land Protection (Pest and Stock Route Management) Act 2002* or the *Plant Protection Act 1989*; or
 - (b) noxious fisheries resources or diseased fisheries resources.
- (2) The following defined terms are used in this Part:

declared pest see the *Land Protection (Pest and Stock Route Management) Act 2002*, section 8 and the *Plant Protection Act 1989*, section 4.

diseased fisheries resources see the *Fisheries Act 1994*, section 94.

noxious fisheries resources see the *Fisheries Act 1994*, schedule.

Division 2 Declaration of local pests

5 Declaration of local pests

The animal or plant described in Column 2 of Schedule 1 of *Subordinate Local Law No. 3 (Community and Environmental Management) 2016* is a declared pest in the corresponding part of the local government's area mentioned in Column 1 of Schedule 1.

6 Emergency declarations

- (1) This section applies if the local government is satisfied urgent action is needed to avoid or minimise an immediate risk of environmental harm posed by a plant or animal.
- (2) The local government may, by resolution, declare an animal or plant of the relevant species to be a local pest.
- (3) A declaration under this section:
 - (a) must be published in a newspaper circulating generally in the local government's area;
 - (b) comes into force on the date of publication; and
 - (c) comes to an end three months after the date of publication.
- (4) A declaration may apply:
 - (a) to the whole of the local government's area or in a specified part or parts of the area; and
 - (b) generally or only in specified circumstances.

Division 3 Control of local pests

7 Power to search for declared local pests

- (1) This section applies if an authorised person wants to enter a property to search for declared local pests.
- (2) After giving reasonable written notice to the owner and the occupier of the property, the authorised person may:
 - (a) enter the property without the permission of the occupier; and
 - (b) take reasonable action to search for declared local pests.
- (3) However, the authorised person:
 - (a) must, as soon as the authorised person enters the property, inform any occupier of the property:
 - (i) of the reason for entering the property; and

- (ii) that the authorised person is authorised under this local law to enter the property, excluding a home on the property, without the permission of the occupier; and
- (b) may enter a home that is on the property only with the permission of the occupier of the relevant part of the property.
- (4) If the occupier gives permission under subsection (3)(b), the authorised person may ask the occupier to sign a document that confirms that the occupier has given permission to enter the home.

8 Pest control notices

- (1) An authorised person may, by compliance notice given to the owner of land, require the owner to take specified action to control declared local pests.
- (2) The specified action may include action to:
 - (a) destroy declared local pests on the land;
 - (b) minimise the risk of an outbreak of declared local pests on the land;
 - (c) prevent or minimise seeding or reproduction by declared local pests;
 - (d) contain infestation by declared local pests within a localised area;
 - (e) reduce the density or extent of infestation by declared local pests; or
 - (f) remove harbour provided to declared local pests.
- (3) The notice may require the repetition of a specified action at stated intervals or on the reappearance of the declared local pest within a specified period.

Division 4 Prohibition of sale and propagation

9 Prohibition on sale

A person must not:

- (a) sell or supply a declared local pest; or
- (b) offer or display a declared local pest for sale or supply.

Maximum penalty for subsection (1)—50 penalty units.

10 Prohibition on introducing, propagating etc. a declared local pest

(1) A person must not:

- (a) introduce, propagate or breed a declared local pest; or
- (b) provide harbour to a declared local pest.

Maximum penalty for subsection (1)—50 penalty units.

- (2) However, subsection (1) does not apply to a person mentioned in Column 1 of Schedule 2 of Subordinate *Local Law No.3 (Community and Environmental Management) 2016* in relation to introducing, propagating, breeding or providing harbour to a declared local pest mentioned in the corresponding part of Column 2 of Schedule 2.
- (3) In this section:
introduce means to introduce, or cause to introduce, into the local government's area.

Part 3 Overgrown and unsightly allotments and nuisances

11 Overgrown allotments

- (1) This section applies where an authorised person forms the opinion that an allotment is overgrown with vegetation to such an extent that it has seriously affected the visual amenity of the allotment.
- (2) The authorised person may, by compliance notice given to the responsible person of the allotment, require the responsible person to clear the vegetation to an extent specified in the notice.
- (3) However, the notice cannot prevent a use of land authorised under the Planning Act or the *Environmental Protection Act 1994*.

12 Accumulation of objects and materials on allotments

- (1) This section applies where an authorised person forms the opinion that objects or materials brought on to, or allowed to accumulate on, an allotment have seriously affected the visual amenity of the allotment.

Examples for paragraph (1) of objects and materials that may seriously affect the visual amenity of an allotment:

- *Discarded or disused machinery or machinery parts.*
- *Broken-down or severely rusted vehicles.*
- *Discarded bottles, containers or packaging.*
- *Refuse or scrap material.*

- (2) The authorised person may, by compliance notice given to the responsible person of the allotment, require the responsible person to:
 - (a) remove objects or materials that are causing the circumstance mentioned in subsection (1); or
 - (b) take other specified action to remedy the circumstance mentioned in subsection (1).

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

Erecting an appropriate structure (in accordance with requirements under the Planning Act) to screen unsightly objects or materials from public view.

- (3) However, the notice cannot prevent a use of land authorised under the Planning Act or the *Environmental Protection Act 1994*.

13 Maintenance of premises

- (1) A person must not allow an allotment or any structure upon an allotment to fall into a state of disrepair or dilapidation such that it becomes a risk to property or people in the neighbourhood.
- (2) A person must not cause or allow any structure on an allotment to remain in a state where it becomes a visual blight on the neighbourhood.

Maximum Penalty under subsections (1) or (2) - 50 penalty units

- (3) In determining whether there is a visual blight on the neighbourhood the following factors will be considered:
 - (a) whether the local government has received any complaints;
 - (b) the content of the complaints;
 - (c) the number of the complaints;
 - (d) the visual impact of the structure including:
 - (i) whether the building is in a dirty condition;
 - (ii) whether the building is in a state of disrepair or dilapidation; and
 - (iii) whether the building is in need of repainting;
 - (e) the prominence of the structure for those living in the neighbourhood and those passing by the premises; and

whether the content of the visual blight is offensive including whether it is racial, discriminatory, has content which is likely to incite hatred, or vilify persons or organisations. Maximum penalty for subsection (2) or (3)-50 penalty units.

- (4) If any building or other structure is marked with graffiti the owner or responsible person for the place must remove the graffiti within a reasonable time.
- (5) An authorised person may give a compliance notice to the owner and responsible person requiring them to remove graffiti or to repair, clean or paint the building or structure so that it is not dilapidated or in a state of disrepair, or no longer a visual blight.

14 Public nuisances

- (1) A person must not do an act or omit to do any act which causes a public nuisance.

Maximum penalty for subsection (1) – 50 penalty units.

- (2) A public nuisance is where:
 - (a) a person does an act or omission that gives rise to a risk of amenity for a person on a neighbouring allotment; or
 - (b) a dead animal remains on an allotment:
 - (i) has caused harm to human health or safety or personal injury; or

- (ii) is likely in an authorised person's opinion to give rise to a risk of harm to human health or safety or personal injury.

Part 4 Waste management

Division 1 Waste containers

15 Placement and removal of bins

- (1) The occupier of any dwelling to which the local government provides a domestic waste collection service and/or a kerbside recycling service must ensure that neither the standard domestic waste container or the standard recyclable waste container is:
 - (a) placed or deposited on the footway for collection more than 12 hours before the time notified by the local government as the specified time on a specified day for the placing or depositing the container out for collection (the "specified time"); or
 - (b) allowed to remain on the footway for more than 12 hours after the specified time.
- (2) If subsection (1) is not complied with, the local government may remove the container and give notice to the occupier that the bin may be collected upon payment of the prescribed fee.
- (3) A container removed by the local government under sub-section (2) shall be returned to the occupier if a valid reason is given by the occupier to the local government for the non-compliance with subsection (1) (including providing evidence of this reason) or upon payment of the prescribed fee.

16 Notices on bins

A person must not place or attach to a standard domestic waste container; standard recyclable waste container or other waste container a notice, poster, sign or any other similar material or deface such a container in any other manner.

Maximum penalty for section 16 – 20 penalty units

Division 2 Recyclable waste

17 Recyclable waste generally

- (1) The local government may establish conditions relating to the collection, storage, disposal and transport of recyclable waste.
- (2) The local government must not less than 7 days prior to the specific conditions taking effect:
 - (a) give public notice of any such conditions at least once;
 - (b) give notice of any such conditions to the occupier of every dwelling to which the local government provides a kerbside recycling service;

- (3) The occupier of every dwelling to which the local government provides a kerbside recycling service must comply with any conditions that apply to that service.

Maximum penalty – 10 penalty units.

18 Subject matter for conditions

The conditions may, for example, relate to the following matters:

- (a) use and maintenance of standard recyclable waste containers;
- (b) cleanliness of and spillage from such containers;
- (c) placement and emptying of such containers; and
- (d) notice of materials which may be deposited in such containers and prohibited materials.

Division 3 Waste disposal facility

19 Waste disposal facility

- (1) A person must not deposit any disused refrigerator, trunk, chest or similar article at a waste disposal facility unless:
 - (a) every door, lid, lock, catch and hinge attached to a door or lid has been removed; and
 - (b) any gas has been removed.

Maximum penalty for subsection (1) – 20 penalty units.

- (2) A waste disposal facility may be closed to all traffic, or partially closed to traffic, where the local government determines that it is appropriate to close such a facility to:
 - (a) allow maintenance of any kind;
 - (b) protect public health and safety; or
 - (c) ensure access roads are restored to a suitable condition.
- (3) A person must not, at a waste disposal facility, deposit any dangerous or hazardous material or material that is likely to cause a danger or hazard to public health or safety.

Maximum penalty for subsection (3) – 40 penalty units.

Division 4 Littering

20 Littering

- (1) A person must not deposit or place domestic waste, commercial waste or industrial waste on land other than at a waste disposal facility established by the local government for that purpose.

Maximum penalty for subsection (1) – 30 penalty units.

- (2) A person must not place any waste other than litter in a container caused to be placed by the local government on or in any local government controlled area or road for the purpose of the storage of waste.

Maximum penalty for subsection (2) – 20 penalty units.

Part 5 Fires and fire hazards

21 Regulation of lighting and maintaining fires in the open

- (1) This section does not apply to the lighting or maintaining of a fire that is authorised under the *Fire and Emergency Services Act 1990*.
- (2) Lighting or maintaining a fire described in Column 2 of Schedule 3 of the *Subordinate Local Law No.3 (Community and Environment) 2016* is prohibited in the corresponding part of the local government's area mentioned in Column 1 of Schedule 3.
- (3) A person must comply with a prohibition or restriction imposed under this section.

Maximum penalty for subsection (3)—50 penalty units.

- (4) 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 for subsection (4)—50 penalty units.

- (5) However, a person does not commit an offence under subsection (3) or (4) if the person is authorised or required to light or maintain the fire in the performance of duties under another Act.

22 Fire hazards

- (1) This section applies where an authorised person forms the opinion that a fire hazard exists on an allotment.
- (2) The authorised person may, by compliance notice given to the responsible person for the allotment, require the responsible person to take specified action to reduce or remove the fire hazard.
- (3) In this section:

fire hazard means:

- (a) anything that, because of its flammable nature, its position or its quantity, exposes property to significant risk of damage or destruction by fire;
- (b) live cinders or hot ash that is not enclosed in a fireplace so constructed as to prevent the escape of cinders or ash;
- (c) a large accumulation of grass clippings that is in the opinion of an authorised person liable to spontaneous combustion; or
- (d) dry vegetation that could be easily ignited or other flammable materials.

Part 6 Community safety hazards

23 What is a community safety hazard

A *community safety hazard* is:

- (a) a fence or structure on land that, because of its nature or its position, poses a significant risk of causing injury to a person or damage to property;
- (b) objects or materials that are unsecured or inadequately secured and are likely to become airborne in periods of high wind in a way that will give rise to a possible risk of personal injury or property damage;
- (c) barbed wire fencing;
- (d) electric fencing;
- (e) disused machinery or machinery parts;
- (f) disused, broken down or severely rusted vehicles, or vehicle parts;
- (g) accumulation of bottles, containers or packaging;
- (h) refuse or scrap metal;
- (i) fish frames, scraping, carcasses and or guts;
- (j) smoke from outdoor cooking ovens or fires;
- (k) works, structures or things on a drainage easement or channel that have the potential to alter or obstruct, or alters or obstructs the flow of water through the drainage easement or channel;
- (l) a drainage easement or channel that has been failed to be properly maintained so that there is a potential to alter or obstruct, or it alters or obstructs the flow of water through the drainage easement or channel;
or
- (m) works, structures or things on or adjacent to a drainage easement or channel that have the potential to or actually do impact upon the drainage infrastructure.

24 Power to enter property to inspect for community safety hazards

- (1) This section applies if an authorised person wants to enter a property to inspect it to identify any community safety hazards.
- (2) After giving reasonable written notice to the owner and the occupier of the property, the authorised person may:
 - (a) enter the property without the permission of the occupier; and
 - (b) take reasonable action to inspect the property for community safety hazards.
- (3) The authorised person:
 - (a) must, as soon as the authorised person enters the property, inform any occupier of the property:

- (i) of the reason for entering the property; and
 - (ii) that the authorised person is authorised under this local law to enter the property, excluding a home on the property, without the permission of the occupier; and
 - (b) may enter a home that is on the property only with the permission of the occupier of the relevant part of the property.
- (4) If the occupier gives permission under subsection (3)(b), the authorised person may ask the occupier to sign a document that confirms that the occupier has given permission to enter the home.

25 Removal or reduction of community safety hazards

- (1) This section applies where an authorised person forms the opinion that a community safety hazard exists on an allotment.
- (2) The authorised person may, by compliance notice given to the responsible person of the allotment, require the responsible person to take specified action in relation to the community safety hazard to:
 - (a) remove the hazard; or
 - (b) reduce the level of risk to persons or property.

Example of specified action that might be required under paragraph (b) to reduce the risk to the community from a community safety hazard:

Securing objects or materials that may become airborne in periods of high wind.

26 Prescribed requirements

- (1) Owners of land that contains a community safety hazard listed in Column 1 of Schedule 4 of *Subordinate Local Law No. 3 (Community and Environment) 2016* must meet the requirements prescribed in the corresponding part of Column 2 of Schedule 4.
- (2) A responsible person must comply with requirements prescribed under this section.

Maximum penalty for subsection (2)—50 penalty units.

Part 7 Noise standards

27 Prescribed noise standards

- (1) This section applies if the local government is the administering authority for the *Environmental Protection Act 1994*, Chapter 8, Part 3B.
- (2) The noise standard in Column 2 of Schedule 5 of *Subordinate Local Law No.3 (Community and Environment) 2016* is prescribed for the section of the *Environmental Protection Act 1994*, Chapter 8, Part 3B, Division 3 stated in Column 1 of Schedule 5.
- (3) The noise standard in Column 2 of Schedule 5 applies in the corresponding part of the local government's area mentioned in Column 3 of Schedule 5.

- (4) Where no noise standard is specified, the standards prescribed under the *Environmental Protection Act 1994* will apply.
- (5) A person must not make, or cause to be made, a noise that exceeds the noise standard in the whole, or designated parts, of the local government's area identified in Schedule 5.

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

Part 8 Shopping trolleys

Division 1 Requirements for shopping trolleys

28 Shopping trolley containment system

A retailer must implement a shopping trolley containment system, if:

- (a) the number of shopping trolleys owned, leased or otherwise made available to customers by that retailer exceeds 25; or
- (b) The retailer receives two or more infringement notices for the contravention of section 31 (Shopping trolleys to remain with retail premises) of this local law for the same retail premises during any 12 month period, unless the local government resolves otherwise.

Maximum penalty for subsection (1)(b) — 50 penalty units.

29 Alternative shopping trolley containment systems

Schedule 6 of *Subordinate Local Law No. 3 (Community and Environment) 2016*, identifies alternative shopping trolley containment systems able to be approved by the local government.

30 Identification of shopping trolley

- (1) A retailer must display the following information on each shopping trolley:
 - (a) the name of the retailer;
 - (b) a 24 hour contact telephone number to report shopping trolleys found or abandoned outside of the retailer's premises.
- (2) The information must be:
 - (a) legible;
 - (b) conspicuously displayed; and
 - (c) permanently affixed and not easily removed.

Maximum penalty for failing to comply with section 30(1) or (2) - 10 penalty units.

Division 2 Retailers

31 Shopping trolleys to remain with retail premises

- (1) A retailer must ensure that all of the shopping trolleys which the retailer provides for its customers remain within the retail premises.

Maximum penalty for subsection (1) - 10 penalty units.

- (2) It is a defence to a proceeding for a contravention of subsection 1 for the retailer to prove that it took all reasonable measures to ensure that the shopping trolley remains within the retail premises.

Examples of reasonable measures may include development and implementation of a trolley containment system.

32 Impoundment and collection notices

- (1) If a shopping trolley is found in a public place other than the retail premises then the local government may:

- (a) seize and impound the shopping trolley under section 49 of *Local Law No. 1 (Administration) 2016* and give an impoundment notice to the retailer; or
- (b) give the retailer a collection notice.

- (2) An impoundment notice or a collection notice may relate to one or more shopping trolleys.

33 Offence to not reclaim impounded shopping trolley

- (1) It is an offence for a retailer to fail to reclaim a shopping trolley referred to in an impoundment notice given under section 32(1)(a) of this local law within 5 business days.

Maximum penalty for subsection (1) - 50 penalty units.

- (2) To avoid doubt, a failure to reclaim each of the shopping trolleys referred to within an impoundment notice within 5 business days constitutes a separate offence.

34 Claiming a shopping trolley

- (1) A retailer claiming an impounded shopping trolley must:

- (a) prove ownership or right to possession to the local government's satisfaction;
- (b) sign a release, in the approved form, which releases the local government, an authorised person or other person acting in accordance with a local law from any claim or action for conversion or damages; and
- (c) pay the prescribed fee.

35 Disposal of shopping trolleys

- (1) The local government may dispose of any impounded shopping trolley not claimed within the period stated in an impoundment notice given under section 32 (1)(a) of this local law, in accordance with sections 49 (Impounding goods) and 50 (Dealing with seized and impounded goods) of *Local Law No. 1 (Administration) 2016*.
- (2) The retailer of a shopping trolley impounded or disposed of under this local law will have no cause of action for damages, conversion or otherwise against the local government, an authorised person or other person acting in accordance with a local law.

36 Offence to fail to collect an abandoned shopping trolley

- (1) It is an offence for a retailer not to collect and remove each shopping trolley referred to in a collection notice given under section 32 (1)(b) of this local law after 5 days.

Maximum penalty for subsection (1) - 50 penalty units.

- (2) It is an offence for a retailer not to collect and remove each shopping trolley not later than 48 hours after being notified by telephone of its location by an authorised officer.

Maximum penalty for subsection (2) – 50 penalty units.

- (3) To avoid doubt, a failure to collect each of the shopping trolleys referred to within a collection notice within the period stated in the notice constitutes a separate offence.

Division 3 Other persons

37 Offence to remove a shopping trolley

A person must not remove a shopping trolley from the premises where it was provided.

Maximum penalty for section 37 - 50 penalty units.

Part 9 Miscellaneous

38 Subordinate local laws

The local government may make subordinate local laws about:

- (a) declaring animals or plants of specified species to be local pests;
- (b) exempting certain persons in relation to declared pests;
- (c) prohibiting lighting and maintaining of fires;
- (d) prescribed requirements relating to community safety hazards;
- (e) prescribed noise standards; or
- (f) alternative shopping containment systems.

CERTIFICATION

This and the preceding 13 pages bearing my initials is a certified copy of Cairns Regional Council *Local Law No. 3 (Community and Environmental Management) 2016* made in accordance with the provisions of the *Local Government Act 2009*, by Cairns Regional Council by resolution dated 27 January 2016.

Peter Tabulo
Chief Executive Officer
Cairns Regional Council