

Hutt City Council (Graffiti Removal) Bill

Local Bill

Explanatory note

General policy statement

The purpose of this Bill is to empower the Hutt City Council to remove graffiti that is on private property and that is visible from a public place. It will provide for local control over the removal of graffiti in Lower Hutt.

For some time now, graffiti has been a key issue for residents in Lower Hutt. The Hutt City Council and its officers have worked hard to rid the city of the graffiti problem.

A graffiti vandalism audit has shown that when compared to other audited areas like the Wellington CBD and the Auckland railway corridors, Lower Hutt is on a par with one of the worst areas for tagging in New Zealand.

The prevalence of graffiti vandalism or tagging in a community signals a lack of social cohesion, perceptions of danger, and reduced property values for owners. Therefore, it has a detrimental effect on the image and well-being of the city.

While sections 11, 11A, 11B, 14A, and 14B of the Summary Offences Act 1981 provide legal grounds to deter an offender and control graffiti sources and effects, they do not give the Hutt City Council the power to clean graffiti marks that are on private property and that are

visible from a public place. Having the power to clean graffiti marks on private property is considered essential in Lower Hutt.

Although the Hutt City Council, other local authorities, and the Police all campaign vigorously against graffiti, the Council believes that this Bill would introduce new legal methods to address the graffiti issue in Lower Hutt and, in doing so, enhance its ability to combat graffiti in the community.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. It provides that the Bill is to come into force on the day after the date on which it receives the Royal assent.

Part 1

Preliminary provisions

Clause 3 states the purpose of the Bill, which is to facilitate the removal of graffiti within the district of the Hutt City Council (the **Council**).

Clause 4 provides that the Bill will apply to activities in the district of the Council.

Clause 5 contains definitions of some terms used in the Bill.

Part 2

Council's power to remove graffiti

Clause 6 sets out the main operative provision of the Bill. It enables the Council to enter any private land within its district and to take any action necessary to remove graffiti that is on any property situated on that land and that is visible from a public place. Before exercising its powers under this clause, the Council is required to serve at least 10 days' written notice on the owner or occupier of the land. The notice must, among other things, give particulars of the action proposed to be taken by the Council and specify the day on which the Council proposes to take the action. It must also state that the owner or occupier may object to the proposed action and that if an objection is made, the Council will not take the proposed action.

Clause 7 sets out certain requirements for the Council when taking action to remove graffiti under the Bill. Under this clause, the Council is required to—

- take reasonable steps to consult with the owner or occupier of the land in relation to the manner in which action to remove graffiti is to be taken; and
- ensure, as far as practicable, that the work is carried out expeditiously and in a way that avoids unnecessary inconvenience or disruption to the owner or occupier of the land and with reasonable care and to a reasonable standard.

Clause 7 also clarifies that action to be taken by the Council under the Bill may be taken on the Council's behalf by an employee of the Council or by another person authorised by the Council for the purpose.

Clause 8 protects the Council, an employee of the Council, or a person acting under the authority of the Council from any civil liability for any act done or omitted to be done in good faith under the Bill.

Clause 9 provides for the service of notices or other documents for the purposes of the Bill.

Hon Trevor Mallard

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Contents

		Page
1	Title	1
2	Commencement	2
Part 1		
Preliminary provisions		
3	Purpose	2
4	Application	2
5	Interpretation	2
Part 2		
Council's power to remove graffiti		
6	Council may remove graffiti	2
7	Requirements for Council when taking action to remove graffiti under this Act	3
8	Protection from civil liability	4
9	Service of notices	4

The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Hutt City Council (Graffiti Removal) Act **2011**.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

Part 1**Preliminary provisions**

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3 Purpose

The purpose of this Act is to facilitate the removal of graffiti within the district of the Hutt City Council.

4 Application

This Act applies to activities in the district of the Hutt City Council. 10

5 Interpretation

In this Act, unless the context otherwise requires,—

Council means the Hutt City Council

district means the district of the Hutt City Council

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private land means land other than land belonging to the Crown or a local authority, or an agency or instrument of the Crown or a local authority

property includes a building, structure, road, paved surface, or object of any kind

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public place has the meaning given to it by section 2 of the Summary Offences Act 1981

remove, in relation to graffiti, includes erasing or covering up the graffiti.

Part 2

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Council's power to remove graffiti**6 Council may remove graffiti**

(1) If **subsection (2)** applies, the Council may—

(a) enter any private land; and

(b) take any action necessary to remove graffiti that is—

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(i) on any property situated on that land; and

(ii) visible from a public place.

- (2) This subsection applies if—
 - (a) a notice under this section was served on the owner or occupier of the land at least 10 days prior to the action being taken; and
 - (b) the owner or occupier on whom the notice was served 5
has not objected, in accordance with the notice, to the action being taken.
- (3) A notice served on an owner or occupier under this section must—
 - (a) be in writing; and 10
 - (b) give particulars of the action proposed to be taken by the Council; and
 - (c) specify the day on which the Council proposes to take the action; and
 - (d) advise the owner or occupier that— 15
 - (i) the owner or occupier may, prior to the specified day, object to the proposed action by notifying the Council or a specified agent of the Council, in a manner specified in the notice; and
 - (ii) if an objection is made, the Council will not take 20
the proposed action.
- (4) Nothing in this section imposes a duty on the Council to remove graffiti.

7 Requirements for Council when taking action to remove graffiti under this Act 25

- (1) In taking action to remove graffiti under this Act, the Council must—
 - (a) take reasonable steps to consult with the owner or occupier of the land in relation to the manner in which the action is to be taken; and 30
 - (b) ensure, as far as practicable, that the work is carried out—
 - (i) expeditiously and in a way that avoids unnecessary inconvenience or disruption to the owner or occupier of the land; and 35
 - (ii) with reasonable care and to a reasonable standard.

- (2) Action to be taken by the Council under this Act may be taken on the Council's behalf by an employee of the Council or by another person authorised by the Council for that purpose.

8 Protection from civil liability

No civil proceedings may be brought against the Council, an employee of the Council, or a person acting under the authority of the Council for any act done or omitted to be done in good faith by the Council, employee, or person under this Act. 5

9 Service of notices

- (1) A notice or other document required to be served on a person for the purposes of this Act is taken to have been served if it is— 10
- (a) delivered personally to the person; or
 - (b) delivered to the person at the person's usual or last known place of residence or business; or 15
 - (c) sent by pre-paid post addressed to the person at the person's usual or last known place of residence or business; or
 - (d) sent by fax or email to the person's fax number or email address; or 20
 - (e) posted to the person's post office box address; or
 - (f) left at a document exchange for direction to the person's document exchange box number.
- (2) If a notice or another document is to be served on a body (whether incorporated or not), service on an officer of the body, or on the registered office of the body, in accordance with **subsection (1)** is taken to be service on the body. 25
- (3) If a notice or another document is to be served on a partnership, service on any of the partners in accordance with **subsection (1)** is taken to be service on the partnership. 30
- (4) If a notice or other document is sent by post to a person in accordance with **subsection (1)(c) or (e)**, it is taken, in the absence of proof to the contrary, to have been received by the person at the time at which the letter would have been delivered in the ordinary course of post. 35

