

## BACKGROUND

Encroachments can be regarded as illegal extensions of private property boundaries and/or structures onto public land. Although at an individual level encroachments may appear minor in impact, cumulatively encroachments are responsible for detaining and degrading hectares of the Council/community reserve system.

Some encroachments occur in a slow, progressive fashion and usually from the well-intentioned activities of residents. Seemingly harmless activities such as lawn mowing, fire-break maintenance and informal gardening can stimulate notions of ownership, pride and a process of successive appropriation passed with land title from one proprietor to another. Further activities such as placement of structures, gradual removal of native vegetation and extension of fencing create the deceptive appearance of private property on Council land. Other encroachments occur rapidly as illegal land modification events.

Unauthorised encroachments on Council land have the ability to:

- Compromise the integrity of natural and cultural values
- Alienate land from public use/access
- Impede fire management
- Detract from aesthetic appearances
- Divert and encumber Council resources and assets
- Jeopardise public safety
- Cause social inequity
- Create otherwise avoidable legal liability exposure or uncertainty for Council

The Property and Recreation Division within Council will take action in respect of encroachments in accordance with this Policy once they become aware of a potential encroachment, either by notification from a member of the public or by notification from another division in Council. The Property and Recreation Division may provide instructions to the Regulation and Enforcement Division to commence enforcement action as appropriate, which will then enforce removal if required.

## OBJECTIVE

The main objectives of this policy are to –

- 1 Provide Council with a strategic, consistent and comprehensive approach to managing and removing encroachments from Council managed land.
- 2 Assist with ensuring that all encroachments on land owned or managed by Council are managed under a consistent set of guidelines which safeguards Council's obligations and liability.
- 3 Raise community appreciation and respect for Council managed land.
- 4 To assist Council in determining the impact of an encroachment and either formalise the existence of, or order the removal of, the encroachment or unauthorised occupation.
- 5 Ensuring that encroachments will be dealt with in a practical and equitable manner, considering the appropriate legislation and ensuring Council satisfies its obligations under the *Local Government Act 1993*, the *Crown Land Management Act 2016* and the *Roads Act 1993*.
- 6 Ensure that where encroachments are permitted to remain by Council, they are safe for the community as well as Council employees, volunteers and contractors.
- 7 To provide clear and precise information to members of the public who are either responsible for encroachments within Council property or are impacted by an encroachment.

## POLICY STATEMENT

This policy aims to provide a consistent framework for managing or removing unauthorised encroachments on Council managed land.

## POLICY REVIEW AND VARIATION

- 1 Council is to have opportunity to review and adopt, at least once during its Term, each Council policy.
- 2 A resolution of Council is required to adopt any variations to this policy, with the exception of minor administrative changes, such as updates to legislative references, which may be endorsed by the Executive Management Committee (EMC). Endorsement of administrative changes made to this policy by EMC does not alter the requirement for it to be reviewed and adopted by each Term of Council.

## APPLICATION

This policy will apply to the following circumstances:

- 1 Any encroachment affecting public road as defined under the *Roads Act 1993* that are not classified or under the control of NSW Roads Maritime Services;
- 2 Any encroachment affecting lands classified as Community or Operational land pursuant to the *Local Government Act 1993*; and
- 3 Any encroachment affecting Crown Land for which Council has the care, control and management under the *Crown Land Management Act 2016*.

## STATEMENT OF PROCEDURES

### DEFINITIONS

#### Community Land

Land that is classified as Community land under Division 1 of Part 2 of Chapter 6 of the *Local Government Act 1993*.

#### Encroachment

- a A privately owned building, steps, retaining wall, pool, fencing or physical barrier, sign, drain, road, path or any other structure constructed in whole or in part on Community land, Operational land or Council road reserve.
- b Vehicle access to private property in whole or in part over Community or Operational land.
- c Trees and shrubs, garden beds or landscaping, in whole or in part over Community or Operational land which could create a public perception that the Community or Operational land is privately owned.
- d Privately owned building materials and other items such as soil, mulch, compost, vehicles, plant and equipment temporarily or permanently stored in whole or in part on Community land, Operational land or Council road reserve.
- e Stormwater pipe discharging in whole or in part over Community or Operational land.

#### Enforced Compliance

##### Local Government Act

An official order issued by Council under section 124 of the *Local Government Act 1993*, requiring the protection or repair of public places by specifically using either:

- Order No 27 to remove an object or matter from a public place or prevent any object or matter being deposited there in the circumstance where the object or matter: (a) is causing or is likely to cause an obstruction or encroachment of or on the public place and the obstruction or encroachment is not authorised by or under any Act, or (b) is causing or is likely to cause danger, annoyance or inconvenience to the public.
- Order No 28 to take whatever steps are necessary to prevent damage to a public place and to repair damage to a public place where there is actual or likely damage.

##### Roads Act 1993 and Roads Regulation 2008

- Section 239 of the Act provides for the issuing of written directions by Council requiring specific works be undertaken to address breaches of Sections 92 and 142 of the Act.
- In certain circumstances (clause 11) of the Regulation provides for the direct issuing of a penalty notice.

#### Operational Land

Land classified as Operational land within the meaning of the *Local Government Act 1993*.

#### Procedural Fairness/Natural Justice

Legal terms (often used interchangeably) to imply that a decision maker should not only act in good faith and without bias but also should grant a hearing to any person whose interests will be affected by the exercise of that decision before the decision is made.

#### Road Reserve

Land dedicated as public road in accordance with the *Roads Act 1993* for which Council is the Roads Authority.

#### Voluntary Compliance

Cooperation with and fulfilment of a Council request to remove structures and/or desist inappropriate behaviours in the absence of enforced compliance.

## LAND TO WHICH THE POLICY APPLIES

This Policy applies only to land classified as 'community land' and 'operational land' under the *Local Government Act 1993* and 'road reserve' for which Council is the Roads Authority under the *Roads Act 1993*. This encompasses

land managed under a reserve trust or where Council has care, control and management of land under the *Crown Land Management Act 2016*.

This Policy does not apply to encroachments including, but not limited to awnings, sidewalk cafes and signage which are specifically dealt with under Council's Local Environment Plan and Development Control Plans.

## LEGISLATIVE FRAMEWORK

The *Local Government Act 1993* (LG Act) and the *Roads Act 1993* and *Roads Regulation 2008* are the primary pieces of legislation relevant to encroachments on Council managed lands. In relation to Council managed land, the aim of the LG Act is to:

- Assist councils in the categorisation of community land and the management of that land;
- Promote the best management of environmentally sensitive land;
- Curb the inappropriate alienation of community land for essentially private purposes; and
- Reinforce the public's right to participate in public land management.

The aim of the Roads Act and Regulation are to:

- Regulate the carrying out of various activities on public roads;
- Set out the rights of members of the public to pass along public roads; and
- Set out the rights of persons who own land adjoining a public road to have access to the public road.

Council also manages land on behalf of State authorities in accordance with the *Crown Land Management Act 2016*. In instances where encroachments occur on land under the care, control and management of Council or on land managed under a reserve trust, the provisions of the LG Act apply.

## RELEVANT POLICIES, GUIDELINES AND PLANS OF MANAGEMENT

- Wollongong City Council Plans of Management
- Wollongong Development Control Plan
- Wollongong City Council Tree Management Order
- Wollongong City Council Enforcement Policy
- Penalty Notice Review Policy
- Wollongong Local Environment Plan
- Wollongong City Council Outdoor Dining Policy

## PROCESS AND MANAGEMENT

The assessment and removal of any encroachment under this policy will involve the Property and Recreation division as the manager of the land, Regulation and Enforcement Division, as the enforcement provider, and Development Assessment and Certification as the approval authority.

The Property and Recreation Division has the role of providing advice to the Regulation and Enforcement Division in relation to the desired outcome, for example, to formalise the encroachment, to take no action, to remove the obstruction or to repair the public land. The Property and Recreation Division will determine the desired outcome based on public risk and the overall impact of the encroachment.

The Development Assessment and Certification Division's role is to provide Regulation and Enforcement with advice regarding unauthorised driveway and or layback structures with respect to if the encroachment would likely have been given approval should an application had been submitted. Such advice will have bearing on any enforcement action.

This process will ensure the most effective use of resources for Council in relation to pursuing enforcement and that minor matters are considered in a reasonable and consistent fashion prior to any enforced compliance.

## APPROACH TO INVESTIGATION

Council's approach will undertake the following main steps (where relevant):

- Receipt of complaint or advice concerning encroachment
- Identification and verification of the encroachments
- Resident engagement concerning background to encroachment
- Referral to the appropriate Divisions for comment
- Determine most appropriate course of action based on an assessment of the impact of the encroachment
- Implement appropriate process pursuant to most appropriate course of action, and if enforcement is most appropriate, provide advice and direction to Regulation and Enforcement Division
- Advice received from Property and Recreation Division pursued by Regulation and Enforcement Division
- Seek Voluntary Compliance
- Issue Local Government Act/Roads Act/Roads Regulation Notice
- Consider any representations to Council's Notice
- Issue Local Government Act Order and/or take further enforcement action with regards to the Roads Act/Regulation Notice
- Take legal action/issue fine for failure to comply with Order/Notice

It is important to note that procedural fairness is offered as part of this process through Council's initial engagement with the offender, the offer of voluntary compliance and the consideration of any representation made to Council's Notice prior to the issue of any order.

The WCC Enforcement Policy is also integral and applies to this policy. The review of any Penalty Notice issued as a result of this policy will be consistent with council's Penalty Notice Review Policy.

## COMMUNICATION AND PREVENTION

Communicating the negative impacts associated with encroachments provides an important mechanism to raise appreciation and respect for Community land, provide offenders with contextual knowledge prior to Council engagement and to prevent the establishment of new encroachments. To ensure effective communication and prevention occurs, Council will, in the course of enquiries regarding specific properties, notify of known encroachments and inform respective owners or purchasers of Council's Encroachment Policy.

## DATA MANAGEMENT

A database will be established to record information including extent and nature of encroachments being resolved through this policy.

## POLICY REVIEW PROCESS

- The Policy will be reviewed every three years.
- The Policy will be amended as and when required in response to legislative changes.

## STANDARD OPERATING PROCEDURE

A standard operating procedure has been created, however it will not form part of this document.

## SUMMARY SHEET

Responsible Division	Property and Recreation
Date adopted by Council	02 September 2019
Date of previous adoptions	8 September 2014, 24 November 2009, 8 September 2014
Date of next review	02 September 2023
Responsible Manager	Manager Property and Recreation
Authorised by	Manager Property and Recreation