



10. PROPERTY MANAGEMENT

Encroachment Management Policy

Policy 10.22

Version 1

ENCROACHMENT MANAGEMENT POLICY

Background

Council Managed Land is an important asset for Lithgow. It supports the delivery of essential local government services, protects sites of environmental and cultural value and provides opportunities for community and recreational uses.

Occasionally Council becomes aware of encroachments on Council Managed Land from adjoining properties. Encroachments can occur through innocent mistake or through disregard for property boundaries and planning laws.

Regardless of how or why an encroachment has occurred, unlawful development or use of Council Managed Land is prohibited and encroachments must be either authorised by Council or removed.

Encroachments on or over Council Managed Land have the potential to:

1. create a safety risk to the public
2. alienate land from public access and use
3. create pollution and contamination of land
4. cause soil erosion, affect water quality and contribute to localised flooding
5. detract from visual appeal and affect the integrity of natural and cultural values
6. encumber Council's resources and assets

Purpose

This policy provides a framework for addressing encroachments on Council Managed Land in an appropriate and consistent manner.

Commencement

This policy commences on the date it is adopted by resolution of the Council.

Application

This policy applies to Council Managed Land (see definitions). It does not apply to roads vested in Council under the Roads Act 1993.

Nothing in this policy affects the power of Council to give an order, notice or direction under the authority of another Act. Examples include the Environmental Planning & Assessment Act 1979, Protection of the Environment Operations Act 1997, Public Health Act 2010, Crown Land Management Act 2016, Swimming Pools Act 1992, Roads Act 1993, Companion Animals Act 1998, Food Act 2003.

Principles

The principles that underpin this policy are:

- Council Managed Land is to be lawfully occupied, used, sold, leased, licensed or otherwise dealt with, as appropriate.
- The natural resources of Council Managed Land are to be conserved (including water, soil, flora, fauna and visual appeal).
- Public use and enjoyment of appropriate Council Managed Land is encouraged.
- Where appropriate Council Managed Land should be used and managed in such a way that it is sustained in perpetuity.

Procedure

When Council receives a complaint about an encroachment on Council Managed Land, Council will apply the procedure set out in column 1 of Appendix A, assess the encroachment based on the factors listed in column 2 of Appendix A, and determine the appropriate action to take under column 3 of Appendix A.

Definitions used in this Policy

In this policy the words in column 1 have the meaning ascribed in column 2.

Category	The category assigned to the land pursuant to section 36 of the <i>Local Government Act 1993</i> or if no category has been assigned, the most suitable category as determined by Council.
Classification	The classification of the Council Managed Land under Division 1, Part 2 of Chapter 6 of the <i>Local Government Act 1993</i> .
Community	Land that is classified as community land under Division 1 of Part 2 of Chapter 6 of the <i>Local Government Act 1993</i> .
Council Managed Land	For the purpose of this policy Council Managed Land is land owned or leased by Lithgow City Council and Crown Land managed by Council as the appointed Crown Land Manager under the <i>Crown Land Management Act 2016</i> .
Encroachment	The unlawful intrusion of a structure or other object over or on Council Managed Land. For example: <ul style="list-style-type: none"> • storing of materials such as soil, mulch, compost or objects such as vehicles or plant and equipment • trees, vegetation, garden beds, or landscaping (may give the impression that part of Council Managed Land forms part of the adjoining private property) • a building, retaining wall, fence, pool, steps, physical barrier, sign, drain, road, path or any other structure

Notice	A notice under section 132 of the <i>Local Government Act 1993</i> , to be given before giving an Order.
Operational	Land that is classified operational land under Division 1 of Part 2 of Chapter 6 of the <i>Local Government Act 1993</i> .
Order	<p>An order under section 124 of the <i>Local Government Act 1993</i> requiring the protection or repair of public places by using either:</p> <p>Order No 27 - to remove an object or matter from a public place or prevent any object or matter being deposited there</p> <p>Order No 28 – to take whatever steps are necessary to prevent damage to a public place and to repair damage to a public place whether there is actual or likely damage,</p> <p>in the circumstances listed in section 124.</p>
Zoning	The land use zone applicable to the relevant Council Managed Land under Lithgow Local Environmental Plan 2014.

APPENDIX A

Procedure when Council receives notice of an encroachment	Factors to be considered when assessing an encroachment	Determine and implement action
<ol style="list-style-type: none"> 1. Council receives notice of an encroachment on Council Managed Land. 2. The matter is assigned to the Property division. 3. The Property division will undertake a preliminary investigation, including: <ul style="list-style-type: none"> o Identify the title particulars of the Council Managed Land o obtain aerial images of the Council Managed Land o verify ownership and responsibility for the Council Managed Land o verify ownership of the encroaching land o identify attributes of the Council Managed Land, including Classification, Category, Zoning, etc o if the land is Crown land, consider native title rights and interests, Aboriginal land claims o review ECM and enquire with appropriate internal divisions regarding any current development consents, approvals, building certificates, etc 4. If the encroachment coincides with a current development consent, building certificate or other approval, the encroachment will be assigned to the Development & Environment division to be addressed in conjunction with the development. (The Property division will notify the complainant in writing that the matter has been assigned to the Development & Environment division to be addressed in conjunction with a current development.) 5. If the encroachment does not coincide with a current development consent, building certificate or other approval, the Property division will undertake the following: <ul style="list-style-type: none"> o engage with the owner of the encroaching land to understand the background to the encroachment o conduct a site visit and take photos of the encroachment o prepare a report for Council's file with a recommendation for action having regard to the facts and circumstances in column 2 6. The Property division will action recommendations listed 1 to 5 of column 3. 7. If there is no voluntary compliance (point 5 of column 3) within the time required or the recommendation is point 6 of column 3, the matter will be assigned to the Development & Environment division to commence enforcement action. 	<ul style="list-style-type: none"> • The nature and scale of the encroachment. • Whether the Council Managed Land is classified Community or Operational. • Whether the Council Managed Land is Crown Land under the <i>Crown Land Management Act 2016</i> and subject to considerations under the <i>Native Title Act 1993</i> • The Zoning of the Council Managed Land. • The risk to public safety, amenity and/or reduced access caused by the encroachment. • Actual or potential environmental risks to the Council Managed Land directly or indirectly caused by the encroachment. • Actual or potential financial risk to Council. • The potential social inequity created by the encroachment. • Any other factors that Council deems relevant in relation to the encroachment, in its discretion. 	<ol style="list-style-type: none"> 1. Take no further action. 2. Record the encroachment in Council's system so that the encroachment is shown on a section 10(5) certificate under the Environmental Planning and Assessment Act 1979. 3. Propose a licence, lease, or easement to authorise use of the area. <p>The encroaching party will be required to pay an annual fee/rent and hold public liability insurance cover, as well as pay costs of and relating to obtaining a valuation, establishing a licence, lease, or easement. Council will require a bond to cover such expenses prior to commencing any work.</p> 4. Propose a boundary adjustment to transfer the encroached area to the encroaching party. <p>The encroaching party will be required to pay Council the market value of the area affected by the encroachment, as well as upfront payment for costs of and relating to a boundary adjustment (including but not limited to valuations, survey, legal and registration fees). Council will require a bond to cover such expenses prior to commencing any work.</p> 5. Request voluntary compliance by the encroaching party to remove the encroachment within 30 to 60 days, having regard to the extent of the encroachment and the risks posed by the encroachment. (Check whether a development application is needed for this purpose.) 6. Commence enforcement action <ul style="list-style-type: none"> o Issue a Notice to the encroaching party. <p>Note: If the situation is an emergency, a Notice need not be issued before an Order (Local Government Act 1993, s 129(1)(b)). However, if the encroachment affects Crown Land, Council must obtain the consent of the Minister prior to issuing an Order (Local Government Act 1993, s 126).</p> o Consider any representations received in relation to a Notice. o Issue an Order. <p>Note: if the encroachment affects Crown Land, Council must obtain the consent of the Minister prior to issuing an Order (Local Government Act 1993, s 126).</p> o Commence legal action for removal of the encroachment. <p>Procedural fairness</p> <p>Procedural fairness will underpin Council's process from initial engagement with the property owner and a request for voluntary compliance, as well as the consideration of any representation made in respect of a Notice prior to the issue of any Order.</p>

APPENDIX A

		Section 130 of the Local Government Act 1993 states that a council that complies with Division 2 of Part 2 of Chapter 7 is taken to have observed the rules of natural justice (the rules of procedural fairness).
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