

POLICY NAME: DRAFT REVIEW  
PRIVATE STRUCTURES (EXISTING)  
ON PUBLIC LAND and ROADS

POLICY REF: P09

MEETING ADOPTED: 28 May 2009  
Resolution No. 280509/17

POLICY HISTORY:

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### OBJECTIVE

- To ensure public safety and amenity is not impacted upon by unauthorised structures on public land or roads.
- To ensure that public land is retained for and available for passive and active recreation for residents and visitors.
- To ensure roads are retained and available for public access.
- To ensure that public land is protected from damage resulting from the use of the public land for activities other than passive or active recreation.
- To ensure that access to public land is unobstructed.
- To ensure that public land is used in accordance with the *Local Government Act 1993*, the *Crown Lands Act 1989* and the *Roads Act 1993*.
- To assist in educating the public on the legislation and controls relating to the placing of structures for private use on public land.
- To provide guidelines for the management of private structures on public land and enable Council staff to manage these issues.

### BACKGROUND

Public land and roads are provided for the benefit of the general public. As a local authority Council is responsible for a significant area of public land and roads and over time private structures have been located on public land and roads without the formal approval of Council.

~~These structures include, but are not limited to, carports, garages, sheds, bird cages, fences and jetties.~~

Whilst many of these structures have been in place for lengthy periods of time, this does not negate the fact that they do not have any legal status and are impinging on the public use of the area they occupy.

These structures are therefore in contravention of the *Local Government Act 1993*, *Roads Act 1993*, or the *Crown Lands Act 1989* depending on the ownership of the land on which they are located. Hence as manager of the land Council is required to take action under this legislation to remedy the situation.

#### Local Government Act 1993

Section 35 of the *Local Government Act 1993* states as follows:

#### ***What governs the use and management of Community land?***

*Community land is required to be used and managed in accordance with the following:*

- *The plan of management applying to the land*

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- Any law permitting the use of the land for specified purpose or otherwise regulating the use of the land
- This division.

Council cannot give consent to use public land that is classified as community land unless the use is prescribed in a plan of management or consent is provided under another regulation. The use of the community land is also prescribed in the *Local Government Act 1993* by the core objectives set out for the management of community land under the categorisation of the land as set out in section 36 E to N of the *Local Government Act 1993*.

### Crown Lands Act 1989

The *Crown Lands Act 1989* prohibits the placement of unauthorised structures on Crown land. Part 7 Division 5 section 155 of the *Crown Lands Act 1989* states:

*A person shall not, without lawful authority:*

- Reside on public land
- Erect a structure on public land,
- Clear, dig or cultivate public land,
- enclose public land,
- Deposit or leave on public land any rubbish, litter, refuse, dead animal, filth or other similar matter.

The *Crown Lands Act 1989* states that if a council is the manager of a reserve trust and the reserve is a public reserve, the trust has all the functions of a council under the *Local Government Act 1993* in relation to public reserves. This means that Council can not provide approval for the private use of a public reserve.

### Roads Act 1993

The Roads Act 1993 provides the statutory framework to regulate works, structures and activities on public roads. Unauthorised works, structures or activities are not permitted on public roads. Where Council is the roads authority, it is able to authorise works, structures or activities on public roads.

### DEFINITIONS

**Public land** All Council owned or controlled land including Roads and Community and Operational land as classified under the Local Government Act 1993. Crown land where Council is the appointed Trust Manager.

**Structures** Include but are not limited to the following:

- Any building, or shed, carport, garage, fence, bird cages, pools.
- Any post, pile, stake, pipe, chain, wire or any other thing that is fixed to the soil or to anything fixed to the soil
- Any roadwork, pathway or paving
- Any works for the reclamation of land that are or liable to be, or would, but for the reclamation, be or be liable to be, covered wholly or partly by water, and
- Any excavation works, drain, canal, sump or foundation, whether lined or unlined.

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### SCOPE OF POLICY

This policy applies to (add or delete where necessary):

- Council employees
- Councillors
- All Community members
- Company's
- Community Groups

### RELATED DOCUMENTATION

Related documents, policies and legislation:

- Crown Lands Act, 1989
- Local Government Act, 1993
- Roads Act, 1993
- EPA Act 1979

### POLICY

This Council policy, as a general rule, is not to support prohibits unauthorised private structures on public land, primarily as this restricts the public use of that land. However Council also recognises that at times the use may be legitimate therefore Council's policy will be to work with the owner of the illegal structure to remedy the situation, in accordance with the following policy guidelines. Council is strongly committed to ensuring encroachments on council managed public lands are removed.

#### Management of Unauthorised Structures

- Once an unauthorised structure is identified on public land Council staff will take all available steps to confirm the owner of that structure. If the owner is not able to be readily identified Council staff will remove the structure from the public land
- If the owner(s) is identified then the owner will be required to remove the structure, an assessment of the purpose of the structure will be undertaken to determine the merits or otherwise of the structure. This assessment will take into account the public interest of retaining the structure on the public land
- The public interest test will consider matters including, but not limited to, the following:
  - a) The restriction placed on public use of the land by the structure
  - b) Whether the placement of the structure can be legalised
  - c) The cost and implications of removal to the public.
- The private interest test will consider matters including the cost and implications of removal to the owner.
- If in the opinion of the General Manager the structure is not in the public interest the owner will be requested to remove the structure. A maximum period of six months will be provided for removal

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- ~~If in the opinion of the General Manager there is a potential public interest in retaining the structure, the matter will be reported to Council for determination of an appropriate course of action~~

### **REVIEW**

This policy is to be reviewed every four years, or as required.