

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

POLICY REF: P09

MEETING ADOPTED: 24 April 2014
Resolution No. 240414/35

POLICY HISTORY: 280509/17



TABLE OF CONTENTS

OBJECTIVE 1

BACKGROUND 1

DEFINITIONS..... 2

SCOPE OF POLICY 3

RELATED DOCUMENTATION 3

POLICY 3

REVIEW 3

OBJECTIVE

The objectives of this policy are to ensure:

- ~~To ensure~~ Public safety and amenity is not impacted upon by unauthorised structures on public land or roads
- ~~To ensure~~ Public land is retained and available for passive and active recreation for residents and visitors
- ~~To ensure~~ Roads are retained and available for public access
- ~~To ensure~~ Public land is protected from damage resulting from the use of the public land for activities other than passive or active recreation
- ~~To ensure~~ Access to public land is unobstructed
- ~~To ensure~~ Public land is used in accordance with the *Local Government Act 1993*, the *Crown Land Management Act 2016* and the *Roads Act 1993*.

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. Over time private structures have been located on public land and roads without the formal approval of Council.

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* *Land Management Act 2016* depending on the ownership of the land on which they are located. Hence as As manager of the public 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*
- *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~~ Land Management Act 2016

~~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:~~

The Crown Land Management Act 2016, Part 9, contains provisions to ensure Crown land is protected from damage and improper use. The Act prohibits the use of the Crown land for certain purposes without lawful authority.

Under the Act, a person shall not, without lawful authority:

- ~~R~~eside on Crown land
- ~~E~~rect a structure on Crown land,
- ~~G~~raze or drive stock on Crown land,
- ~~C~~lear, dig up or cultivate Crown land,
- ~~I~~nterfere with any substance on, in or forming part of Crown land,
- ~~P~~ollute or contaminate Crown land
- ~~E~~nclose Crown land,

~~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.~~

The Crown Land Management Act 2016 states that if a council is the manager of dedicated or reserved Crown land, the Council 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~~ land manager.

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

- ~~A~~ny building, including a shed, carport, garage, fence, bird cage or pool
- ~~A~~ny post, pile, stake, pipe, chain, wire or any other thing that is fixed to the soil or to anything fixed to the soil
- ~~A~~ny roadwork, pathway or paving
- ~~A~~ny 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~~
- ~~A~~ny excavation works, drain, canal, sump or foundation, whether lined or unlined.

SCOPE OF POLICY

This policy applies to:

- Council employees
- Councillors
- All community members
- Companies
- Community groups.

RELATED DOCUMENTATION

Related documents, policies and legislation:

- Crown ~~Lands Act 1989~~ Land Management Act 2016
- Local Government Act 1993
- Roads Act 1993
- EPA Environmental Planning and Assessment Act 1979

POLICY

~~This Council policy,~~ Council manages activities and works on Council managed public land. Council is strongly committed to ensuring the removal of encroachments on Council managed public land.

Management of Unauthorised Structures

- ~~Once~~ **When** an unauthorised structure is identified on public land, Council staff will take 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.

REVIEW

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