



UNAUTHORISED USE OF PUBLIC LAND POLICY

Contents

1. Scope
 2. Purpose
 3. Procedure
 4. Definitions
 5. Associated Documents
-

1. Scope

This policy applies to Council owned land under the Local Government Act 1993 and Crown Land managed under a Council Reserve Trust or where Council has care, control and management of that land under the Crown Lands Act 1989 together with other land that Council has the care, control and management of. It also encompasses roads, whether formed or not, where Council is the Roads Authority under the Roads Act 1993.

2. Purpose

Council will manage the Unauthorised Use of Public Land to:

- Ensure Public Land remains accessible for the use of all members of the public;
 - Preserve ecological integrity;
 - Preserve recreational amenity;
 - Ensure Council can properly maintain Public Land; and
 - Ensure Council satisfies its legal obligations and administers the intent of the Local Government Act 1993 (LG Act), Crown Lands Act 1989 (CL Act) and Roads Act 1993.
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3. Procedure

Council will follow the *Unauthorised Use of Public Land Procedure (HPRM # D05164826)* when responding to an Alleged Unauthorised Use of Public Land and to action all verified Unauthorised Uses.

Unauthorised Use of Public Land will be managed with Procedural Fairness.

4. Definitions

Name of Policy		
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CITY OF PARRAMATTA

For the purpose of this policy, the following definitions will apply:

Alleged Unauthorised Use means an unverified ***Unauthorised Use***.

Bushland means land on which there is **Vegetation** which is either a remnant of the natural **Vegetation** of the land or, if altered, is still representative of the structure and floristics of the natural **Vegetation** and can also include remnant native canopy trees with a missing or modified understorey.

Council means City of Parramatta Council.

Crown Land means land as defined under Section 3 of Part 1 of the Crown Lands Act 1989.

Enforced Compliance means an order issued by Council under the Local Government Act 1993, requiring or prohibiting the doing of things to or on Public Land.

Procedural Fairness means that a decision maker should not only act in good faith and without bias but will also grant a hearing to any person whose interests will be affected by the exercise of that decision before the decision is made.

Public Land means any land (including a public reserve) vested in or under the control of Council or a public road where Council is the Roads Authority, but does not include:

- (a) a common; or
- (b) land subject to the *Trustees of Schools of Arts Enabling Act 1902*; or
- (c) a regional park under the *National Parks and Wildlife Act 1974*.

Roads Authority means the council of a local government area in accordance with section 7 of the Roads Act 1993.

Unauthorised Use means an occupation and/or encroachment, whether fenced or unfenced, of part or the whole of any parcel of Public Land and includes (but is not limited to):

- a) the erection of fencing or other physical barrier, in whole or in part over Public Land, which restricts access to Public Land; and/or
- b) the storage of privately owned objects and materials and other items, such as soil, mulch, compost, vehicles, plant and equipment and/or

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CITY OF PARRAMATTA

- construction material/s whether temporarily or permanently stored in whole or in part on Public Land; and/or
- c) any other Unauthorised Use as determined by Council.

Vegetation means trees (including any sapling or shrub, or any scrub), understory plants, groundcovers (being any type of herbaceous vegetation) and plants occurring in a wetland.

Voluntary Remediation Agreement means a formalised agreement which sets out the agreed terms and conditions for removing item/s and/or rehabilitating areas of Public Land, an example of which is contained in **Annexure A** of the Procedure.

Associated Documents

The Local Government Act, Crown Lands Act and Roads Act are the primary legislation relating to the Unauthorised Use of Public Land.

(a) Local Government Act 1993

Council is responsible for managing both operational and community land. In accordance with Chapter 6, Part 2 of the LG Act. The following provisions in the LG Act apply to community land:

1. Section 45 gives Council no power to sell, exchange or otherwise dispose of community land;
2. Section 47D (1) prohibits the exclusive occupation or exclusive use by any person of community land otherwise than in accordance with a lease, licence of other estate;
3. Section 47B precludes the granting of a lease or license for private residential purposes on land categorised as a natural area; and
4. Section 46 (2) specifies that the granting of a lease or license must be in accordance with the applicable core objectives for community land (Sections 36E to 36N) which are inconsistent with private residential purposes.

Section 124 (Orders 27 – 29) of the LG Act empower Council with the regulatory mechanisms to deal with the Unauthorised Use of Public Land.

(b) Crown Lands Act 1989

Council also manages land on behalf of state authorities. In instances where the Unauthorised Use of Public Land occurs on land under the care, control and management of Council or on land managed under a reserve trust, provisions of the LG Act apply. Section 98 of the CL Act devolves to Council the ability to

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CITY OF PARRAMATTA

use provisions of the LG Act in relation to land where Council is the manager of a reserve trust.

(c) Roads Act 1993

Council is the Roads Authority pursuant to Section 7 of the Roads Act 1993, as follows:

Section 7 - Roads authorities

1. Roads and Maritime Services is the roads authority for all freeways.
2. The Minister is the roads authority for all Crown roads.
3. The regulations may declare that a specified public authority is the roads authority for a specified public road, or for all public roads within a specified area, other than any freeway or Crown road.
4. The council of a local government area is the roads authority for all public roads within the area, other than:
 - (a) any freeway or Crown road, and
 - (b) any public road for which some other public authority is declared by the regulations to be the roads authority.
5. A roads authority has such functions as are conferred on it by or under this or any other Act or law.

(d) State Environmental Planning Policy 19 (Urban Bushland)

This policy aims to protect and preserve bushland within urban areas and under Clause 6 (1) a person shall not disturb bushland zoned or reserved for public open space purposes without the consent of the council.

(e) Real Property Act 1900

Under Section 45D (3) of the Real Property Act 1900, a possessory application may not be made in respect of an estate or interest in any land, or in any part of any land of which the Crown or Council, within the meaning of the LG Act, is the registered proprietor. To reinforce that public land cannot be claimed by a private individual.

(f) Encroachment of Buildings Act 1922

This legislation deals with the encroachment by a building onto adjoining land and includes encroachment by overhang of any part as well as encroachment by intrusion of any part in or upon the soil of adjoining land.

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Date of Commencement: 07/12/15	Approval Authority:	Date Approved:
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CITY OF PARRAMATTA

(g) Surveying and Spatial Information Act 2002

This legislation deals with the provision of authority for survey work to be undertaken.

(h) Related Strategies, Plans and Policies

This Policy must be implemented in conjunction with adopted or draft Council Plans of Management and other plans and policies, including, but not limited to, the following:

- 1) Parramatta City Centre Local Environmental Plan 2007;
- 2) Parramatta Local Environmental Plan 2011;
- 3) Community Land Plan of Management (2014);
- 4) Lake Parramatta Reserve Plan of Management (2012);
- 5) Baludarri Wetland Plan of Management (2010);
- 6) Biodiversity Plan (2003);
- 7) Open Space Plan (2003);
- 8) Development Control Enforcement Policy (Policy 136);
- 9) Volunteer Bushcare Program Charter and Policy (Policy 195);
- 10) Environmental Policy (Policy 282);
- 11) Local Orders Policy including The Keeping of Birds and Animals (Policy 135);
- 12) Policy 236 - Outdoor Dining Policy; and
- 13) Policy 240 – Retail Trading in Public Spaces Policy

REFERENCES	
POLICIES	
ATTACHMENTS	

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