

**Submission
No 37**

MANAGEMENT AND DISPOSAL OF WASTE ON PRIVATE LANDS

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Position: Director Planning and Environment
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Partially Confidential

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The Chair
Committee on Environment and Regulation
Parliament of New South Wales
Macquarie Street
SYDNEY NSW 2000

Dear Mr Patterson

The Parliamentary Committee Inquiry into the Management of Waste on Private Land

I refer to your letter of 28 June 2013 (File Reference: D13/16852) inviting submissions addressing the above Parliamentary Committee's terms of reference.

In response, the following is submitted for the Committee members' consideration:

a) The health and safety risks posed by inadequate management and disposal of waste, overgrowth and excess vegetation, pests and odour.

The risks are self-evident and the extent of threat to the community is reflected by the number of incidents of illegal dumping, unlawful landfilling or storage/disposal of waste, and the degree of neglect of persons to properly maintain their properties. Whilst Council is responsive in dealing with such incidents, frequently it is the innocent property owner or Council that bears the cost of clean-up.

Some photographic examples of the types of waste dumping incidents and overgrown vegetation on private premises experienced in the Campbelltown Local Government Area/LGA are attached.

b) The effectiveness of current regulatory arrangements and powers to compel clean-ups on private land and manage derelict buildings.

Streamlining the Notice/Order Process

The process of issuing notices and orders can on occasion seem unnecessarily complex and the procedures could be simplified, particularly with respect to ongoing offences. For instance, in most cases a clean-up is directed, except in urgent or emergency situations, by way of the service of a notice of intention followed by an order. Should the order not be complied with, Council can then pursue the issue of a penalty notice or legal action depending on the seriousness of the offence. However, to recommence the order process a further notice of intention needs to be issued in order to satisfy the strict procedural requirements of the relevant legislation. If there is a need to issue a fresh order to the offender or the responsible party for the same ongoing offence then there should be no need to precede the issue of the order with a

notice of intent for a matter that the offender or the responsible party is already aware of and been given previous opportunity to make representation or resolve.

Consideration could be given to broadening the capacity to serve orders without the need for a notice of intent, in the interest of streamlining the administrative process and achieving earlier compliance. Issue of industry wide guidelines with practical examples may be useful in the consistent handling of waste management issues and the implementation of any streamlined order process.

c) The adequacy of inspection and enforcement procedures, including relevant sanctions and powers to recover costs.

Power to Furnish Information or Records

Of particular value to Council's officers' ability to properly investigate matters of unhygienic, environmentally negligent or inappropriate land use, is the power, by written notice, to require a person, who may be able to assist with Council's enquiries, to furnish such information or records (or both) that the officer requires to assist with their investigation. Whilst this power is available under ss 192 and 193 of the POEO Act, similar powers are not available to Council's authorised officers under the EP&A Act and LG Act. The utilisation, of this authority to require information can greatly assist Council's authorised officers in identifying all responsible offenders, which, in some cases, may not be the owner or occupier of the premises who may ultimately be left with the responsibility and cost of the clean-up of the premises.

Review Penalty Provisions

Recent amendments to the POEO Act have seen the penalty provisions increased consistent with the relevant offence provisions. It is acknowledged that a review of the LG Act is currently being undertaken and as part of that review, a recommendation by the LG Act Taskforce has been made that *'penalties for offences in the Act and Regulations be reviewed to ensure they are proportionate to the seriousness and the nature of the offence, and act as a deterrent to re-offending'*. Council supports such recommendation, particularly as the regulatory provisions of the LG Act are frequently relied upon when dealing with health/nuisance type complaints (such as unhealthy and overgrown land, derelict buildings and accumulation of rubbish and waste) and the associated penalties for non-compliance are comparatively low.

Cost Recovery

Provision for the recovery of clean-up costs must be pursued through the courts to initially obtain orders and, not uncommonly, a further process of enforcement of the cost orders obtained. In the case of smaller clean-up amounts, for instance overgrown vegetation, the cost of the legal cost recovery processes can far exceed the actual cost of the clean-up. In such situations it would seem more effective, where appropriate, to apply the debt not as a debt against the individual but as a debt against the property, which would attract ongoing interest until the debt is settled or recovery is enabled through the private sale of the property or other appropriate property disposal mechanisms available to Council.

d) Possible measures to improve the management of waste on private land.

Consolidation of Provisions for Waste Management

Waste on private land is essentially a matter that can be effectively dealt with under the enforcement provisions of the Environmental Planning and Assessment Act, 1979, Local Government Act and POEO Act. It is considered that there is merit in examining

the consolidation of current regulatory provisions under one Act, preferably the POEO Act, as it contains a range of effective regulatory provisions (such as notice fees, authority to require information/records and higher penalties) when compared to the LG and EP&A Acts. Alternatively similar POEO provisions could be incorporated into the LG and EPA Acts for the sake of consistency.

Video Surveillance Programs

The availability of suitable technology (ie: infrared surveillance cameras) should be further considered by regulatory authorities, as it provides an effective means of assisting in the identification of offenders. The availability of funding or assistance through State Government Programs would encourage broad scale use of such technology in surveillance programs both on public and private land.

The broad scale implementation of surveillance programs would be likely to act as an effective measure to detect and deter illegal waste disposal activity.

Asbestos Management

One particular area of concern is the management of asbestos in regard to recovery, transport and disposal. Council's experience is that there is concern in the community, particularly as more and more older buildings are being demolished or renovated. Council responds to various complaints regarding the handling or disposal of asbestos and our experience suggests that there are a number of organisations and individuals who fail to observe safe handling and management practices.

In view of the above it may be beneficial to consult the Workcover Authority and NSW EPA regarding the merit of the Parliamentary Committee extending the scope of its Inquiry, to examine the current licencing arrangements for asbestos removal contractors and the need for increased monitoring, auditing and surveillance of the industry.

e) The extent of illegal dumping and the impact on local government authorities of requirements to remove dumped waste.

The incidents of illegal waste dumping continue to increase each year, which anecdotally, appears to relate to the high recovery and disposal costs associated with proper land fill disposal. This is particularly evident in respect of potentially hazardous materials, such as asbestos and certain contaminated landfill where incidents of unsafe recovery, handling and illegal dumping occur all too frequently, with a potential to pose a threat to the community and the environment.

To give an indication of the extent of illegal dumping within the Campbelltown LGA, Council spends on average \$125,000 each year in waste disposal fees associated with the illegal disposal of waste on public land. \$15,000 is spent annually on community education in advertising, flyers, newspaper articles and website information. Further expenses are incurred with labour and plant associated with waste removal, investigation, analysis and consultant reporting, in addition to enforcement and legal costs.

Furthermore, Council over the 2012/13 period has issued a number of Notices/Orders relating to waste management on private land or overgrown property on private land:-

- 19 POEO Clean Up/ Prevention Notices relating to waste or pollution on private land.

- 150 LG Act Notices/Orders relating to overgrown vegetation or removal of waste on private land.
- 74 EP & A Act Notices and Orders regarding land use activities relating to waste on private land.

In addition, over the 2012/13 period Council received 2738 complaints relating to illegal dumping.

Council appreciates the opportunity to provide the Parliamentary Committee with its submission on this significant issue.

Should you require any further information or assistance in this matter please do not hesitate to contact Councils Director Planning and Environment, Mr Jeff Lawrence on [REDACTED] or alternatively Mr Paul Curley, Acting Manager Compliance Services on [REDACTED]

Yours sincerely,

[REDACTED]

Jeff Lawrence

Director Planning and Environment

