

**Submission  
No 5**

## **MANAGEMENT AND DISPOSAL OF WASTE ON PRIVATE LANDS**

**Organisation:** Ballina Shire Council  
**Name:** Mr Graham Plumb  
**Position:** Manager Public & Environmental Health  
**Date Received:** 26/07/2013

enquiries refer  
**Rachael Jenner**  
in reply please quote  
**Container 333-02**  
**Trim 13/43274**



26 July 2013

Mr Chris Patterson  
Parliament of NSW  
Macquarie Street  
SYDNEY NSW 2000

Dear Mr Patterson

**Re: Inquiry into the Management and Disposal of Waste on Private Land.**

Thank you for providing Ballina Shire Council the opportunity to make a submission to your inquiry. The management and disposal of waste, and the community's expectations relating to this subject, can be a significant burden on the thinly stretched resources of most NSW councils. Any improvements to the legislation and regulatory options would be very beneficial.

We provide the following information to assist you;

- a) There are wastes that if stored and disposed of inappropriately carry great risks to people and the environment. These include hazardous materials such as asbestos, chemicals, heavy metals etc. The inappropriate storage or disposal of these can lead to land contamination and/or land pollution and can leave a costly legacy for future communities to deal with. During the last financial year (2012-2013), Council responded to approximately fifteen complaints relating to the inappropriate management and disposal of asbestos products on private land.

In relation to excess vegetation, pests and odour, Council responds to many complaints from residents in urban areas relating to these matters and the health risks they can present. A significant number of these complaints relate to Housing NSW (and other community housing) properties and their tenants. In particular the inappropriate storage of putrescible waste and animal faeces can present significant impacts to neighbouring properties. The inappropriate storage of any waste, including building materials, can provide harbourage to vermin and may also create significant issues for nearby residents. Last financial year (2012-2013) Council received approximately one hundred and thirty complaints relating to excess vegetation, pests and odour of which half related to overgrown vegetation on residential blocks, many of which were vacant.

- b) Currently Council uses several pieces of legislation to deal with issues relating to waste management and disposal on private land. These include the Protection of the Environment Operations (POEO) Act 1997, the Local Government (LG) Act 1993, Work Health and Safety (WHS) Act 2011 and the Environmental Planning and Assessment (EP&A) Act 1979 and their associated regulations.

Council has found the legislation to compel clean up adequate where the various pieces of legislation can be satisfied - i.e. land is unhealthy (section 124 LG Act) or land pollution has occurred (section 91 POEO Act). However there are many factors that can complicate the effective implementation of the legislation. These factors include;

- the polluter being able to access the land to undertake clean up actions if they are not the property owner or occupier,
- the interaction between Council and the Environment Protection Authority (EPA) in relation to waste classification, which is very complicated and the appropriate regulatory authority (ARA) is not always obvious. In some situations Council and the EPA may have joint responsibilities (i.e. illegal land use involving mixed waste storage),
- where a complaint relates to harbourage of snakes (these are native animals and not vermin under the LG Act),
- where the complaint relates to fire risk due to overgrown vegetation (LG Act does not deal with this situation),
- matters relating to hoarders or people with mental illnesses, and
- complaints relating to minor damage to asbestos structures (i.e. cracked dividing fences etc).

It is our experience that many of these clean ups can take considerable time and effort to ensure the required work is completed to satisfaction. Many also require ongoing follow up as the properties often degenerate quickly to an unhealthy or polluted state and frequently require repeat regulatory action.

- c) Issues have been raised in our region relating to uncertainty over powers of entry into the outdoor areas of residential properties when the Council Officer has not been invited onto the property. Having powers of entry clarified and strengthened would be helpful. Knowing when and where officers can enter and what they can do while on the property (under the various pieces of legislation) can help to prevent a matter being thrown out of court at a later stage which is costly and inefficient for councils.

In instances where the polluter refuses or is incapable of undertaking the clean up works it can become complicated and lengthy for councils to resolve the matter. At Ballina Shire Council a resolution of Council is required before Council can commence the clean up action themselves, the WH&S of Council staff or contractors need to be addressed as well as Council being at risk of liability for any potential damages while on the private property undertaking the clean up works.

A recent example of a council having problems with recovering costs for clean up works is: *McNeil versus Narrabri Shire 2013 NSWCA 112*.  
<http://www.austlii.edu.au/au/cases/nsw/NSWCA/2013/112.html>

We have one case at the moment involving the illegal dumping of construction and demolition waste onto a rural property as (unapproved) fill which has been ongoing for almost three years and is still not resolved. The time and cost to Council relating to this one matter would be in the order of \$12,000 and is envisaged to cost in excess of \$60 000 when the clean up and remediation is complete.

In relation to cost recovery it can be very difficult, time consuming and politically difficult to recover costs particularly when the situation includes pensioners, the physically or mentally ill or other disadvantaged people. Often councils will not recover the majority of

their costs until the property is sold (which can be many years following the costs being incurred).

It would be very rare for councils to ever fully recover their costs in any waste matter relating to private land.

Whilst the powers exist within the relevant legislation, councils generally are extremely reluctant to go down the path of selling encumbered properties to recover a debt. This has the potential to render a physically or mentally disadvantaged person or a pensioner homeless, which is not favourably viewed. Councils can, of course, charge interest, but at the standard 10%, this can dramatically increase the debt over time.

- d) As suggested before by us and other councils (to no avail), the NSW Waste Levy should be removed or reduced for hazardous wastes, including asbestos. This would reduce some barriers to the correct disposal of this waste and considerably assist councils by reducing illegal dumping on public and private land.

The provisions of clear guidelines, inclusive of case studies, in relation to the resolution of the more complex waste disposal and management complaint scenarios commonly encountered would be helpful. These could include the best legislative tools to use, the case law precedents set and examples. These could either be prepared by a State body or a working group comprising of various Local Government Officers working in this area. A good example of a similar document is the EPA publication 'Noise Guide for Local Government'.

Education of the public is always important, and as it is a State wide issue, State based education campaigns are appropriate to inform the public of their legal obligations and should be on going. Also on going education of councils and their staff on the best way to resolve these waste matters and what recent court findings have determined, would be of benefit. This could be done through Australasian Environmental Law Enforcement and Regulators Network (AELERT) or similar.

Having a State monetary fund (funded from the waste levy?) to support councils to run and publicise key 'deterrent effect' prosecutions could also assist in testing the legislation through the courts and provide essential information to all councils on how to successfully prosecute these matters. For councils who are struggling to do more on less money the risk of running unsuccessful prosecutions is a major consideration and any way to maximise the opportunity to successfully prosecute is essential as councils are responsible to their rate payers and need to spend their budgets judiciously. This would encourage councils to undertake more prosecutions and therefore effectively utilise the legislation. Penalty Infringement Notices (PINs) offer councils a lower cost regulatory option. They have proven to be a very useful tool and should be available to resolve all of the more minor offences.

- e) Illegal waste dumping on public land is a significant financial, environmental, and social problem in the Shire. Ballina Shire Council incurs considerable costs every year for the investigation, collection, and disposal of illegally dumped waste. The cost of illegal dumping on public land for Council is in excess of \$100,000 annually. If this figure was multiplied across the 152 councils within the State the true impact and cost for local councils and therefore the community could be realised.

In relation to waste dumping on private land there is still a considerable burden on Council relating to the investigation, evidence gathering, analysis of materials, legal costs and staff time. Ballina Shire Council has not quantified this figure yet.

- f) Currently the penalties under the LG Act are deficient especially when considering the seriousness of issues relating to the management, handling and disposal of asbestos. It is our opinion that penalties under the LG Act should be increased and specific orders and offences should be incorporated relating to asbestos to enable Council to manage this issue in line with community expectations.

If you have any enquiries in regard to this matter please contact Rachael Jenner on [REDACTED]

Yours faithfully

[REDACTED]

Graham Plumb  
**Manager Public & Environmental Health**  
**Development and Environmental Health Group**