

**Submission  
No 13**

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

**Organisation:** Camden Council  
**Name:** Mr Ron Moore  
**Position:** General Manager  
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Camden Council  
37 John Street, Camden NSW 2570 DX 25807  
PO Box 183, Camden 2570 ABN: 31 117 341 764  
Telephone: 02 4654 7777 Fax: 02 4654 7829  
Email: [mail@camden.nsw.gov.au](mailto:mail@camden.nsw.gov.au)

26 July 2013

The Committee Manager  
Committee on Environment and Regulation  
Parliament House  
Macquarie Street  
SYDNEY NSW 2000

*email: [environmentregulation@parliament.nsw.gov.au](mailto:environmentregulation@parliament.nsw.gov.au)*

Dear Sir/Madam,

**RE: INQUIRY INTO THE MANAGEMENT AND DISPOSAL OF WASTE ON PRIVATE LANDS**

Please find attached a submission prepared by and endorsed by Camden Council at its meeting of 23 July 2013 relating to the Inquiry into the Management and Disposal of Waste on Private Lands.

Council's submission has also been forwarded electronically to the Committee.

Should you require any further information or assistance in this matter please do not hesitate to contact Geoff Green (Manager, Environment and Health) or in his absence Fiona Stalgis (Team Leader, Environment and Health) on [REDACTED] during business hours.

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Ron Moore  
**GENERAL MANAGER**

# Camden Council

## SUBMISSION



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**Committee on Environment & Regulation  
Inquiry into the Management and  
Disposal of Waste on Private Lands**

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**July 2013**

## Management and disposal of waste on private lands

### Introduction

1. Council officers deal with matters regarding the management and disposal of waste on private lands on a frequent basis.
2. The following is a list of requests that Council is called upon to deal with:
  - Overgrown land;
  - Bush Fire Hazards;
  - Solid waste storage on lands;
  - Solid waste disposal on lands;
  - Unauthorised placement of fill on lands;
  - Hoarding of items/materials that may create a fire hazard or a harbourage for vermin;
  - Asbestos being present or kept in a manner that may pose a risk to the public or neighbours; and
  - Clandestine drug laboratories.

Council receives complaints relating to overgrown vegetation on allotments of land, particularly during the summer months of the year, and other complaints regarding the storage of materials which may or may not be classified as waste. Complaints are received that relate to the following alleged concerns – mice, fire hazard, snakes - because the grass is overgrown. The majority of these complaints relate to residential areas, however on occasion complaints are received for rural lands.

Complaints regarding the overgrown nature of land are dealt with under the provisions of the *Local Government Act 1993*, and in the majority of instances the requested work is undertaken by the land owner.

Complaints in respect of fire risk posed by vegetation in bushfire prone areas are referred to the Rural Fire Service (RFS) to assess and manage under the provisions of the *Rural Fires Act, 1997*. These areas tend to be in the semi-rural and rural areas of the local government area (LGA). Some residential fringe areas may also fall to the RFS to determine and act upon fire risk.

3. At this time hoarding and derelict buildings are not significant issues for Camden Council. In most instances where Council becomes involved the required works are undertaken within acceptable timeframes.
4. An aspect of waste that is causing concern is the increasing number of incidents of large quantities of fill being brought onto rural lands in an

uncontrolled manner. Council officers experience difficulties establishing whether the material is classified as a waste, whether the material is contaminated and the origin of the material.

5. Concerns about asbestos have also escalated of recent times as a result of illegal dumping, both on public and private lands, and following fires at premises.
6. Council receive 'Clandestine Drug Laboratory – Site Inspection Reports' from the NSW Police Force (Drug Squad). The Police are referring the previous clandestine drug laboratory to Council to pursue clean up and remediation of the site. The referral is made either verbally at the time of the Police being on site and/or in writing when the evidence in the form of chemicals, materials and equipment has been removed from the premises.

These Reports appear to be for Council to commence actions to remediate the site and commence legal proceedings. As Council officers have endeavoured to action the Reports, several concerns have become apparent in respect of the available legislation.

**Terms of Reference:**

- a. **The health and safety risks posed by inadequate management and disposal of waste, overgrowth and excess vegetation, pests, and odour**
7. The type, nature, location and quantity of the waste will influence the health and safety risks that council must consider prior to initiating any form of regulatory action.
8. The legislation appears adequate to enable Notices/Orders to be issued for the more obvious and the majority of complaints received relating to safety and health concerns or the disposal of waste. The challenge is that Council must be in a position to 'prove beyond reasonable doubt' that an offence has occurred before initiating action. This burden of proof is at times challenged by both the complainants and the property owners.
9. It is apparent that sometimes the more minor accumulations of items or unsightliness appear to be the cause of annoyance for neighbouring properties. It is these properties that officers experience difficulties in justifying health and safety concerns. As such, it is considered that unsightliness is not a matter of health and safety and should not be considered in the realm of local government to regulate.

10. The question arises “what is waste”? An accumulation of items may be stored for future use. This is difficult to prove otherwise and the items may be difficult to define as waste.
11. The risks to health and safety due to inappropriate management and disposal of asbestos are well known and documented.
12. The health and safety risks of hazardous materials/products and chemicals, in particular unmarked containers, heat and fire affected containers or residues of chemicals that may not be visible to the eye, are not so well known. Testing is required to establish if chemicals remain and in what quantities, and to establish clean up or remediation plans. This is a difficulty that clandestine drug laboratories pose.

Council officers hold concerns regarding the NSW Police Force referring clandestine drug laboratories to Council to pursue clean up after a drug raid. In the first instance concerns are held as to whether the responsibility should rest with local government at all.

Given the expertise and training held by NSW Police and Fire and Rescue NSW, these agencies may be more suitably skilled to address such matters. The Environmental Protection Authority (EPA) may also have suitable expertise to assist in the remedy of these sites. Under the *Contaminated Land Management Act 1997* the EPA may declare a site to be significantly contaminated land. This legislation could be extended to cover premises where clandestine drug laboratories have been in use.

Council officers are not aware of any level of consultation with local councils in regards to receiving these reports and taking on the responsibility for regulating clean ups.

The appropriateness of current legislation to satisfactorily deal with health and safety of occupants also requires consideration. Work Health and Safety (WH&S) concerns for Council staff, given the nature and use of the premises, are paramount.

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

13. The period of time from when a complaint is first lodged with council until completion of works may be extensive. The initial investigation can take time. Notices of Proposed Order, Orders, follow up inspections, owner's inaction or inability to undertake works due to varying circumstances, issue of Penalty Notices and reissue of Orders all exacerbate the time of compliance.

It is difficult where a recipient of an Order does not act or does not fully comply with an Order. Reasons for inaction are varied and may range from lack of means, whether this be financial or the physical ability or motivation, possible mental health issues, on occasion locating the owner or the death of the owner; and yet the surrounding community may be dissatisfied when delays occur in addressing their concerns.

14. Particularly throughout the summer months councils receive many calls from neighbours about overgrown vacant land. Some owners of vacant land often wait each year until council reissues the Order for slashing/cutting of the grass prior to undertaking any further works.
15. In fairness to property owners, reasonable amounts of time are needed to undertake works.
16. In respect of the deterioration of asbestos (eg roof or wall sheeting) due to age, lack of maintenance or fire - it may not always be considered to be waste. For instance, deteriorated materials that form part of a dwelling that may not have been maintained, but is repairable, may not fall under the definitions of waste and accordingly this may limit the use of some current legislation.
17. The current regulatory arrangements to compel clean up of premises that have been utilised as a clandestine drug laboratory are considered to be insufficient, cumbersome and potentially costly for council.

Under the *Local Government Act 1993* the mechanism for managing occupied premises or requiring cessation of occupation of the premises are lacking or not supportive. Timeframes for clean up can be prolonged, which can be a concern given the potentially hazardous substances that may be present at a premises previously used as a clandestine drug laboratory.

However, it is appreciated that time is needed to source suitable consultants to undertake assessments, prepare remediation plans and undertake remediation works.

Evidentiary provisions under the *Local Government Act 1993* require councils to have sufficient evidence to prove that the premises are not in a safe and healthy condition prior to the issue of Notices/Orders. The Police Report is not a scientific report, but rather a notification to the council of the prior existence of a clandestine drug laboratory at a premise. It may be difficult to defend a matter based on the Police Report.

As such, legislative provisions are sought to enable the Police Report to be utilised in evidence or other mechanisms to support that the land is not in a safe and healthy condition.

There could be substantial costs to councils in undertaking this regulatory function if specific legislation is not made.

Regardless of which regulatory authority becomes involved, it is considered important that the premises be made safe and healthy without unnecessary delays to protect human health and the environment. The legislation is not sufficient in this regard.

The *Protection of the Environment Operations Act 1997* is not specific in addressing the issues presented by many clandestine drug laboratories, particularly those involving residential dwellings.

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

18. The regulation and management of asbestos is a growing concern within most communities across the state. In 2012 Local Government NSW (LGNSW) developed a model policy to be embedded into local government in an attempt to provide clarity and direction to the management of asbestos.

The model policy attempts to address this issue, however, councils need to be further empowered through legislative change to effectively deal with the myriad of circumstances that are presented to them. The model policy relies on various provisions within the *Protection of the Environment Operations Act 1997* and the *Local Government Act 1993* to regulate these circumstances. These provisions are not specifically tailored to the management of asbestos and are therefore open to legal challenge.

These provisions are also for the most part cumbersome and time consuming and uncertainty exists that they effectively deal with the issue in a manner that gives confidence to the community and to local government officers alike.



The objective of any legislative change should not be about penalty provisions that require the matter to proceed to court for enforcement, but rather about empowering the regulatory authority to undertake the work without unnecessary delay.

Development of a clear legislative framework so that the relevant government agencies at both the state and local level have the necessary powers to quickly and effectively deal with the management of asbestos would be beneficial. The legislation needs to have sufficient penalties commensurate with the significance of the issue and encompass the power so that should a landowner fail to take adequate measures in a timely manner to best manage asbestos on their premises, then a regulatory authority can undertake the works and claim the costs as a debt against the property.

19. Similar circumstances apply to enforcement of Notices/Orders at properties where clandestine drug laboratories have existed.
20. It is considered that clear definitive legislation, enabling councils to fully recover all costs in remedying a matter, including but not limited to cost of works, legal costs and the like, should be introduced to enable a levy against a property to be made under both the *Local Government Act 1993* and *Protection of the Environment Operations Act 1997*.

At present cost recovery mechanisms are not clear and may need to be separately pursued against the owner as an outstanding charge.

21. The *Contaminated Lands Management Land Act 1997* which is predominantly EPA administered legislation utilises the concept of a “notional owner of land - being a person who is a mortgagee in possession of land or who has vested interest with respect to the land.”

This concept is worthy of consideration in respect of allowing recovery of costs by councils from mortgagees estates, financial controllers etc, with provisions reflected in the *Local Government Act 1993* and *Protection of the Environment Operations Act 1997*.

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

22. In relation to filling of land, clear guidelines, education materials and legislation for all stakeholders would be beneficial.

At times confusion exists between provisions of the *Environmental Planning and Assessment Act 1979*, eg. Exempt and Complying

provisions and *Protection of the Environment Operations Act 1997*. A simplification would assist Council officers and property owners alike.

Ongoing broad scale education of property owners, tenants, real estate agents, and transport companies has merit. It is important that education is proactive and engages members of the community prior to fill being deposited on private land. Once deposited, the owners are often left with expensive testing and clean up costs. In the majority of cases the imported waste fill materials come from other local government areas. In this regard it is imperative that education programs are led by the EPA to ensure a consistent, wide reaching message is achieved.

Transporters of waste fill, including individual drivers, require targeted education and enforcement programs.

23. Asbestos in particular is expensive to transport and to dispose of at licensed lawful waste management facilities. In the interests of reducing illegal dumping consideration to waiving or reducing the Section 88 waste levy for asbestos may hold some merit. Increasing access to facilities for disposal should be explored.

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

24. Illegal dumping is considered to be the deposition of waste unlawfully. If on private land it is considered the responsibility of the polluter, the transporters of the waste or the land owner to dispose of the waste in an appropriate manner. Councils may issue Clean Directions Up under the provisions of *Protection of the Environment Operations Act 1997*.

25. Whilst it is not a requirement on local government authorities to remove illegal dumping from private land, nor should it be, the regulation of such activities can be time consuming and costly should the matter require legal advice/action or should council have no option but to undertake the works.

Often the difficulty is establishing the identity of the polluter or transporter of the waste. As such, the onus to clean up the property rests with the owner of the land.

26. Council may either leave the matter for the owner to resolve or in circumstances where the waste is perhaps of an amount, type, or not secured, may issue a Notice/Order for the waste to be removed. The provisions of such Notices/Orders typically include requirements for the waste to be disposed of at an appropriately licensed waste management facility and tipping receipts being produced to Council as evidence that the waste was disposed of lawfully.

27. Should non-compliance occur, Council's options are to issue Penalty Notices (on-the-spot fines), take legal proceedings or enter the premises and undertake the works and endeavour to recover costs from the land owner. Again, the objective of any legislative change should not be about penalty provisions that require the matter to proceed to court for enforcement, but rather about empowering the regulatory authority to undertake the work without unnecessary delay where there are significant concerns regarding health and safety.

The penalty provisions of the *Local Government Act 1993* are considered to be minimal for some offences and do not act as a financial disincentive nor suitable penalty for many offences.

28. On occasion, difficulties relate to inaction of owners, locating owners, bankruptcy, where the property is in probate or the owner is incarcerated.

**f. Any other related matter**

The following recommendations are made for the Committee's consideration:

1. *Review of Local Government Act, 1993* to:
  - i. provide better financial disincentives and penalties for non-complying persons;
  - ii. extend the statute of limitations from six (6) months to at least two (2) years to enable actions to be taken;
  - iii. simplify and expedite the process of regulation where serious health and safety concerns exist.
2. Development of legislation specific to local government's role in the regulation of asbestos.
3. The ease of asbestos disposal be considered, exploring increasing access to lawful disposal sites and a reduction in disposal costs.
4. Adoption of clear legislation that enables councils to make a claim or charge against a property where costs have been incurred by the council in undertaking works where there are non compliances with Notices and Orders issued under the *Local Government Act 1993* and *Protection of the Environment Operations Act 1997*.
5. Establishment of an appropriate level of government and a central agency responsible for regulating clean ups associated with clandestine drug laboratories.
6. Should the regulation of the clean up of clandestine drug laboratories default to local government as a regulatory responsibility, a lead state

government agency be nominated for developing specific and suitable legislation in respect of remediation of clandestine drug laboratories.

7. Consultation be undertaken with council officers in an effort to establish legislation and guidelines that meet the needs of councils in respect of:
  - i. management of asbestos;
  - ii. management of clandestine drug laboratories.
8. Education and training be provided to council staff in legislation and enforcement options for managing the disposal of waste on private lands.
9. Education programs/materials be developed to provide a consistent message across the Sydney basin, if not the wider state, for all stakeholders (eg property owners, transporters) on their legal responsibilities and practicalities of identifying, managing and disposing of waste.

**END OF DOCUMENT**