

**Submission
No 19**

MANAGEMENT AND DISPOSAL OF WASTE ON PRIVATE LANDS

Organisation: Armidale Dumaresq Council
Name: Mr Shane Burns
Position: General Manager
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Your ref: D13/16852
Our ref: O/2013/05984

The Chair,
Committee on Environment and Regulation
Parliament of NSW
Macquarie Street
Sydney NSW 2000

Emailed to environmentregulation@parliament.nsw.gov.au

Dear Mr Patterson,

Inquiry into the Management and Disposal of Waste on Private Land

Firstly, we would like to thank you for the opportunity to provide a submission on the above inquiry to the committee. Whilst Council staff do not think that illegal dumping is as prevalent in our Local Government Area as in others, we still would like to take this opportunity to comment on the inquiry.

This submission reflects the views of regulatory staff, but not necessarily the views of the full elected Council due to insufficient time to seek Council's endorsement at a council meeting.

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

Without going into a literature review on the topic of risks associated with the above, generally the hazards that are seen when investigating illegal dumping/waste offences:

- Provides food and harbourage for pests and vermin; green waste and other putrescible wastes can be used as a food source and other wastes can provide areas for habitation. As a result there is the potential to increase the populations of these vectors of disease;
- Physical hazards such as sheer force hazards from metal/glass and other sharps;
- Asbestos dumped on private land; and
- Bushfire hazards by providing fuel/ignition sources depending on the materials disposed of.

It has been known that sanitation and removal of waste is required to reduce the burden of disease since ancient times, and whilst this is not an exhaustive list, it does show the need to better prevent and control the disposal of waste on all land, both public and privately owned.

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

For the investigation of these dumping matters there are three pieces of legislation that are used to have the materials cleaned up within our Local Government Area. Where there is clear evidence that waste materials have been placed on land, depending on the severity and risk to the environment, a warning letter is sent to ascertain the reasoning behind the dumping, and whether it should be handled as a health matter or an environmental matter.

In the case of an environmental matter, a cleanup notice is issued under the *Protection of the Environment Operations Act 1997* (POEO), instructing the polluter or the owner of the land to remove the waste and to remediate the land to make it as it was before the waste has been deposited. There is no right of appeal to a clean up notice, provided that procedural fairness has been followed. In the event of an emergency, or where the land owner has not complied with the notice, Council may perform the cleanup works and issue a Compliance Cost notice to the land owner/polluter to recover the cost of the cleanup; provided detailed records of costs have been recorded. On private land, the current available arrangements and powers under POEO are sufficient to compel clean ups for environmental matters.

In the case of a health matter, eg hoarding, the matter is more complicated as there is commonly a mental health component to the remediation. Hoarding can be dealt with under the *Local Government Act 1993* with Order 22a which requires the owner or occupier 'to remove or dispose of waste that is on any residential premises or to refrain from keeping waste on those premises' s124. Specific protocol and wording must be followed when issuing orders to ensure that they are valid. There have been cases in the media where orders have been overturned in court due to the wording of the order given.

To assist in the cleanup of premises where hoarding has occurred, council has in the past provided (free of charge to the offender) an additional weekly waste collection service for a limited time, provided that the additional service is utilised regularly. Whilst this does take time, it is also effective in the removal of the waste where additional mental health support is also obtained.

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

Under POEO entry onto land can be done where the authorised officer reasonably suspects pollution has been, is being or is likely to be caused—at any time. The exception is residential premises, where a search warrant or permission from the occupier is required. The enforcement procedures are then carried out in accordance with Council's Policy for Enforcement and Prosecutions. This is an internal procedure to assist Council staff to act promptly, consistently and effectively in response to allegations of unlawful environmental activity.

As mentioned earlier, in the event of an emergency, or where the land owner has not complied with the notice, Council may perform the cleanup works and issue a Compliance Cost notice to the land owner/polluter to recover the cost of the cleanup. On private land, the current available arrangements and powers under POEO are sufficient to compel clean ups effectively within our local government area. Where payment cannot be made, council may apply to the Land Titles Office to have the charge placed on the land. In cases where this occurs on public land and the owner of the waste has not been identified, there is no avenue to recover the costs associated with the clean-up.

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

Improvement options could include:

- Increased fines for multiple offences, i.e. the using the current penalty for the first offence, and where the same offender repeats, an increased penalty be issued in addition to any notices. It is understood that where multiple infringements are likely to occur, prosecution would be an appropriate action however, the time and resources that are put into preparing a case, monitoring and investigation of the incident may exceed any cost recovery gained from this recourse. In some cases where the cost recovery may be insufficient, prosecution may not be followed. This additional option would then be made available to deter the offenders in instances where the court hearing may not be a viable option.
- Provide Authorised officers with access to the yard area of residential premises (not inside the dwelling) without the requirement of a warrant, where the use of the land is mixed use i.e. a home business, and where the authorised officer reasonably suspects pollution has been, is being or is likely to be caused—at any time. This would reduce the response time to a pollution incident and potentially prevent further contamination of neighbouring areas.

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

As mentioned earlier, Council staff do not believe that illegal dumping not a major problem in our Local Government Area. In 2013 data is being gathered to identify problem areas to increase the risk of getting caught. A draft Illegal Dumping Strategy is also being developed by council officers to further combat this issue. However, it should be noted that most of the illegally dumped waste is deposited on public land and in road reserves where it is Council's responsibility to remove and dispose of the waste. Where the offender cannot be identified, Council has to cover the costs of this removal and disposal. The cost of removal can be high especially where there is asbestos and other hazardous materials that have to be removed and disposed of lawfully. In smaller local government areas the cost of removal of these items can take a significant portion of the budget, and potentially exceed the budgetary allocations of a council.

Thank you again for the opportunity to make a submission and for your consideration. Please contact Matthew Rand, Council's Environmental Health Officer on [REDACTED] or by email at [REDACTED] if we can be of further assistance.

Yours sincerely,

[REDACTED]
[REDACTED]
Shane Burns
General Manager
Armidale Dumaresq Council

