

POLICY



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Policy title: PARK ENCROACHMENT
Directorate: COMMUNITY AND LIFESTYLE
Branch: PARKS
Policy objective: To provide a framework that assists the management of encroachments on the Council's controlled parkland.

Policy scope:

When considering encroachments within a park for the purposes for Local Law No. 5 (Parks, Jetties and Boat Ramps) 2011, the following steps will be taken, bearing in mind that the prime objective is to have the encroachment removed from the park.

Definitions:

Not applicable.

Policy statement:

The following procedure is to be undertaken for this policy:

1. A detailed boundary survey will be undertaken by the Council. Real property pegs will be reinstated and copies of the survey will be available free to all stakeholders.
2. The person considered likely to be responsible for the encroachment is to be consulted prior to its removal, preferably by personal contact in the first instance.
3. Where the encroachment involves a building or structure which may contravene the *Building Act 1975*, the Council's City Standards & Animal Care branch will be consulted to investigate and take appropriate action under the *Building Act 1975*.
4. A number of options are available when it comes to removing encroachments, these being:
 - (a) The option of removal by a person or persons admitting responsibility will be given first, subject to agreement being reached on a reasonable time frame. A reasonable time frame depends on the nature of the encroachment and other circumstances, but should be no less than thirty (30) days from the official letter of notification to remove.

An extension of time to remove the encroachment may be given to a maximum of six (6) months from the date of the first official letter of notification to remove.

An extension of time may be appropriate where the removal of the encroachment results in:

- (i) financial hardship; and/or
- (ii) emotional trauma or anxiety, particularly if the owner was ignorant of the encroachment.

In this circumstance an appropriate notation will be made to the property record.

- (b) A legal course of action to have the encroachment removed at no cost to the Council either under the *Building Act 1975* or the Council's Local Law No. 5 (Parks, Jetties and Boat Ramps) 2011. Under Local No. 5 (Parks, Jetties and Boat Ramps) 2011, it is an offence for a person to erect or install a building, a structure, or a facility without the permission of the Council. It is also an offence for a person to deposit, store or abandon any goods on a park.

This involves legal representation and can provide for offenders to pay restitution when parkland has been damaged and requires restoration. This action is often costly and time consuming, however, this may be an appropriate option when the other party is uncooperative and the encroachment was deliberate.

- (c) Removal of the encroachment at the Council's cost. This may be a cheaper alternative than option 4(b) of this policy, and may be the only option when there is a lack of evidence as to the party responsible for the encroachment.
- (d) The encroachment is not removed. The portion of parkland on which the encroachment resides is sold to the adjoining property owner. This option can only apply where:
 - (i) the area of park is owned by the Council and is not a crown reserve
 - (ii) the area is considered to be of negligible open space value as parkland
 - (iii) consultation with the community confirms this view (consultation with the community is only required if the scale of the encroachment impacts on the use of the park for its designated purpose). The adjoining owner acquires the land encroached on by way of boundary realignment, at market value, and pays all associated costs, including rezoning.

5. Examples of the most desirable outcomes include:

- (a) The responsible person or persons cooperatively remove encroachments within a reasonable time and rectify the damage to parkland where applicable, at their own cost.
- (b) The Council removes encroachments where no person or persons claim ownership of the encroachments, and the cost incurred by the Council is insignificant or substantially less than pursuing a legal course of action.
- (c) Where required, successful prosecution and/or restitution to have an encroachment removed and parkland restored, including full cost recovery to the Council.

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 - (ii) the area is considered to be of negligible open space value as parkland
 - (iii) consultation with the community confirms this view (consultation with the community is only required if the scale of the encroachment impacts on the use of the park for its designated purpose).
6. The adjoining owner acquires the land encroached on by way of boundary realignment, at market value, and pays all associated costs, including rezoning.

Related policies/legislation/other documents:

DOC ID	DOCUMENT TYPE	DOCUMENT NAME
-	Local Law	Local Law No. 5 (Parks, Jetties and Boat Ramps) 2011
-	Legislation	<i>Building Act 1975</i>