

G.116 Encroachment Policy

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CEO Chief Executive Officer
MGC Manager Governance and Compliance

1 OBJECTIVE

To provide an open and accountable objective whereby Council can determine the impact of an encroachment on the community and either formalise the existence or order the removal of the encroaching structure or unauthorised occupation.

2 SCOPE

This Policy applies to any/all encroachments identified on Quilpie Shire Council freehold or reserve land under Council's trusteeship and control (Public Land).

The Policy does not apply to:

- Matters covered under existing legislation, Local Law or policy including outdoor eating areas or advertising structures;
- Structures of a temporary nature approved or required as part of a development application process;
- Authorities, corporations or other parties that have a statutory right to create such encroachments.
- Roads as defined under the Land Act 1993.

3 STATEMENT

Encroachments can be regarded as illegal extensions of private property boundaries and/or structures onto adjacent land. Although at an individual level, Encroachments may appear minor in impact, cumulatively. Encroachments are responsible for retaining and degrading hectares of Public Land. Some Encroachments occur in a slow, progressive fashion and usually from the well-intentioned activities of residents.

Seemingly harmless activities such as lawn mowing, fire-break maintenance and informal gardening or activities such as placement of structures, gradual removal of native vegetation and extension of fencing create the deceptive appearance of private ownership on Public Land which can pass unknowingly from one owner to another. Other Encroachments occur rapidly as illegal land modification events.

Unauthorised Encroachments on Public Land have the ability to:

- Compromise the integrity of natural and cultural values
- Alienate land from public use/access
- Impede fire management
- Detract from aesthetic appearances
- Divert and encumber Council resources and assets
- Jeopardise public safety
- Cause social inequity
- Incite issues of legal liability
- Create risk that Council is allowing Public Land to be used inconsistently to its permitted purpose
- Create financial burdens on parties to resolve such encroachments
- Perceive ownership of the Public Land by the Encroaching Owner and any future owner once ownership is transferred.

3.1 CATEGORIES OF ENCROACHMENT

Encroachments on Public Land do not always impose a constraint on the community use or effective operation of Public Land. In assessing the impact or constraint of the various instances of Encroachments on the community or Council, the following categories have been adopted:

3.1.1 Minor

Encroachments of a minor nature considered unlikely to result in significant risk (financially or public liability) for the community or Council. Minor Encroachments should not interfere with community access to Public Land.

For example: landscaped gardens, mowing strips, letter boxes, access stairs, handrails and small retaining walls.

3.1.2 Moderate

Encroachments of this nature are considered quite significant and can restrict community access to Public Land, this may generate a significant benefit to the Encroaching Owner. There may also be public liability issues for Council.

For example: medium to large retaining walls, large hardstands, singular vehicle, decks and structures.

3.1.3 Major

Major Encroachments include items of a physical nature that cannot be easily removed and can prevent access to Public Land by the community, this gives the Encroaching Owner exclusive benefit. There may also be increased public liability and safety issues for Council.

For example: fenced areas, shed/garage structures, pools, multiple vehicles and dwellings.

3.2 RISK

This Policy applies to all Public Land and focuses on the management of all Encroachments upon such land.

Encroachments onto Public Land may present a potential risk of safety to the public as well as a potential risk of legal claims to Council if left unmanaged.

Council has a duty to manage the risk and this is done by ensuring that the Encroaching Owner who encroaches onto Public Land undertakes all measures necessary to mitigate the risk to an acceptable level while the Encroachment is being resolved.

3.3 OPTIONS TO REMEDY ENCROACHMENTS

Options to remedy Encroachments on Public Land may include:

- Permit to use land subject to compliance with tenure conditions.
- Removal of Encroachment and restoration of Public Land.
- Consideration for Encroaching Owner to purchase encroached land, subject to community consultation and necessary sale conditions.

Council may consider formal approval of an Encroachment on Public Land with due consideration of a range of criteria including, but not limited to, safety, commercial gain, personal gain, community impact, Queensland Department of Resources views and any legislative constraints.

If the Encroachment is inconsistent with the purpose of the Public Land, the only appropriate remedy may be removal of the Encroachment.

4 ENCROACHMENT ACTIONS

4.1 ASSESSMENT OF ENCROACHMENT

Council shall assess the encroachment by:

- Identifying and verifying the encroachment;
- Assessing the impacts of encroachment on Council and community needs;
- Determine if the Encroachment is required to be removed or if the Encroachment is able to be formalised either by a Permit to Occupy, Licence or sale of encroached land to the Encroaching Owner.

4.2 DEALING WITH AN ENCROACHMENT

The following actions have been developed as a guide to remedy an Encroachment:

- a) For all Encroachments on Public Land, the Encroaching Owner will first be given a notice to remove and restore the Public Land within 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 letter of notification to remove (“Notice to Remove”).
- b) An Encroaching Owner may seek an extension of time to remove the Encroachment to a maximum of six (6) months from the date of the Notice to Remove. An extension of time may be appropriate where the removal of the Encroachment results in: financial hardship; and/or other circumstance where a legitimate requirement for extension is demonstrated.
- c) In most circumstances, removal of the Encroachment and land restoration with full cost recovery from the Encroaching Owner to Council is the most appropriate action. This action is often costly and time consuming. However, this may be an appropriate option when the Encroachment is categorised as moderate or major.
- d) Possible consideration of issuing a Permit to Occupy / Licence to the Encroaching Owner (with conditions) under special circumstances, including where the Encroachment is not inconsistent with the purpose of the Public Land and the Encroaching Owner does not require exclusive access rights. Appropriate fees and insurances will be applicable.

- e) Where the Encroachment is inconsistent with the purpose of the Public Land and the Encroaching Owner requires exclusive access rights and the Encroachment is not removed, the Encroaching Owner may apply to purchase the encroached land. This option can only apply where:
- Council approval/consent is granted.
 - The area is of negligible open space and or community value.
 - 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 land for its designated purpose). The Encroaching Owner purchases the encroached land by way of boundary realignment, at market value, and pays all associated costs, including survey plan, registration fees and any rezoning costs.
 - If Reserve Land, the Encroaching Owner must make formal application with Department of Resources (DOR) and obtain approval from DOR to purchase the encroached land. Note: Council and DOR where applicable, may consider formal approval of an Encroachment on Public Land with due consideration to a range of criteria including, but not limited to, safety, commercial gain, personal gain, community impact, impact on future use of the subject areas by Council and/or other public bodies and any legislative constraints.
 - Zonings, purposes and classifications of some Public Land may prevent Council from formalising any agreement with the Encroaching Owner. The Encroaching Owner would be responsible for the cost of the reclassification process, if possible, and approval to formalise the Encroachment is granted by Council. Reclassification is at the discretion of Council and may be refused.

4.3 APPROVAL FOR ENCROACHMENT ACTIONS

Council approval is required prior to action being taken to remedy the Encroachment. The CEO has delegated authority to sign any agreement for use of encroached land.

5 COMPLAINTS

Any complaints in relation to this service will be assessed and managed in accordance with Council's Administrative Action Complaints Policy.

Complaints may be made to the Council CEO via admin@quilpie.qld.gov.au or to PO Box 57 Quilpie QLD 4480.

6 DEFINITIONS

CEO	Chief Executive Officer
Council	Quilpie Shire Council
Encroachment	Means a situation in real estate where a property owner or permitted occupant(s) violates the property rights of Council.
DOR	Department of Resources

7 RELATED POLICIES | LEGISLATION | OTHER DOCUMENTS

Local Government Act 2009;

Local Government Regulation 2012;

Land Act 1994;

Property Law Act 1974;

Local Law 1 (Administration);

Local Law No. 4 (Local Government Controlled Areas, Facilities and Roads);