

Ku-ring-gai Council

# Bushland Dumping and Encroachment Policy

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# Bushland Dumping and Encroachment Policy

## Table of Contents

<b>Controlled Document Information</b> .....	<b>3</b>
Authorisation Details .....	3
Related Document Information, Standards & References .....	3
Version History .....	4
<b>Policy</b> .....	<b>5</b>
Purpose .....	5
Objectives .....	5
Scope .....	5
Responsibilities .....	5
<b>Policy Statement</b> .....	<b>6</b>
Context .....	6
Implementation program .....	7
Implementation framework .....	8
Property Inspection Report .....	9
Removal and remediation .....	11
Communication and prevention through education .....	11
Data and financial management .....	12
Dispute resolution .....	12
Monitoring and evaluation .....	12
Legislative framework .....	13
Associated documents .....	13
Definitions .....	14
Appendices .....	16

## Controlled Document Information

### Authorisation Details

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### Related Document Information, Standards & References

<b>Related Legislation:</b>	<i>NSW Local Government Act 1993</i> <i>NSW Protection of the Environment Operations Act 1997</i> <i>Crown Lands Act 1989</i>		
<b>Related Policies (Council &amp; Internal)</b>	Compliance Policy Biodiversity Policy (2016)		
<b>Related Documents - Procedures, Guidelines, Forms, WHS Modules/PCD's, Risk Assessments, Work Method Statements, etc</b>	Appendix 1 - Property Inspection Report <a href="#">2015/322408</a>		

## Version History

Version Number	Version Start Date	Version End Date	Author	Details and Comments
1	2007	09/08/2016	Graeme Williams	First version
2	10/08/2016	(date the version ceased to be effective)	Marnie Kikken Kathy Kai Penny Colyer	Policy changed to Bushland Dumping and Encroachment Policy Objectives updated Classification of dumping and encroachment reviewed Implementation program reviewed

# Policy

## Purpose

This Policy provides the management framework for Council to address dumping and encroachments on Council-managed bushland reserves in the Ku-ring-gai Local Government Area (LGA).

## Objectives

- To reduce the incidences and impacts of dumping and encroachment in Council-managed bushland reserves in the Ku-ring-gai LGA
- To protect the ecological integrity of bushland within the Ku-ring-gai LGA
- To provide a cost effective, transparent and consistent management framework that meets Council's legislative requirements, to address dumping and encroachment in bushland
- To raise community awareness of the value of Council's bushland and the impacts of dumping and encroachment for residents living on the bushland interface

## Scope

This Policy applies only to land classified as 'community land' and categorised as 'a natural area' under the *Local Government Act 1993*. This Policy also applies to land managed under a Reserve Trust or where Council has care, control and management of the land under the *Crown Lands Act 1989*.

## Responsibilities

Specific responsibility for the implementation of this policy lies with the following sections of Council:

- Environment and Sustainability
- Regulation and Compliance
- Bushland Operations

## Policy Statement

### Context

The Ku-ring-gai Local Government Area (LGA), situated approximately 16 kilometres from the city of Sydney, covers an area of 85 km<sup>2</sup> and is bound by Garigal National Park to the east, Lane Cove National Park to the west and Ku-ring-gai Chase National Park to the north.

The Ku-ring-gai LGA contains 1,160 hectares of Council-managed bushland reserves, comprising 24 vegetation communities. This includes 7 vegetation communities listed under the *NSW Threatened Species Conservation Act 1995* and 4 listed under the *Environment Protection and Biodiversity Conservation Act 1999*. These vegetation communities provide habitat for more than 700 native plant species and over 300 vertebrate species, including 10 threatened flora species and 23 fauna species (12 mammal, 8 bird, 2 amphibian and 1 reptile species) which are either known to be present, or are frequently recorded. Many more threatened species have been previously recorded or have potential to occur.

Ku-ring-gai's unique natural diversity is derived from its elevated position, rich soils, high rainfall and a deeply dissected plateau, shedding water into the three catchment areas of Cowan Creek, Middle Harbour and Lane Cove River. This gives rise to typically wet sclerophyll forest ecology of high conservation value, with Ku-ring-gai's natural bushland remnants regarded as one of the last remaining biodiversity hotspots in the Sydney metropolitan area.

Ku-ring-gai's bushland-urban interface is a major factor defining its character and influencing biodiversity. Ku-ring-gai's natural areas are highly accessible, with residents living in close proximity to local bushland, national parks or waterways. Council's ridge top reserves are characteristically isolated from adjoining vegetation and subsequently embedded within the urban matrix. These reserves exhibit a high perimeter: core ratio with intensive urban land use and consequently experience degrading human impacts.

Unauthorised dumping and encroachments in Council's bushland reserves has a number of adverse impacts on the natural environment, including soil erosion, contamination, leaching and pH changes; loss of vegetation and habitat; increased fire hazards, such as green waste and flammable items; and weed dispersal, which degrades the quality of Council's bushland, riparian areas and waterways.

Unauthorised dumping and encroachments compromises the integrity of ecological values, alienates land from public use and access, impedes fire management, reduces visual amenity, jeopardises public safety, causes social inequity and incites issues of legal liability.

Some encroachments occur in a slow, progressive fashion and usually from the well-intentioned activities of residents at the bushland interface. Seemingly harmless activities, such as lawn mowing, firebreak maintenance and informal gardening can stimulate notions of ownership, pride and a process of successive appropriation passed with land title from one property owner to another. Further activities such as placement of structures, gradual removal of native vegetation and extension of fencing can create the deceptive appearance of private property on Council land.

The power to claim back Council land is often exacerbated by ill-defined reserve boundaries and the increasing pressures of urbanisation. Although at an individual level, dumping and encroachments may appear minor in impact, cumulatively dumping and encroachments can degrade hectares of Council's bushland reserve system.

Dumping and encroachments impinge on the economic efficiency of Council's bush regeneration and weed control programs. Dumping and encroachments are a typical encumbrance to the construction or maintenance of Council firebreaks and the implementation of hazard reduction burns. Consequently, the

management of dumping and encroachments, including investigation, documentation and removal diverts Council resources and draws on limited operational budgets.

For private landowners, most prominently those who inherit dumping and encroachments from previous landowners, the cost of maintaining and subsequently removing dumping and encroachments represents a substantial economic inconvenience.

The rehabilitation and re-integration of land formerly subject to a dumping or encroachment also entails considerable long-term investment to prevent rapid weed invasion and site degradation.

## Implementation program

The importance of addressing dumping and encroachment is demonstrated in the long-term objectives of Council's *Our Community Our Future: Community Strategic Plan 2030*:

- Our bushland is rich with native flora and fauna
- A community empowered with knowledge, learning and information that benefits the environment
- Our natural waterways and riparian areas are enhanced and protected

This policy recognises Council's limited capacity to manage all occurrences of dumping and encroachments on its bushland reserves. Council officers will execute their judgement in prioritising the order in which dumping and encroachment issues are addressed, based on a consideration of the potential impacts rating of the dumping or encroachment (see Table 1). Council endeavours, however, to address all dumping and encroachment issues brought before it in a timely manner.

### Determining the level of operational response

Dumping and encroachment issues, either reported to Council or discovered through a proactive inspection, will be rated based on (1) the dumping and / or encroachment risk and (2) the site's ecological values, in order to determine their potential impacts rating and to guide Council's management response.

	Potential impacts rating		
Dumping risk	High	Moderate	Low
Encroachment risk	Exclusive	Restrictive	Minor
Site's ecological values	High	Moderate	Low

**Table 1:** Dumping and encroachment potential impacts rating

The Property Inspection Report (Appendix 1) details the criteria and guidelines in determining the potential impacts rating, that is, the dumping and / or encroachment risk and the site's ecological values. Based on the potential impacts rating, guidelines for Council's management response are as follows:

Potential impacts rating	Typical management response
Any high or exclusive rating	Compliance Agreement and/or Enforcement
All low or minor ratings	Letter of Notification
Combination of moderate / restrictive and low / minor	Letter of Notification and/or Compliance Agreement

**Table 2:** Council's management response to dumping and encroachment issues

## Implementation framework

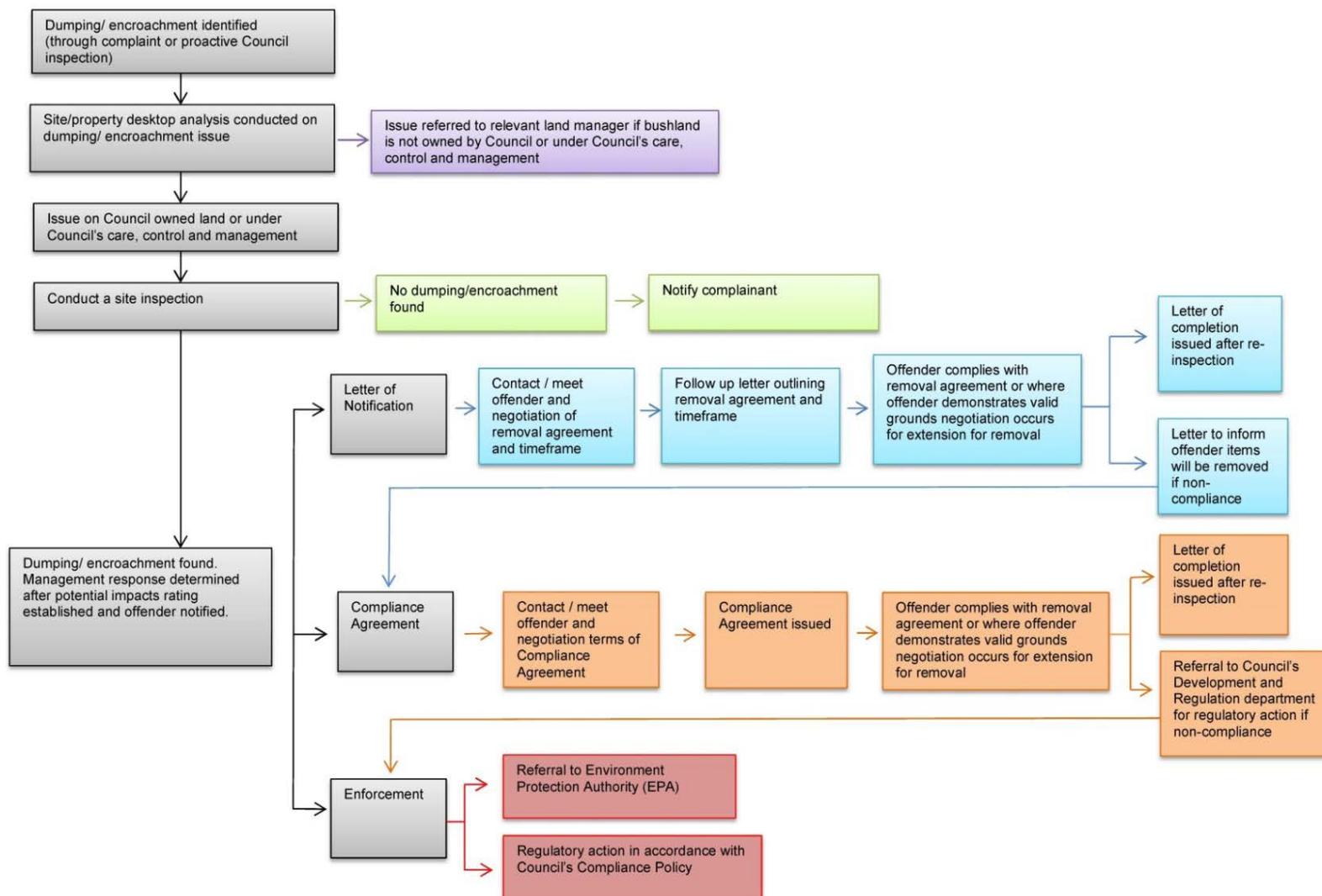


Figure 1: Dumping and encroachment management framework

## Property Inspection Report

Council will manage dumping and encroachment issues using a Property Inspection Report (attached as Appendix 1 to this Policy).

### Identification of dumping or encroachment and desktop review

In each instance that a reported dumping or encroachment has been identified or detected through a proactive inspection, Council will:

- Follow the desktop analysis and initial site inspection procedure prescribed in Stage 1(a) and 1(b) of the Property Inspection Report
- Refer any alleged or identified dumping or encroachments pertaining to land owned / managed by external (State) land management agencies or to private property owners for management action
- Determine the management response for the dumping or encroachment (letter of notification, Compliance Agreement or Enforcement)
- Investigate all issues of alleged dumping and encroachments in a consistent and impartial manner

### Potential offender engagement

When an alleged dumping or encroachment has been identified or is unverified or an issue resulting from a proactive inspection is being further investigated, Council will:

- Follow the procedure prescribed in Stage 2 of the Property Inspection Report
- Ensure all owners or occupiers of the land from which the dumping or encroachment originates receive a standard contact letter requesting a site meeting to discuss the alleged dumping or encroachment, with educational materials
- Exercise any necessary power of entry or inspectorial function in accordance with section 191 of the Local Government Act 1993
- Provide each owner/occupier of the land from which an alleged dumping or encroachment originates an approximate measurement and ground marking of any necessary property dimensions using the relevant Deposited Plan (DP) under section 192 of the Local Government Act 1993, for the purposes of ascertaining the existence of an alleged dumping or encroachment. Measurements will be taken on the horizontal plane.
- Regard all dumping and encroachments considered to be impacting public safety or impeding operational outcomes as a priority
- Classify the result of owner/occupier meeting into one of following outcomes:
  - Owner/occupier concedes to alleged dumping or encroachment and agrees to voluntarily comply with directives to remediate issue
  - Owner/occupier concedes to alleged dumping or encroachment but refuses to comply for reasons of undue hardship, legality issues, general apathy, non-accountability or other rationale
  - Owner/occupier denies validity of alleged dumping or encroachment or refuses to permit entry
  - Alleged dumping or encroachment is considered 'abandoned' with no evidence of exclusive use or occupation able to be established

### Compliance Agreement

For those dumping and encroachments where the owner/occupiers of the land from which a dumping or encroachment originates agree to comply with removal directives through a Compliance Agreement, Council will:

- Guide and support owners /occupiers in the removal of structures or the remediation of the site
- Not assume any responsibility for damages or mishaps to persons or property whilst engaged in supporting the removal of structures or remediation of the site
- Accept as true and correct any current survey conducted by a registered surveyor that confirms or refutes Council's assumptions regarding a dumping or encroachment
- Provide each owner/occupier with an approximate indication of the boundary between private and community land, unless otherwise signified by a registered survey/or
- Permit each owner/occupier of land to which a dumping or encroachment originates a single time extension of two weeks for compliance with the terms of a Compliance Agreement upon written request or otherwise through discretion of the enforcing officer
- Subsequent to a written request, consider reasonable variations or extensions to the specific terms prescribed in a Compliance Agreement issued by Council
- Upon change of circumstances, generally review the fairness of the terms prescribed in the Compliance Agreement upon the written request of the owner/occupier of land from which a dumping or encroachment originates. The period for voluntary compliance stays until otherwise varied by Council
- Exercise any right under the Compliance Agreement should the terms and/or conditions stated in the Agreement not be satisfied within the time specified, without reasonable excuse, including, but not limited to the:
  - Removal of the dumping or encroachment
  - Recovery of a debt
  - Service of an order under the Local Government Act 1993

### Enforcement

In instances where the owner/occupiers of land from which a dumping or encroachment originates deny the validity of the dumping or encroachment or generally refuse to comply with removal directives, Council will:

- Refer the issue to Council's Regulation and Compliance section for regulatory action, in accordance with Council's Compliance Policy
- Demonstrate procedural fairness when exercising regulatory functions
- Retain the right to issue an order/s in accordance with provisions of the Local Government Act 1993 and Local Government (General) Regulation 2005. Copies of all correspondence will be stored against relevant property files
- Commission or re-authenticate a property boundary survey from a registered surveyor prior to the service of an order or at any other occasion deemed necessary, where none can be obtained
- Ensure all orders contain the option to enter into a Compliance Agreement, with a period for compliance not being less than the period specified in the order
- Retain final determination as to the standards or extent that an order must be satisfied, taking into consideration any representations made against the terms of an order or against the order generally during the period allocated for representations to be made
- Hear any representations received against a proposed order by Council's nominated manager and provide a single consultative session to all residents wishing to debate the terms of an order
- Retain the right to undertake whatever measures are necessary to give effect to the terms of an order, including the carrying out of any work required by the order and recovery costs
- Serve all orders in respect of land owned or occupied by more than one person to both persons if aware of their existence or requested to do so
- Revoke or modify any orders when proven inconsistent with a registered survey or other irrefutable proof

- Ensure all orders are appropriately re-inspected within 7 days following the date for compliance
- Retain the option to serve penalty infringement notices for non-compliance with the order
- Not undertake court proceedings for dumping or encroachments without prior review and approval from the Director of Development and Regulation

### **Removal and remediation**

In the case where Council decides to direct or undertake removal or remediation works by way of agreement or order, Council will:

- Review the option to instigate removal or remediation works, by way of order, contract or operations on the bushland subject to a dumping or encroachment with the aim of re-instating connectivity between the principal reserve system and urban interface
- Ensure all removal or remediation works are consistent with the vegetation community found on that land
- Specify to owner/occupiers of land from which a dumping or encroachment originates the terms for the removal of a dumping or encroachment and the terms for the remediation of land formally subject to a dumping or encroachment by way of Compliance Agreement or order, whichever is deemed appropriate. Rehabilitation of land subject to a dumping and encroachment will be prioritised in instances where the person/s responsible for the instatement of the dumping and encroachment can be established
- Retain the right to require a remediation plan prepared by a qualified bush regeneration contractor to oversee the terms of remediation. Council must approve the remediation plan prior to the commencement of works and a site meeting between Council staff and the relevant contractor should take place before works commence. Council is to be notified upon the completion of works to determine the satisfaction of the remediation terms.
- Retain the right to remove or otherwise dispose of objects (via contract or operations) left on Council land, after the period specified in a Compliance Agreement or order, whichever is applicable.
- Provide written notification to residents to inform of any intention to remove or otherwise dispose of objects left on Council land with a minimum of 14-day notice prior to commencement of removal and/or remediation works.
- Consider the economics and long-term sustainability of restoring land formerly subject to a dumping or encroachment
- Reserve the right to consider site specifics when determining remediation terms
- Review the option to remove any dumping or encroachments considered 'abandoned' on Council land

### **Communication and prevention through education**

Communicating the negative impacts associated with dumping and encroachments is an important mechanism to (i) raise appreciation and respect for Council's bushland reserves; (ii) provide offenders with contextual knowledge prior to Council engagement; and (iii) prevent the establishment of new dumping and encroachments. To ensure effective communication and prevention occurs, Council will:

- Disseminate through local media and / or Council's communication channels an annual dumping and encroachment information / education campaign
- Provide dumping and encroachment education material at local community events
- Conduct community educational events at priority bushland reserves
- In the course of enquiries regarding specific properties, notify of known dumping or encroachments and inform respective owners or purchasers of Council's Bushland Dumping and Encroachment Policy

## Data and financial management

Council will:

- Maintain a database that records information on the incidences and management status of dumping and encroachments in Council's bushland reserves.
- Allocate financial resources to specifically support and facilitate the removal and rehabilitation of dumping and encroachments, as per Council's budget allocations
- Allocate funds acquired through the administration of this Policy for the purpose of remediating land/s formerly subject to a dumping or encroachment

## Dispute resolution

The Director of the relevant Department will consider mediation between Council and the property owner when necessary.

## Monitoring and evaluation

Council will monitor and report against this Policy as follows:

Objective	Details	Timeframe
To reduce the incidences and impacts of dumping and encroachment in Council-managed bushland reserves in the Ku-ring-gai LGA	Number of issues investigated and closed (that is, remediation undertaken)	Annually
To protect the ecological integrity of bushland within the Ku-ring-gai LGA	Number of issues investigated and closed (that is, remediation undertaken)	Annually
To provide a cost effective, transparent and consistent management framework that meets Council's legislative requirements, to address dumping and encroachment in bushland	All dumping and encroachment issues managed as per this Policy and monitored through Council's database that records information on the incidences and management status / response to dumping and encroachments in Council's bushland reserves	Quarterly / annually
To raise community awareness of the value of Council's bushland and the impacts of dumping and encroachment for residents living on the bushland interface.	Number of and participation in community educational events Distribution of educational materials to residents	Annually

## Legislative framework

The following legislation affects this policy:

- *NSW Local Government Act 1993*
- *NSW Threatened Species Conservation Act 1995*
- *Environment Protection and Biodiversity Conservation Act 1989*
- *NSW Protection of the Environment Operations Act 1997*

## Associated documents

This policy provides the basis for the dumping and encroachment management program for Council owned or managed bushland reserves. Supporting this policy is Council's:

- Bushland Reserves Plan of Management
- Biodiversity Policy
- Temporary Access Over Community Land Policy
- Tree Management Policy
- Compliance Policy
- Fire Break Maintenance Standards
- State Environmental Planning Policy 19 - Urban Bushland
- State Environment Planning Policy Exempt and Complying Development Codes 2008
- Hornsby Ku-ring-gai Bush Fire Risk Management Plan
- Bush Fire Risk Management Policy
- Bush Fire Prone Lands Map for the Ku-ring-gai Local Government Area

## Definitions

Term / abbreviation	Definition
Alleged dumping or encroachment	A possible yet unverified dumping or encroachment on community land.
Built encroachment	A secured or sturdy construction, for example, a pergola or concrete slab
Bushland	Land on which there is vegetation, which either is a remainder of the natural vegetation of the land or, if altered, is still representative of the structure and floristics of the natural vegetation.
Bushland interface	The peripheral area of a bushland reserve that adjoins residential/commercial or other land uses.
Community land	Land that is classified as community land under Division 1 of Part 2 of Chapter 6 of the <i>Local Government Act 1993</i> .
Compliance Agreement	A non-legalistic, formalised agreement which sets out the agreed upon terms of conditions for removing and/or rehabilitating a dumping or encroachment.
Dumping	This includes dumping, abandoning, depositing, discarding, rejecting, discharging or emitting anything that constitutes waste and includes causing or permitting the disposal of waste.
Encroachment	Unauthorised occupation or use of or unauthorised activities on community land by a person, including but not limited to a building or structure or part of a building or structure on community land, gardens on or gardening of community land and mowing or clearing of community land.
Enforced compliance (orders)	An official order issued by Council under Section 124 of the <i>Local Government Act 1993</i> , requiring or prohibiting the doing of things to or on premises.
General waste	Waste that is not hazardous material or green waste.
Green waste (non-noxious weed)	Waste that is biodegradable, including garden waste (for example, garden or hedge clippings) as well as domestic and commercial food waste that is not registered as a noxious weed under the <i>Noxious Weed Act 1993</i>
Green waste (noxious weed)	Waste that is biodegradable, including garden waste (for example, garden or hedge clippings) as well as domestic and commercial food waste) that is registered as a noxious weed under the <i>Noxious Weed Act 1993</i>
Hazardous material	Hazardous material includes any unwanted or discarded material (excluding radioactive material), which because of its physical, chemical or infectious characteristics can cause significant hazard to human health or the environment when improperly treated, stored, transported, disposed of or otherwise managed.
Natural area	Community land categorised as a natural area as defined in the <i>Local Government Act 1993</i>
Non-built encroachment	Items that are not a secured structure e.g. garden furniture
Non-compliance	Failure to act in accordance with a request.
Procedural fairness / natural justice	Legal terms (often used interchangeably) to imply that a decision maker should not only act in good faith and without bias but also should grant a hearing to any person whose interests will be affected

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Term / abbreviation	Definition
	by the exercise of that decision before the decision is made.
Property Inspection Report	Internal reporting document used to compile relevant information to substantiate the presence of a dumping or encroachment and collate evidence for legal purposes.
Remediation works	Activities undertaken to redress the impact, ecological or otherwise of dumping or encroachments on community land.
Vegetation community	A group of plants occurring together to form a characteristic vegetation type.
Voluntary compliance	Co-operation with and fulfilment of a Council request to remove structures and/or cease inappropriate behaviours in the absence of regulatory engagement.

## Appendices

Appendix 1 – Property Inspection Report