

Resident property encroachment onto public open space land along Merri Creek

The issue

The increasing backyard encroachment by residents adjoining Merri Creek parkland, and the threat this poses to the recreational/environmental value and management of this public open space.

The problems with backyard encroachment:

Public safety / liability / legal impacts

- Public safety concerns eg with unsafe fencing/construction work on public land.
- The possible loss of public land through **Adverse Possession** (a legal claim that a resident can make when public land has been privately used without contention for a period of fifteen years). If however, efforts have been made to contend this land encroachment, it becomes more difficult for the resident to argue in court. Implementing an action plan (written documentation of communication with residents, regarding their encroachment) could prevent Adverse Possession.
- Setting a precedent for further encroachment with extensions to existing encroachment (eg vehicle access), and setting an example to other residents backing onto the creek parklands.

Recreational impacts

- The loss of public land to private use, restricting public use and access to park areas for recreational or maintenance purposes.

Environmental impacts

- The planting of environmental weeds and/or weeds classified by the Dept of Natural Resources and Environment, within the extended garden encroachments, and the threat this poses to adjacent areas of native vegetation (eg Opuntia).
- The side effects of property encroachments, including dumping of rubbish and garden clippings closer to native vegetation sites. This rubbish dumping is a financial expense for parkland management in removal costs and the spread of weeds into indigenous vegetation areas.
- Implications for long term management planning of open space along Merri Creek (eg vehicle access, development works, weed control).

As urban development increases and expands along the Merri Creek corridor, backyard encroachment will become a more extensive issue to address. Public landowners such as City of Hume and City of Whittlesea will be more directly involved in managing this issue. This indicates the need to develop a unified strategic approach for all public landowners and managers along the Merri Creek corridor, to address backyard encroachment.

Case Study: Emma Street Fawkner & Florence Cres Reservoir

This site has been managed by MCMC for the last seven years. In this time there has been significant backyard encroachments onto adjoining areas of the site. One particular resident has increased his encroachment further into the mown parkland over these years and has subsequently hindered vehicle access to plantings within this site.

This backyard encroachment poses problems for public and maintenance access to sites, and constitutes a safety hazard with an unsafe shed construction and fence line. The issue of public safety on public land that has been cordoned off for private use is an important legal consideration, and one that could be further investigated.

A precedent has already been well established in this area for other residents to follow suit with backyard encroachment. An estimated measurement of all backyard encroachments in this area alone is approximately 400 m². This represents a significant area of public land held up in private usage.



Emma St Fawkner



Florence Crt Reservoir

Policy

Resident property encroachment onto public open space land along Merri Creek

MCMC and its members recognise the problems associated with encroachment onto public open space. The following provides a framework for MCMC and member agencies to address this issue within the parklands of the Merri Creek and tributaries.

The following steps outline a standard approach for all member agencies in tackling the problem of existing backyard encroachment, and the prevention of future backyard encroachments (this standard approach includes both education and enforcement):

Member agencies develop a unified implementation strategy for the reclaiming of public land already used for private backyard purposes, and for the prevention of future possible encroachments. This is to include:

- prioritising encroachment closest to remnant vegetation areas, or areas of high conservation value;
- justification for reclaiming this land (ie. mown grass areas, or indigenous planting);
(If indigenous plantings are to be established, use a staged approach to allow time to encourage community support and participation.)
- utilising risk management procedures and local laws such as building laws to justify the removal of unsafe buildings, fences, vegetation.
- framework for the prevention of future situations of backyard encroachment before they become too established.

The following standard procedures will be included in the unified implementation strategy:

- establish initial communication with landowners and residents already encroaching. This communication will seek to inform and educate residents of the impact of their encroachment, along with a request that they remove the extension.
- follow-up works be planned once encroachment structure has been removed.
- follow up initial communication with a formal standard letter outlining the resident's obligations.
- enforcement of Bylaws where necessary

Member agencies develop an education program for agency staff and landholders/residents that addresses the issues of encroachment onto public open space. This is to include:

- highlighting the importance of Merri Creek parklands as a shared community and environmental resource.
- encouragement of residents to understand the impact of environmental weeds that they plant;
- encouragement of further community involvement in planting, including the establishment of community-run vegetable gardens, using non-invasive species, within the creek corridor.

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