

POLICY MANUAL

Environmental, Planning & Building
Services Department
2024 – Service 1



BATHURST
REGIONAL
COUNCIL

TABLE OF CONTENTS

A

Advertising signs in public areas

Approved handling of fill

Asbestos

B

Burial on private property

C

Construction and Transfer of Crown Roads

Contaminated land policy

Control of open burning

D

Dangerous and menacing dogs

E

Enforcement Policy

F

Food premises inspection

Footpath restaurants

Futureproofing our CBD – 2022 and beyond

G

Greywater reuse (residential areas)

I

Industries – Establishment of new industries in Bathurst

K

Keeping of Roosters

L

Land – subdivisions (developers)

LEP's, DCP's & Local Approvals Policy

M

Mount Panorama – Noise Reference Line

O

Operation of tourist and visitor accommodation establishments

P

Planning agreements

Planning Instrument amendments and refund of fees

Protection of roadside vegetation and habitat

R

Rainwater Tanks – Reticulated water supply areas

Roadside heritage items

Roadside stalls and street vending

S

Section 68 fees – erection of scaffolding for building improvements B3 Commercial Core Zone

Sewerage treatment works

Swimming pool inspection program

T

Transition away from gas use at Council facilities

Tree preservation and management

U

Urban design excellence – R3 Medium Density and E1 Local Centre Zones

Use of remotely piloted aircraft systems/drones

W

Waiving of Development Application fees

POLICY:	ADVERTISING SIGNS IN PUBLIC AREAS
DATE ADOPTED:	Director Environmental, Planning & Building Services Report #8.2.9 Council 20 September 2023 Minute Book No. ORD2023-264
ORIGINAL ADOPTION:	Director Environmental, Planning & Building Services Report #6 Council 31 January 2007
FILE REFERENCE:	23.00045
OBJECTIVE:	<p>To ensure that signs erected or displayed in the Bathurst Region are appropriate to their location and function and do not diminish the visual amenity, aesthetic, heritage significance and character of the locality or detract from the appearance of buildings and places.</p> <p>To ensure that movable signs are permitted to be displayed only within a clearly defined policy context and that their numbers, location and appearance will not cause problems of obstruction and visual intrusion in public places.</p>

1. INTRODUCTION

- 1.1 The erection of signs where it occurs on a public road in the Bathurst Local Government Area is an activity requiring a permit under the Roads Act 1993.
- 1.2 In exercising its discretion to grant a sign permit, the Council will have regard to the principles set out in the policy.
- 1.3 This policy has been formulated by Bathurst Regional Council under the powers contained within Section 68 of the Local Government Act 1993 or Section 138 of the Roads Act 1993.

Roads Act 1993

Division 3 Other works and structures

138 Works and structures

- (1) A person must not—
 - (a) erect a structure or carry out a work in, on or over a public road, or
 - (b) dig up or disturb the surface of a public road, or
 - (c) remove or interfere with a structure, work or tree on a public road, or
 - (d) pump water into a public road from any land adjoining the road, or
 - (e) connect a road (whether public or private) to a classified road, otherwise than with the consent of the appropriate roads authority.

Maximum penalty—10 penalty units.
- (2) A consent may not be given with respect to a classified road except with the concurrence of TfNSW.

- (3) If the applicant is a public authority, the roads authority and, in the case of a classified road, TfNSW must consult with the applicant before deciding whether or not to grant consent or concurrence.
- (4) This section applies to a roads authority and to any employee of a roads authority in the same way as it applies to any other person.
- (5) This section applies despite the provisions of any other Act or law to the contrary, but does not apply to anything done under the provisions of the [Pipelines Act 1967](#) or under any other provision of an Act that expressly excludes the operation of this section.

OR

Local Government Act 1993

68 What activities, generally, require the approval of the council?

Part D Community land

- 1 Engage in a trade or business
- 2 Direct or procure a theatrical, musical or other entertainment for the public
- 3 Construct a temporary enclosure for the purpose of entertainment
- 4 For fee or reward, play a musical instrument or sing
- 5 Set up, operate or use a loudspeaker or sound amplifying device
- 6 Deliver a public address or hold a religious service or public meeting

2. AIM

2.1 Advertising signs contribute to the urban environment when their function is to convey information to the public which is relevant and appropriate to the location of the sign. The Council regards a sign appropriate if it:

- (a) identifies the name or address of the building or use of a site to which it is attached;
- (b) identifies the name or business of the owner or occupier;
- (c) identifies activities carried on within that part of a building or site to which the sign is attached; and
- (d) identifies - generally as a subordinate adjunct to any of the preceding forms of information - goods or services available at the building or site to which the sign is attached.

2.2 All the above elements should normally be contained in a concise form and manner which compliments the architecture of the building or design features of the streetscape or place.

2.3 The Council will endeavour to avoid the impairment of the amenity of the locality which may be caused where:

- (a) The sign is of such scale, prominence, obtrusiveness or character as to be incongruous with the surrounding land uses;
- (b) the sign adds to the danger of driver distraction;
- (c) the sign adds to the visual clutter of the locality;
- (d) numerous other signs exist on the site;
- (e) the sign, when viewed from a position where the sign would be legible, would obscure existing signs, information, sight lines or architectural features, or would itself be obscured.

3. APPROVAL CONDITIONS

Outlined below are some of the principle conditions that one would find in any Footpath Advertising Sign Approval. It should be noted that this list is not exhaustive, and Council reserves the right to add, remove or amend these conditions.

- 3.1 In granting a Permit for the erection or display of an advertising sign the Council will have regard to and may attach conditions concerning the following matters: the location, position, size, shape, colour, degree of illumination and the presence or rate of flashing lights.
- 3.2 Wherever possible, public information and parking signage should be coordinated to be readily identifiable and present a uniform image reflective of the City's identity.
- 3.3 Corporate signage, including the style and colours of proposals will be assessed in light of the objectives and requirements of this policy and be re-designed if necessary.
- 3.4 No advertising will be permitted on street furniture, unless approved by Council.
- 3.5 Any sign should be located as close as possible to the premises to which it relates, unless the Council is satisfied that there are local circumstances which make this difficult and that an alternative location acceptable to the Council can be identified.
- 3.6 Advertising signs will not be allowed to be placed or to remain where, in the Council's opinion, they would obstruct or conflict with pedestrian or vehicle movements, or sightlines, or obstruct access to or views from any other premises.
- 3.7 An approval for Private Advertising in Public Areas shall not take effect until the applicant has provided Council with a copy of a public liability insurance policy with a minimum value of \$20 million which contains the following clauses "It is hereby agreed that the indemnity given by this policy is extended to the Bathurst Regional Council in respect to placement of private advertising in public areas".
- 3.8 There is an approval fee for Private Advertising in Public Areas which is to be incorporated within Council's Revenue Policy and set out in detail in the approval conditions. These fees will be determined on an annual basis by Council in association with Council's annual review of its Revenue Policy. Permits may be issued for 12 months or 24 months, and all fees must be paid on application.
- 3.9 The grantee of approval will be required to indemnify Council against all actions, lawsuits, debts, obligations, claims and other liabilities which may arise during the continuance of the approval.
- 3.10 An unobstructed passage for pedestrian movement of at least 2.0 meters wide shall be maintained at all times.
- 3.11 In areas where there is no full width footpath, the sign is to be located so that it does not obstruct the available footpath.
- 3.12 In areas without a formed footpath, the sign is not to be located to interrupt orderly pedestrian movements.

4. SPECIFIC CRITERIA RELATED TO A-FRAME SIGNS

- 4.1 Movable signs should not exceed 1m^2 in total face area (i.e. $1.25\text{m} \times 0.8\text{m}$ or 1.0m

x 1.0m).

- 4.2 Those business houses located on a corner will be allowed to have one(1) moveable sign for each street frontage. All other business houses will be allowed one (1) moveable sign only.
- 4.3 Movable A-Frame signs will be permitted to remain only where they include the name, location and details of the business of the sign's owner.

5. SPECIFIC CRITERIA RELATED TO TEARDROP BANNER OR FLAGS

- 5.1 Teardrop banners/flags should not exceed the height of any awning where an awning exists, or a maximum of 3.6m. No part of the Teardrop sign/banner is permitted to overhang a roadway.
- 5.2 Where a teardrop banner/flag overhangs a footpath/pedestrian movement way, a minimum clearance of 2.0m is required.
- 5.3 Teardrop banner/flags shall be securely fixed into the ground, attached to a building or similar structure to ensure the banner or flag is not a danger to persons or property.
- 5.4 Teardrop banners/flags are not to impede vehicle sightlines, pedestrian movement or obscure or impede surrounding businesses.
- 5.5 Each business would be limited to two (2) teardrop banners/flags for the first 10m street frontage or part thereof. For every 10.0m after, one additional teardrop banner/flag is permitted. (i.e. for a 20.0m frontage, three (3) teardrop banner/flags are permitted with Council approval).
- 5.6 Only one teardrop banner/flag is permitted where an A-Frame sign is already approved and being displayed.
- 5.7 Those businesses located on a corner with two street frontage will be permitted to apply the above restrictions to each street frontage.

6. DISPLAY OF ADVERTISING SIGNS IN PUBLIC PLACES

- 6.1 Council may exercise its authority to remove or require the removal of signs which are in contravention of this policy or in any case where the Council considers that the display of such a sign is not appropriate.
- 6.2 That any "A" frame signage that does not have approval under this Policy may be subject to removal under Section 124 of the Local Government Act 1993 or Section 25 of the Public Spaces (Unattended Property) Act 2021.

POLICY:	APPROVED HANDLING OF FILL
DATE ADOPTED:	Director Environmental, Planning & Building Services Report #9.1.11 Council 18 October 2023 Resolution Number: ORD2023-308
ORIGINAL ADOPTION:	Director Environmental, Planning & Building Services Report # 1 Policy 7 September 2011 Council 21 September 2011 Minute Book No. 11192
FILE REFERENCE:	11.00006
OBJECTIVE:	To establish guidelines for the correct transport and disposal of approved fill material with minimal environmental impact

1. BACKGROUND

The *Protection of the Environment Operations Act (1997)* (the Act) outlines the transport and use of land as waste facilities, and the *Protection of the Environment Operations (Waste) Regulation (2014)* (the Regulation) outlines the requirements for individuals and corporations in dealing with waste materials that are transported and applied to land.

The *Protection of the Environment Operations Act (1997)*, Section 143 'Unlawful transporting or depositing of waste', states:

- (1) **Offence** If a person transports waste to a place that cannot lawfully be used as a waste facility for that waste, or causes or permits waste to be so transported—
- (a) the person, and
 - (b) if the person is not the owner of the waste—the owner of the waste, and
 - (c) if the waste is transported in a vehicle and the person is not the owner of the vehicle—the owner of the vehicle,
- are each guilty of an offence.

2. AIM

The aim of this policy is to ensure the protection of public health and the environment and to improve the methods used to transport and dispose of fill material.

3. LAND TO WHICH THIS POLICY APPLIES

This policy applies to all land within the Bathurst Regional Council Local Government Area. It applies to actions which result in the transport of fill from one property to another.

4. BENEFITS

The inappropriate transport and disposal of fill material can result in a devaluing of the natural and human environment and can cause harm to both humans and the environment through:

- Failing to prevent the loss of material during transport;
- Contaminated material being introduced to the environment;
- Inappropriate material being used during construction or land conservation works;
- Material being placed in locations not suitable or not permitted to receive such material.

This policy aims to provide clear guidelines for the appropriate transport and disposal of material that is classed as 'clean fill'.

5. APPROVED MATERIALS

Approved materials for the purpose of this policy are classed as 'Clean Fill'. Clean fill includes the following material.

- Virgin Excavated Natural Material (VENM) as defined in the Act and in the Glossary.
- Rock material sourced from an approved quarry or reseller.
- Top soil or similar material sourced from an approved seller.
- Materials subject to a Resource Recovery Exemption issued by the NSW Environment Protection Authority that permit the material's use for engineering fill, earthworks, building, landscaping and/or construction works and:
 - Meets the requirements of that exemption;
 - Details are provided to Council of such evidence prior to transport and disposal;
 - Is not deposited in a waterway or other environmentally sensitive area.

6. APPROVED TRANSPORT OF CLEAN FILL

Approved transport means clean fill that is transported in a manner that does not result in material being lost during transit:

- Material is to be contained in a vehicle or other transport device that is designed to carry such material
- Material is to be covered in a manner that will not result in the material being blown, washed or otherwise lost during transport
- The driver conveying the material must be able to provide details as to the owner, origin and nature of the material and to the location of disposal
- If material being transported is to be taken to an unlicensed landfill or a site not dedicated for the receiving and processing of waste, the driver conveying the material must carry written approval from the receiving landowner or corporation as per s143(3A) of the Act.

7. APPROVED RECEIVING OF CLEAN FILL

Approved receiving means allowing clean fill to be deposited onto land which the person receiving such material has approval or has given permission to do so. The person receiving the material is to:

- Obtain documentation regarding owner, origin and nature of material;
- Obtain documentation regarding person or corporation transporting the material;
- Provide written approval to the individual or corporation transporting and

disposing of the material as per s143(3A) of the Act.

8. APPROVED DISPOSAL OF CLEAN FILL

Approved disposal means transporting and depositing clean fill to a site that allows the receiving of such material, including:

- (a) A licensed landfill site including the Bathurst Waste Management Centre but excluding Bathurst Region Rural Transfer Stations;
- (b) An unlicensed landfill site that meets the requirements of the Policy or has consent to receive material and has given approval to receive such material;
- (c) An approved* construction or land conservation works site that receives only Virgin Excavated Natural Material (VENM) and has given approval to receive such material;
- (d) An approved* construction or land conservation works site that receives other naturally sourced clean fill and has given approval to receive such material;
- (e) site that receives material recovered as part of a resource recovery exemption and has given approval to receive such material, has the relevant Council consent or is exempt from consent.

*An approved site means one for which site works have received the relevant Council or other Government Department consent.

9. MATERIALS THAT ARE NOT APPROVED FOR DISPOSAL

Materials that are classed as waste are not approved for disposal to a site other than that which is licensed to receive such waste. Waste is defined in the Act and in the Glossary below and includes but is not necessarily limited to:

- Non-exempt building or demolition material;
- VENM mixed with building or demolition material;
- VENM sourced from former fuel storage areas or other potentially contaminated sites;
- Green (garden and plant) waste;
- Asbestos;
- Household waste and other litter;
- Cars, tyres, batteries and other vehicle parts;
- Dead animals;
- Chemicals, fuel, paint and other hazardous liquids;
- Other putrescible, hazardous or liquid waste, as defined in the Act.

10. MATERIALS NOT INCLUDED IN THIS POLICY

The application to land with organic material for agricultural purposes may be permitted subject to the relevant Council or relevant NSW Government Department Approval or Exemption and as such, are not dealt with under the Policy. Such material may include but not necessarily be limited to:

- Biosolids;
- Food waste;
- Feed lot waste;
- Manure, compost or other processed organic material.

11. TRANSPORT NOT INCLUDED IN THIS POLICY

Fill that is transported and deposited without leaving the property boundary and is not placed contrary to any Act or Regulation does not require approval and is not included in this policy. Property boundary means a single or multiple titled parcel of land that is contiguous and owned by the same person or corporation.

If the fill is taken outside the property boundary, then the conditions of this policy apply.

12. GLOSSARY

Clean Fill must meet the definitions of 'non-putrescible' waste under the Act and the conditions outlines in this Policy, and not contain any material that would otherwise alter the natural environment, result in contamination or devaluing of the natural or human environment.

The following items are defined under the *Protection of the Environment Operations Act (1997)*:

Land pollution or pollution of land means placing in or on, or otherwise introducing into or onto, the land (whether through an act or omission) any matter, whether solid, liquid or gaseous:

- (a) that causes or is likely to cause degradation of the land, resulting in actual or potential harm to the health or safety of human beings, animals or other terrestrial life or ecosystems, or actual or potential loss or property damage, that is not trivial; or
- (b) that is of a prescribed nature, description or class or that does not comply with any standard prescribed in respect of that matter,

Litter includes:

- (a) any solid or liquid domestic or commercial refuse, debris or rubbish and, without limiting the generality of the above, includes any glass, metal, cigarette butts, paper, fabric, wood, food, abandoned vehicles, abandoned vehicle parts, building or demolition material, garden remnants and clippings, soil, sand or rocks, and
- (b) any other material, substance or thing deposited in or on a place if its size, shape, nature or volume makes the place where it is deposited disorderly or detrimentally affects the proper use of that place,

Resource Recovery Exemption

Resource recovery exemptions are granted by the NSW Environment Protection Authority (NSW EPA) where the land application or use as fuel of a waste material is a bona-fide, fit for purpose, reuse opportunity that causes no harm to the environment or human health, rather than a means of waste disposal. General exemptions are issued for commonly recovered, high- volume and well-characterised waste materials.

A general exemption may be used by anyone, without seeking approval from the NSW EPA, provided the generators, processors and consumers fully comply with the conditions of the exemption and this Policy.

Section 143(3A) Defence – approved notice

It is a defence in any proceedings for an offence under this section if the defendant establishes that:

- (a) an approved notice was, at the time of the alleged offence, given to the defendant by the owner or occupier of the place to which the waste was transported or was displayed at the place, and
- (b) the approved notice stated that the place could lawfully be used as a waste facility for the waste, and
- (c) the defendant had no reason to believe that the place could not lawfully be used as a waste facility for the waste.

An s143(3A) Notice is available at
<https://www.epa.nsw.gov.au/licensing-and-regulation/legislation-and-compliance/notices-and-other-reg-docs>

Virgin excavated natural material (VENM) means natural material (such as clay, gravel, sand, soil or rock fines):

- (a) that has been excavated or quarried from areas that are not contaminated with manufactured chemicals, or with process residues, as a result of industrial, commercial, mining or agricultural activities, and
- (b) that does not contain any sulfidic ores or soils or any other waste and includes excavated natural material that meets such criteria for virgin excavated natural material as may be approved for the time being pursuant to an EPA Gazettal notice.

Waste includes:

- (a) any substance (whether solid, liquid or gaseous) that is discharged, emitted or deposited in the environment in such volume, constituency or manner as to cause an alteration in the environment, or
- (b) any discarded, rejected, unwanted, surplus or abandoned substance, or
- (c) any otherwise discarded, rejected, unwanted, surplus or abandoned substance intended for sale or for recycling, processing, recovery or purification by a separate operation from that which produced the substance, or
- (d) any processed, recycled, re-used or recovered substance produced wholly or partly from waste that is applied to land, or used as fuel, but only in the circumstances prescribed by the regulations, or
- (e) any substance prescribed by the regulations to be waste.

A substance is not precluded from being waste for the purposes of the Act merely because it is or may be processed, recycled, re-used or recovered.

POLICY:	ASBESTOS
DATE ADOPTED:	Director Environmental, Planning & Building Services Report #8 Policy 1 March 2017 Council 15 March 2017 Minute Book No. 12460
ORIGINAL ADOPTION:	Director Environmental, Planning & Building Services Report #8 Council 19 June 2013 Minute Book No. 11545
FILE REFERENCE:	18.00105
OBJECTIVE:	To ensure that activities which may involve asbestos containing materials are managed in accordance with the relevant legislation and best practice guidelines. To provide information to residents of the Bathurst Region regarding the risks and regulations relating to the management of asbestos containing materials.

Council disclaimer

This policy was formulated to be consistent with council's legislative obligations and within the scope of council's powers. This policy should be read in conjunction with relevant legislation, guidelines and codes of practice. In the case of any discrepancies, the most recent legislation should prevail.

This policy is based upon the *Model Asbestos Policy for NSW Councils* developed by the Heads of Asbestos Coordination Authorities to promote a consistent Local Government approach to asbestos management across NSW.

This policy does not constitute legal advice. Legal advice should be sought in relation to particular circumstances and liability will not be accepted for losses incurred as a result of reliance on this policy.

1. INTRODUCTION

Bathurst Regional Council acknowledges the serious health hazard of exposure to asbestos.

In Australia, asbestos was gradually phased out of building materials in the 1980s and the supply and installation of asbestos containing goods has been prohibited since 31 December 2003. Yet asbestos legacy materials still exist in many homes, buildings and other assets and infrastructure. It is estimated that one in three Australian homes contains asbestos. Many older homes in the Bathurst Region Local Government Area were built utilising asbestos containing goods.

Asbestos is known to cause human health risks.

It is often difficult to identify the presence of asbestos by sight. Where a material cannot be identified or is suspected to be asbestos, it is best to assume that the material is asbestos and take appropriate precautions. Further information about asbestos and the health impacts of asbestos can be found in Appendix A and website links to additional information are provided in Appendix B.

Council has an important dual role in minimising exposure to asbestos, as far as is reasonably practicable, for both:

- residents and the public within the Local Government Area (LGA).
- workers (employees and other persons) in council workplaces.

Council's legislative functions for minimising the risks from asbestos apply in various scenarios including:

- as a responsible employer
- contaminated land management
- council land, building and asset management
- emergency response
- land use planning (including development approvals and demolition)
- management of naturally occurring asbestos
- regulation of activities (non-work sites)
- waste management and regulation.

1.1 Purpose

This policy aims to outline:

- the role of council and other organisations in managing asbestos
- council's relevant regulatory powers
- council's approach to dealing with naturally occurring asbestos, sites contaminated by asbestos and emergencies or incidents
- general advice for residents on renovating homes that may contain asbestos
- council's development approval process for developments that may involve asbestos and conditions of consent
- waste management and regulation procedures for asbestos waste in the LGA
- council's approach to managing asbestos containing materials in council workplaces
- sources of further information.

1.2 Scope

This policy applies to all of the Bathurst Region LGA within council's jurisdiction.

The policy provides information for council workers and the local community. Part 1 of the policy includes the sections that are likely to be of most interest to the local community. Part 2 is information that applies to workers associated with council including employees, contractors, consultants, and volunteers (as defined by the *NSW Work Health and Safety Regulation 2011*). Definitions for key terms used in the policy are provided in Appendix C and acronyms are listed in Appendix D.

The policy applies to friable, non-friable (bonded) and naturally occurring asbestos (where applicable) within the LGA.

The policy outlines council's commitment and responsibilities in relation to safely managing asbestos and contains general advice. For specific advice, individuals are encouraged to contact council or the appropriate organisation (contact details are listed in Appendix E).

The policy does not provide detail on specific procedures. Practical guidance on how to manage risks associated with asbestos and asbestos containing material can be found in the:

- Code of practice on how to manage and control asbestos in the workplace (catalogue no. WC03560) published by SafeWork NSW NSW.
- Code of practice on how to safely remove asbestos published by SafeWork NSW NSW (catalogue no. WC03561) published by SafeWork NSW NSW.
- Additional guidance material listed in Appendix B.

Detailed information on council's procedures and plans may be found in other documents, which are referenced in part 2 under section 18.1.

2. DEFINITIONS

Definitions are provided in Appendix C.

3. ROLES AND RESPONSIBILITIES OF COUNCIL

3.1 Provision of information to residents

Council shall assist residents to access appropriate information and advice on the:

- prohibition on the use and re-use of asbestos containing materials
- requirements in relation to development, land management and waste management
- risks of exposure to asbestos
- safe management of asbestos containing materials
- safe removal and disposal of minor quantities of asbestos containing materials.

Educational information and website links for educational materials can be found in Appendices A and B.

3.2 Managing land

Council is responsible for managing public land. This may include land with naturally occurring asbestos as described in section 5 and land contaminated with asbestos as outlined in section 6.

3.3 Managing waste

Where council is the appropriate regulatory authority, council is responsible for:

- Issuing clean up notices to address illegal storage or disposal of asbestos waste or after an emergency or incident (under the Protection of the Environment Operations Act 1997).
- Issuing prevention or clean up notices where asbestos waste has been handled (including stored, transported or disposed of) in an unsatisfactory manner (under the Protection of the Environment Operations Act 1997).
- Issuing penalty infringement notices for improper transport of asbestos (under the Protection of the Environment Operations Act 1997).

- Applying planning controls to proposals to dispose of asbestos waste on-site, seeking advice from the Environment Protection Authority (EPA) on this matter and making notation on planning certificates (section 149 certificates) where on-site disposal is permitted.
- Operating a licensed landfill facility that accepts asbestos waste.

Waste facilities that are licensed to accept asbestos waste are listed in Appendix F.

3.4 Regulatory responsibilities

Council has regulatory responsibilities under the following legislation, policies and standards in situations where council is the appropriate regulatory authority or planning authority:

- Demolition work code of practice 2015 (catalogue no. WC03841)
- Contaminated Land Management Act 1997
- Environmental Planning and Assessment Act 1979
- Environmental Planning and Assessment Regulation 2000
- Local Government Act 1993
- Protection of the Environment Operations Act 1997
- Protection of the Environment Operations (General) Regulation 2009
- Protection of the Environment Operations (Waste) Regulation 2005
- State Environmental Planning Policy (Exempt and Complying Development Codes) 2008
- State Environmental Planning Policy No. 55 – Remediation of Land.

Additional legislation, policies and standards relating to the safe management of asbestos are listed in Appendix G.

The situations in which council has a regulatory role in the safe management of asbestos are listed in Table 1.

Table 1: Situations in which council has a regulatory role in managing asbestos

Issue	Council's role	Section of policy
Contaminated land	<ul style="list-style-type: none"> • Record known asbestos site contamination on section 149 certificates where practicable and for council workplaces, record on council's asbestos register. • Notify stakeholders of land use planning policy requirements relating to contamination. • Manage residential asbestos contaminated land that is not declared 'significantly contaminated' under the <i>Contaminated Land Management Act 1997</i> (excluding oversight of removal or remediation work which is the role of SafeWork NSW). 	Sections 5 and 6
Development assessment	<ul style="list-style-type: none"> • Assess development applications for approval under the <i>Environmental Planning and Assessment Act 1979</i>. • Set conditions of consent for renovations, alterations, additions, demolitions or other developments requiring consent and which may involve disturbance of asbestos containing materials. • Ensure compliance with development conditions. 	Section 9

	<ul style="list-style-type: none"> • Apply conditions relating to development involving friable and non-friable asbestos material under the relevant legislation and planning codes and as outlined in section 9. 	
Demolition	<ul style="list-style-type: none"> • Approve demolition under the <i>Environmental Planning and Assessment Act 1979</i>. • Council certifiers approve development as complying development under the <i>State Environmental Planning Policy (Exempt and Complying Development Codes) 2008</i>. 	Section 9
Emergencies and incidents	<ul style="list-style-type: none"> • Regulate the clean up of asbestos waste following emergencies where sites are handed over to the council or a local resident by an emergency service organisation (excluding oversight of licensed removal or remediation work which is the role of SafeWork NSW). Council may consider the need to issue a clean up notice, prevention notice or cost compliance notice under the <i>Protection of the Environment Operations Act 1997</i>. 	Section 7
Naturally occurring asbestos	<ul style="list-style-type: none"> • Verify compliance with environmental planning and assessment legislation for development applications that could disturb naturally occurring asbestos. • Prepare an asbestos management plan for council workplaces or road works which occur on land containing naturally occurring asbestos. 	Section 5
Residential premises	<ul style="list-style-type: none"> • Respond to any public health risks (risks to council workers and wider public) relating to the removal of asbestos containing materials or asbestos work at residential properties that does not involve a business or undertaking. • Respond to complaints about unsafe work at a residential property that is undertaken by a resident (not a worker, which is the role of SafeWork NSW). • Respond to public health risks posed by derelict properties or asbestos materials in residential settings. 	Section 9
Waste	<ul style="list-style-type: none"> • Manage waste facilities in accordance with environmental protection legislation. • Respond to illegal storage, illegal dumping and orphan waste. • Regulate non-complying transport of asbestos containing materials. 	Section 10

3.5 Responsibilities to workers

Council is committed to fulfilling its responsibilities to workers under the *NSW Work Health and Safety Act 2011* and *NSW Work Health and Safety Regulation 2011* and maintaining a safe work environment through council's:

- general responsibilities
- education, training and information for workers
- health monitoring for workers

- procedures for identifying and managing asbestos containing materials in council premises.

These responsibilities are outlined in part 2.

4. OTHER STAKEHOLDERS INVOLVED IN MANAGING ASBESTOS

Council is committed to working collaboratively with other government agencies and where appropriate, other stakeholders as needed to respond to asbestos issues.

Appendix E notes useful contacts and Appendix H notes agencies involved in managing asbestos. Various asbestos scenarios requiring stakeholders to work together are outlined in Appendix I.

Part 1 – Asbestos in the Local Government Area: Information for the community

5. NATURALLY OCCURRING ASBESTOS

Asbestos is found as a naturally occurring mineral in the southern part of the Bathurst Region LGA around Charlton and may occur elsewhere in the LGA.

Naturally occurring asbestos only poses a health risk when elevated levels of fibres are released into the air, either by human activities or by natural weathering and these fibres are breathed in by people. Information on naturally occurring asbestos and work processes that have the potential to release naturally occurring asbestos fibres into the air is provided in Appendix A under section 2.1.

5.1 Responsibilities for naturally occurring asbestos

For naturally occurring asbestos that will remain undisturbed by any work practice, council is the lead regulator.

Where development applications propose activities that may disturb areas of naturally occurring asbestos (such as excavation), any consent or approval should contain conditions requiring: testing to determine if asbestos is present, and the development of an asbestos management plan if the testing reveals naturally occurring asbestos is present. Council will verify compliance with environmental planning and assessment legislation and together with the EPA and SafeWork NSW will coordinate enforcement where non-compliance is suspected.

Where naturally occurring asbestos will be disturbed due to a work process, including roadwork, excavation and remediation work, SafeWork NSW is the lead regulator. Requirements for workplaces are summarised in the *Naturally-occurring asbestos fact sheet* (catalogue no. WC03728) published by SafeWork NSW. Where naturally occurring asbestos is part of a mineral extraction process, Department of Industry is the lead regulator.

5.2 Managing naturally occurring asbestos

Where naturally occurring asbestos is encountered or suspected, the risk from disturbance of the naturally occurring asbestos should be assessed by an occupational hygienist.

Allowing deposits of naturally occurring asbestos that stays in its natural state is not prohibited if managed in accordance with an asbestos management plan. Requirements for risk management, asbestos management plans and provisions for workers are outlined in the *Naturally-occurring asbestos fact sheet* (catalogue no. WC03728) published by SafeWork NSW.

The SafeWork NSW website provides further information on naturally occurring asbestos and supporting documents on what people can do to avoid contact with naturally occurring asbestos.

5.2.1 Management of naturally occurring asbestos by council

Council will develop an asbestos management plan for the naturally occurring asbestos in the LGA.

Council will aim to prevent the exposure of workers and the public to any naturally occurring asbestos that is known or discovered in the council workplace.

Council will develop an asbestos management plan for the naturally occurring asbestos in the council workplace.

6. CONTAMINATION OF LAND WITH ASBESTOS

Background information on contamination of land with asbestos and potential disturbance of asbestos contaminated sites can be found in Appendix A under sections 2 and 3. The nature of asbestos contamination of land can vary significantly and there can be a number of different mechanisms available to address this contamination depending upon its source and extent.

6.1 Responsibilities for contaminated land

Responsibility for cleaning up contaminated land lies with the person responsible for contaminating the land or the relevant landowner.

Council may issue a clean up notice to the occupier of premises at or from which council reasonably suspects that a pollution incident has occurred, or is occurring, requiring asbestos waste to be removed (under part 4.2 of the *Protection of the Environment Operations Act 1997*).

Council may also issue prevention notices (under part 4.3 of the *Protection of the Environment Operations Act 1997*) to ensure good environmental practice. If a person does not comply with a prevention notice given to the person, council employees, agents or contractors may take action to cause compliance with the notice.

Any reasonable costs incurred by council in monitoring or enforcing clean up and prevention notices may be recovered through a compliance cost notice (under part 4.5 of the *Protection of the Environment Operations Act 1997*). Council shall keep records of: tasks undertaken; the hours council employees have spent undertaking those tasks; and expenses incurred.

During site redevelopment council will consider contamination with asbestos containing materials in the same way as other forms of contamination as stipulated by the *Environmental Planning and Assessment Act 1979*. That is, council will apply the general requirements of *State Environmental Planning Policy (SEPP) No. 55 – Remediation of Land*

and the *Managing Land Contamination: Planning Guidelines SEPP 55 – Remediation of Land*.

Council provides information about land contamination on planning certificates (issued under section 149 of the *Environmental Planning and Assessment Act 1979*) as outlined in section 6.2.

For sites that are ‘significantly contaminated’ and require a major remediation program independent of any rezoning or development applications, the EPA and SafeWork NSW are the lead regulatory authorities as outlined in Appendix A under section 2.4.2.

The management of council workplaces contaminated with asbestos is outlined in section 14.4.

6.2 Finding out if land is contaminated

A person may request from council a planning certificate containing advice on matters including whether council has a policy to restrict the use of land due to risks from contamination. Certificates are issued under section 149(2) of the *Environmental Planning and Assessment Act 1979*.

Factual information relating to past land use and other matters relevant to contamination may also be provided, even when land use is not restricted. When council receives a request for a certificate under section 149(2), it may also inform applicants of any further information available under section 149(5). Council may also use section 149(5) certificates to record other information, particularly anything else of a factual nature about contamination which council deems appropriate (such as details of land history, assessment, testing and remediation).

Council records can only indicate known contaminated sites. Any site may potentially be contaminated.

Council may issue notices to land owners or occupiers requiring information about land it has reason to believe may be contaminated by asbestos using section 192 and section 193 of the *Protection of the Environment Operations Act 1997*.

6.3 Duty to report contaminated land

A person whose activities have contaminated land or a landowner whose land has been contaminated is required to notify the EPA when they become aware of the contamination (under section 60 of the *Contaminated Land Management Act 1997*). Situations where this is required are explained in the document: *Guidelines on the duty to report contamination under the Contaminated Land Management Act 1997*.

The EPA will inform council of contaminated land matters relating to the LGA as required under section 59 of the *Contaminated Land Management Act 1997*.

6.4 Derelict buildings

Concerns regarding potential health risks from derelict properties may be directed to council. Derelict properties include abandoned buildings, fire damaged buildings and otherwise dilapidated buildings. Where derelict properties contain friable asbestos and asbestos is exposed, either from human activities or weathering, this poses a potential risk to public health.

Council may respond to derelict properties that pose a demonstrable public health risk using a range of regulatory tools according to the particular circumstances.

Council may issue a clean up notice or prevention notice and compliance cost notice as noted in section 6.1.

Council may also order a person to demolish or remove a building if the building is so dilapidated as to present harm to its occupants or to persons or property in the neighbourhood (under section 121B 2(c) of the *Environmental Planning and Assessment Act 1979*). An order may require immediate compliance with its terms in circumstances which the person who gives the order believes constitute a serious risk to health or safety or an emergency (under section 121M of the *Environmental Planning and Assessment Act 1979*). If a person fails to comply with the terms of an order, council may act under section 121ZJ of the *Environmental Planning and Assessment Act 1979* to give effect to the terms of the order, including the carrying out of any work required by the order.

If the derelict building is on a site that is a workplace then SafeWork NSW is the lead agency responsible for ensuring that asbestos is removed by appropriately licensed removalists.

7. RESPONDING TO EMERGENCIES AND INCIDENTS

Emergencies and incidents such as major collapses, cyclones, explosions, fires, storms, or vandalism can cause damage to buildings or land that contain asbestos. This may include working with state agencies in accordance with the NSW Asbestos Emergency Plan and the Disaster Assistance Guidelines. This can create site contamination issues and potentially expose emergency service workers and the wider public to asbestos. Emergencies or incidents can arise from natural hazards, or from accidental or deliberate human activities including criminal activity.

7.1 Responsibilities in the clean up after an emergency or incident

Council may play a role in ensuring that asbestos containing materials are cleaned up after an emergency or incident. If the emergency or incident occurs at a workplace, SafeWork NSW is the lead agency.

Council may issue a clean up, prevention, cost compliance or penalty infringement notice as outlined in section 3.3 and section 6.1.

Alternatively, council may act under the *Environmental Planning and Assessment Act 1979* as outlined in section 6.4 of this policy.

Council will determine an appropriate response depending on the nature of the situation.

This may include to:

- Seek advice from an occupational hygienist on the likely level of risk and appropriate controls required.

- Liaise with or consult the appropriate agencies.
- Inform emergency personnel of any hazards known to council as soon as practicable.
- Follow the *Code of practice on how to safely remove asbestos* (catalogue no. WC03561) published by SafeWork NSW NSW.
- Ensure that any council workers attending the site have appropriate training and are wearing appropriate personal protective equipment.
- Exclude the public from the site.
- Inform the public of the potential sources of exposure to asbestos, health risks and emergency management response.
- Minimise the risks posed by any remaining structures (see section 6.4).
- Address the risks posed by disturbed asbestos containing materials by engaging a licensed removalist (as outlined in section 14.6.2) or issuing a clean up or prevention notice (as outlined in section 6.4) to ensure asbestos containing materials are removed for disposal.
- Ensure that the site is kept damp, at all times or sprayed with PVA glue, particularly where friable asbestos is present, if considered appropriate (noting that in some instances this may not be appropriate, for example if there are live electrical conductors or if major electrical equipment could be permanently damaged or made dangerous by contact with water).
- Ensure that asbestos containing materials are disposed of at a facility licensed to accept asbestos waste and sight proof of appropriate disposal through weighbridge dockets or similar documentation.

7.2 Advice to the public regarding clean up after an emergency or incident

During a clean up after an emergency or incident, the possibility of neighbours being exposed to asbestos fibres may be very low if precautions are taken to minimise the release and inhalation of asbestos dust and fibres.

As a precautionary measure, where council is involved in a clean up, council will seek advice from a qualified occupational hygienist and implement any measures recommended the occupational hygienist following assessment of the situation. Any advice to the public would be based on advice from an occupational hygienist.

8. COUNCIL'S PROCESS FOR CHANGING LAND USE

Council recognises the need to exercise care when changing zoning for land uses, approving development or excavating land due to the potential to uncover known or unknown asbestos material from previous land uses (for example, where a site has been previously been used as a landfill or for on-site burial of asbestos waste).

State Environmental Planning Policy No. 55 – Remediation of Land states that land must not be developed if it is unsuitable for a proposed use because it is contaminated. If the land is unsuitable, remediation must take place before the land is developed.

Managing sites contaminated with asbestos material is addressed in section 6.

9. COUNCIL'S PROCESS FOR ASSESSING DEVELOPMENT

This section applies to development applications assessed under the *Environmental Planning and Assessment Act 1979* and complying development applications assessed under the *State Environmental Planning Policy (Exempt and Complying Development*

Codes) 2008 or council's complying codes (see section 9.5.2). This includes alterations and additions to residential development, which may include internal work as well as extensions to the existing main structure, or changes to outbuildings, sheds or garages.

This section also covers renovations that do not require development consent or a complying development certificate. Development consent is not required to maintain an existing structure. For example, the replacement of windows, doors and ceilings may involve the removal of asbestos but is categorised as exempt development under the *Environmental Planning and Assessment Act 1979* and does not require development consent. In these instances, council has an educative role in providing owners and occupiers with advice and information about the identification and safe management of asbestos.

9.1 Responsibilities for approving development

Council is the consent authority for the majority of development applications in the LGA. The Joint Regional Planning Panel (JRPP) is also consent authority for certain local or regional development. Council may have representation on the JRPP.

Council or the JRPP may impose conditions of consent on a development consent to ensure the safe removal of asbestos, where asbestos has been identified or may be reasonably assumed to be present.

Either council or a private certifier may assess a complying development certificate. Where a private certifier is engaged to assess a complying development certificate, the private certifier is responsible for ensuring that the proposed development activities include adequate plans for the safe removal and disposal of asbestos.

This also applies to the demolition of buildings. Certifiers are able to issue a complying development certificate under the Demolition Code of the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*. Further information on demolition is provided in section 9.4.

When a private certifier issues a complying development certificate and is appointed as the Principal Certifying Authority for the development it is the certifier's responsibility to follow up to ensure that works including asbestos handling, removal and disposal if present, are carried out appropriately in accordance with the *Environmental Planning and Assessment Regulation 2000* (clause 136E). Compliance is covered in section 9.7.

9.2 Providing advice to home owners, renovators and developers

Council is committed to providing information to minimise the risks from asbestos in the LGA. Information is provided below and in Appendix A. Appendix B lists additional sources of information on how to deal safely with the risks of asbestos and Appendix J lists asbestos containing products that may be found around the home.

The key points are:

- Before any renovation, maintenance or demolition work is carried out, any asbestos or asbestos containing materials should be identified (refer to section 9.3).
- Where a material cannot be identified or it is suspected to be asbestos, it is best to assume that the material is asbestos and take appropriate precautions.
- If asbestos containing materials can be maintained in good condition it is recommended that they be safely contained, left alone and periodically checked to monitor their condition, until demolition or redevelopment.

If asbestos materials cannot be safely contained, they should be removed as outlined in section 9.4.

- For demolition or redevelopment, any asbestos containing materials should be safely removed and disposed of prior to the work commencing.

Anyone who is undertaking renovations themselves without a contractor is encouraged to refer to Appendices A and B for more information and contact council where they require further advice or clarification. Anyone engaging an asbestos removal contractor may contact SafeWork NSW with any queries as SafeWork NSW regulates asbestos removal by workers (as explained in section 9.4). Contact details for council and SafeWork NSW are provided in Appendix E.

9.3 Identifying asbestos

Information on common places where asbestos is likely to be found in residential, commercial and industrial premises with materials from prior to 2004 on the premises is provided in Appendix A.

A person may apply to council for a planning certificate (called a section 149 certificate) for the relevant land. Council may provide information on a planning certificate including whether council has a policy to restrict the use of land due to risks from asbestos contamination, as outlined in section 6.2.

Council aims to ensure that records are, as far as possible, accurate. In some instances, council may not have up-to-date information about asbestos for a property. Council may be able to provide general advice on the likelihood of asbestos being present on the land based on the age of the buildings or structures on the land. A general guide to the likelihood of asbestos presence based on building age is provided in Appendix A under section 2.2.

The most accurate way to find out if a building or structure contains asbestos is to obtain an asbestos inspection by a person competent in the identification and assessment of asbestos, such as an occupational hygienist (a competent person is defined by the NSW *Work Health and Safety Regulation 2011*). This is highly advisable before undertaking major renovations to buildings constructed, or containing materials from prior to 2004.

Property owners and agents are encouraged to inform any tenants or occupiers of the presence of asbestos and to address any potential asbestos hazards where appropriate.

Property owners who let their properties out are required to identify any asbestos within those properties before any work is carried out (this includes residential properties).

The *Work Health and Safety Regulation 2011* states that the person conducting a business or undertaking in any building constructed before 31 December 2003 must identify if there is any asbestos in the building.

All commercial properties that contain asbestos must have and maintain a current asbestos register and asbestos management plan.

9.4 Removing asbestos, refurbishments and demolitions

9.4.1 Removing asbestos at domestic premises

If development is undertaken by contractors, as is the case with a lot of home renovations, then the work is considered to be at a workplace and is regulated by SafeWork NSW under the NSW *Work Health and Safety Regulation 2011*. This requires that a person conducting a

business or undertaking who is to carry out refurbishment or demolition of residential premises must ensure that all asbestos that is likely to be disturbed by the refurbishment or demolition is identified and, so far as reasonably practicable, is removed before the refurbishment or demolition is commenced.

Depending on the nature and quantity of asbestos to be removed, a licence may be required to remove the asbestos. The requirements for licenses are outlined below and summarised in the table in Appendix K. SafeWork NSW is responsible for issuing asbestos licences.

Friable asbestos must only be removed by a licensed removalist with a friable (Class A) **asbestos removal licence. Except in the case of the removal of:**

- asbestos containing dust associated with the removal of non-friable asbestos, or
- asbestos containing dust that is not associated with the removal of friable or non-friable asbestos and is only a minor contamination (which is when the asbestos contamination is incidental and can be cleaned up in less than one hour).

The removal of more than 10 square metres of non-friable asbestos or asbestos containing material must be carried out by a licensed non-friable (Class B) or a friable (Class A) asbestos removalist.

The removal of asbestos containing dust associated with the removal of more than 10 square metres of non-friable asbestos or asbestos containing material requires a non-friable (Class B) asbestos removal licence or a friable (Class A) asbestos removal licence.

Removal of 10 square metres or less of non-friable asbestos may be undertaken without a licence. However, given the risks involved, council strongly recommends that residents to engage a licensed asbestos removal contractor.

All asbestos removal should be undertaken in accordance with the *Code of practice on how to safely remove asbestos* (catalogue no. WC03561).

Requirements for the transport and disposal of asbestos waste are covered in section 10.

9.4.2 Removing asbestos at workplaces

The NSW *Work Health and Safety Regulation 2011* specifies requirements for demolition and refurbishment at a workplace with structures or plants constructed or installed before 31 December 2003. SafeWork NSW is the lead agency for regulating the safe management of asbestos at workplaces.

9.4.3 Obtaining approval for demolition

Demolition work is classified as high risk construction work in the *NSW Work Health and Safety Regulation 2011* and demolition licenses are required for some demolition work. *The Demolition work code of practice 2015* provides practical guidance on how to manage the risks associated with the demolition of buildings and structures. In most circumstances demolition of a structure requires development consent or a complying development certificate. Applicants need to enquire to council as to whether and what type of approval is required. Where a development application is required council's standard conditions need to be applied to ensure that asbestos is safely managed. Council's conditions for development consent are referred to in section 9.6.

Demolition of development that would be exempt development under the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* is also

exempt development and does not require consent. This includes minor structures such as carports, fences, sheds and the like.

Other demolition would need to be the subject of a development application.

9.5 Exempt or complying development

9.5.1 Exempt development

Exempt development does not require any planning or construction approval if it meets the requirements of the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* or the *Bathurst Regional Council Development Control Plan (Exempt Development)*.

This means that there is no ability for council or a private certifier to impose safeguards for the handling of asbestos through conditions of development consent. However, council advises that all asbestos removal work should be carried out in accordance with the *Code of practice on how to safely remove asbestos* (catalogue no. WC03561).

9.5.2 Complying development

The *Environmental Planning and Assessment Regulation 2000* (clause 136E) outlines conditions under which a complying development certificate can be issued for development that involves building work or demolition work and friable or non-friable asbestos.

Applications for complying development certificates must include details of the estimated area (if any) in square metres of friable and/or non-friable asbestos material that will be disturbed, repaired or removed in carrying out the development (under Schedule 1 part 2 of the *Environmental Planning and Assessment Regulation 2000*).

Where more than 10 square metres of non-friable asbestos is to be removed, a contract evidencing the engagement of a licensed asbestos removal contractor is to be provided to the principal certifying authority. The contract must specify the landfill site lawfully able to accept asbestos to which the removed asbestos will be delivered.

If the contract indicates that asbestos will be removed to a specified landfill site, the person having the benefit of the complying development certificate must give the principal certifying authority a copy of a receipt from the operator of the landfill site stating that all the asbestos material referred to in the contract has been received by the operator.

If the work involves less than 10 square metres of non-friable asbestos and is not undertaken by a licensed contractor, it should still be undertaken in a manner that minimises risks as detailed in the *Code of practice on how to safely remove asbestos* (catalogue no. WC03561). In instances where asbestos removal is less than 10 square metres of non-friable asbestos and not from a place of work, then SafeWork NSW would not be the agency responsible for regulating this activity. Concerns or complaints may be directed to council as outlined in section 11.

The *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* outlines the requirements for the applicant to notify their neighbours that works may include asbestos removal.

Further requirements to inform other persons of licensed asbestos removal are described in section 467 of the *NSW Work Health and Safety Regulation 2011* as noted in section 9.4.1 of this policy.

9.6 Development applications

If a proposed building does not meet the requirements of exempt or complying development then the alternative planning approval pathway is a development application (DA). A DA can only be approved by a local council, the JRPP or, for very large, State-significant development proposals, the State Government. A development application needs to be prepared and it will be assessed in accordance with the requirements of relevant environmental planning instruments and the development standards established by council. Council may undertake a site inspection as part of the DA assessment.

9.6.1 Pre-development application advice regarding asbestos

Council's pre-DA service enables proponents to discuss asbestos-related issues with council prior to lodging a DA, if the issue is raised. Council may inform applicants of this policy, fact sheets or websites. Generally this may be most relevant to structures erected or modified before the 1980s and any other structure that could be reasonably suspected to contain asbestos including those with building materials from prior to 2004.

9.6.2 Conditions of consent

Any development involving non-friable asbestos removal work (of an area of more than 10 square metres) or friable asbestos removal work must be undertaken by a person who carries on a business of such removal work in accordance with a license under Part 8.10 of the Work Health and Safety Regulation 2011.

The applicant/owner having the benefit of the Complying Development Certificate must provide Bathurst Regional Council with a copy of a signed contract with such a person before any development pursuant to the consent commences.

Any such contract must indicate whether any non-friable asbestos material or friable asbestos material will be removed, and if so, must specify the landfill site (that may lawfully receive asbestos) to which the non-friable asbestos material or friable asbestos material is to be delivered.

9.7 Compliance and enforcement

9.7.1 Responsibilities for compliance and enforcement

The controls rely on information being provided and checked by the principal certifying authority which may be either the local council or a private certifier. A private certifier has powers under the *Environmental Planning and Assessment Act 1979* to issue construction certificates, compliance certificates, complying development certificates, occupation certificates and to carry out mandatory inspections. Councils will not always be the principal certifying authority. When a council is not nominated as the principal certifying authority for a complying development certificate or development application, the council may not have any knowledge of the asbestos matter. Accordingly, coordination of compliance and/or enforcement actions between the council and the private certifier will be required.

Council may take action on any development for which council has issued the development consent, even when not appointed as the principal certifying authority to ensure enforcement. Where council receives a complaint about a development for which council is not the principal certifying authority, council should consider whether council is the appropriate authority to resolve the matter. Complaints that warrant action by councils because of their greater enforcement powers include:

- urgent matters, for example, a danger to the public or a significant breach of the development consent or legislation
- matters that are not preconditions to the issue of the occupation/subdivision certificate.

In relation to naturally occurring asbestos, council is to verify compliance with environmental planning and assessment legislation and together with the EPA and SafeWork NSW is to coordinate enforcement where non-compliance is suspected.

9.7.2 Compliance strategies

Illegal works include:

- works that are undertaken without a required development consent or complying development certificate
- works that are undertaken that do not comply with the conditions of the development consent or complying development certificate.

Where council becomes aware of illegal work involving asbestos or asbestos containing materials, council will notify SafeWork NSW if the site is a workplace. The *Environmental Planning and Assessment Act 1979* empowers council to issue orders to direct specific work be undertaken to comply with a development consent.

Council may need to issue an order under the *Local Government Act 1993* (section 124) to direct a person to 'do or refrain from doing such things as are specified in the order to ensure that land is, or premises are, placed or kept in a safe or healthy condition.'

Council may also issue a clean up notice or prevention notice under the *Protection of the Environment Operations Act 1997* as outlined in section 6.1 of this policy. Council may audit asbestos-related demolition works which council has recently approved by using a legal notice under section 192 of the *Protection of the Environment Operations Act 1997* to require developers to provide information and records regarding disposal of their asbestos waste.

Council will undertake all enforcement activities in accordance with its adopted Enforcement Policy.

10. MANAGING ASBESTOS AS A WASTE

It is illegal to dispose of asbestos waste in domestic garbage bins or to recycle, reuse, bury or illegally dump asbestos waste. Asbestos must not be placed in general waste skip bins, yet there have been instances where asbestos has been illegally placed in skip bins by third parties. Members of the public need to be aware of this hazard and may need to secure their skip bins to prevent a third party from illegally disposing of asbestos in the skip bin.

Asbestos waste (in any form) must only be disposed of at a landfill site that may lawfully receive asbestos waste.

10.1 Responsibilities for asbestos waste management

Council's responsibilities for asbestos waste management are outlined in section 3.3.

The handling and, where appropriate, temporary storage of asbestos waste at worksites is regulated by SafeWork NSW NSW.

The EPA regulates premises that have or require an environment protection licence in accordance with the *Protection of the Environment Operations Act 1997*. A licence is required where more than 5 tonnes of asbestos waste, brought from off-site, is stored at any time. All other sites where asbestos waste is stored, typically those that are non-work sites, are regulated by local councils.

10.2 Handling asbestos waste for disposal

The *Code of practice on how to safely remove asbestos* (catalogue no. WC03561) provides details on waste containment and disposal and controls applicable to all types of asbestos removal (in section 4.8 of the Code).

10.3 Transporting asbestos waste

The following requirements apply to the transport of asbestos waste and non-compliance with these requirements is an offence under clause 78 of the *Protection of the Environment Operations (Waste) Regulation 2014*:

- (a) any part of any vehicle in which the person transports the waste is covered, and leak-proof, during the transportation, and
- (b) if the waste consists of bonded asbestos material- it is securely packaged during the transportation and
- (c) if the waste consists of friable asbestos material – it is kept in a sealed container during transportation, and
- (d) if the waste consists of asbestos-contaminated soils- it is wetted down

Asbestos waste that is transported interstate must be tracked in accordance with the *Protection of the Environment (Waste) Regulation 2014*. The transport of asbestos waste in NSW must be recorded from the place of generation to its final destination. The waste tracking system is administered by the EPA. Operators that use the EPA's WasteLocate system will be in compliance with these requirements. Information about EPA's WasteLocate system can be found at:

www.epa.nsw.gov.au/wasteregulation/transport-asbestos-tyres.htm

An environment protection licence issued by the EPA is required to transport asbestos waste interstate where any load contains more than 200 kilograms of asbestos waste.

It is an offence to transport waste to a place that cannot lawfully receive that waste, or cause or permit waste to be so transported (under section 143 of the *Protection of the Environment Operations Act 1997*). Penalty notices may be issued for \$7 500 (to individuals) and \$15 000 (to corporations). NSW courts may impose penalties up to \$250 000 (for individuals) and \$1 000 000 (for corporations) found guilty of committing this offence.

10.4 Disposing of asbestos waste at waste facilities

The Bathurst Waste Management Centre accepts non-friable asbestos waste subject to certain conditions.

The Bathurst Waste Management Centre is located at the 378 College Road, Orton Park.

Hours of Operation for Waste Management Centre

The Waste Management Centre is open seven (7) days a week except Good Friday and Christmas Day.

The Waste Management Centre Hours of Operations are as follows:

Monday to Friday 7:30am to 4:30pm
Saturday and Sunday 8:30am to 3:00pm

Non-friable asbestos waste must be buried immediately and is only accepted by prior arrangement with the Waste Management Centre on 6332 9111. Non-friable asbestos waste is only accepted for delivery at specific times.

Immediate burial operating hours:

Monday to Friday	8:00am–9:30pm 10:00am–1:00pm 2:00pm–3:30pm
Saturday to Sunday	9:00am–10:00pm 10:30am–12:30pm 1:00pm – 2:30pm

Current fees for disposal are listed in Council's revenue policy and at www.bathurst.nsw.gov.au

The Council operated transfer stations in Sofala, Trunkey, Rockley and Sunny Corner do not accept asbestos waste. The Hill End landfill does not accept asbestos waste.

Persons delivering waste to a landfill site must comply with the following requirements:

- a person delivering waste that contains asbestos to a landfill site must inform the landfill occupier of the presence of asbestos when delivering the waste.
- when unloading and disposing of asbestos waste at a landfill site, the waste must be unloaded and disposed of in such a manner as to prevent the generation of dust or the stirring up of dust.

Non-compliance with these requirements is an offence under the *Protection of the Environment Operations (Waste) Regulation 2014* and these offences attract strong penalties.

10.4.1 Situations in which asbestos waste may be rejected from waste facilities

Asbestos waste may be rejected from a waste facility if the waste is:

- not correctly packaged for delivery and disposal (as per sections 10.2 and 10.3)
- not disclosed by the transporter as being asbestos or asbestos containing materials, or
- taken to a waste facility that does not accept asbestos waste.

Where waste is rejected, the waste facility must inform the transporter of the waste of a waste facility to which the waste may be transported, that is, a waste facility at which the waste can be legally accepted (as required by the *Protection of the Environment Operations (Waste) Regulation 2005*).

Individuals may be fined \$7 500 and corporations may be fined \$15 000 under the *Protection of the Environment Operations Act 1997* and *Protection of the Environment Operations (Waste) Regulation 2014* for transporting asbestos waste to a facility that cannot lawfully receive asbestos waste.

10.5 Illegal dumping of asbestos waste

Illegal dumping is the unlawful deposit of waste onto land. That is waste materials dumped, tipped or otherwise deposited onto private or public land where no licence or approval exists to accept such waste. Illegal landfilling, which is waste used as fill material, with or without the consent of the owner or occupier of the land and without the necessary council or EPA approvals, is also considered to be illegal dumping and pollution of land.

Illegal dumping of asbestos waste in public places such as parks, streets or nature strips can attract regulatory action including:

- on the spot fines of up to \$15,000
- prosecution for pollution of land of up to \$1 million for a corporation and \$120,000 for each day the offence continues (under section 142A of the *Protection of the Environment Operations Act 1997*), or
- up to \$1 million, or seven years imprisonment, or both for an individual (under section 119 of the *Protection of the Environment Operations Act 1997*).

The responsibility for cleaning up illegally dumped waste lies with the person or company that deposited the waste. If they cannot be identified the relevant occupier or landowner becomes the responsible party.

Local councils are the appropriate regulatory authority for illegal dumping unless:

- the activity was part of the carrying on of an activity listed in Schedule 1 of the *Protection of the Environment Operations Act 1997*
- the activity was carried out by a public authority or the state, or
- the site is regulated by a different authority such as the Minister for Planning.

A handbook to assist Aboriginal communities to prevent and arrange the clean up of illegal dumping (published by the EPA) is noted in Appendix B.

10.6 Asbestos remaining on-site

All waste management facilities in the Bathurst Region LGA require development consent from Council. Council is not supportive of waste management facilities on private land for asbestos waste disposal.

11. COMPLAINTS AND INVESTIGATIONS

Complaints and inquiries may be directed to council about incidents in public places and private properties. Complaints and inquiries regarding a workplace should be directed to SafeWork NSW. Complaints and inquiries regarding licensed premises under the *Protection of the Environment Operations Act 1997* should be directed to the EPA.

Council will respond to complaints and inquiries regarding:

- council's requirements in relation to development, land management and waste management
- derelict properties
- general asbestos safety issues
- illegal dumping
- safe removal and disposal of minor quantities of asbestos materials
- unsafe work at a residential property conducted by a homeowner or tenant.

Complaints about council in relation to asbestos may be directed to the NSW Ombudsman.

Part 2 – Management of asbestos risks within council

12. RIGHTS AND RESPONSIBILITIES OF WORKERS AT THE COUNCIL WORKPLACE

12.1 Duties of council workers at the council workplace

12.1.1 The General Manager

The General Manager has a duty to exercise due diligence to ensure that council complies with the *NSW Work Health and Safety Act 2011* and the *NSW Work Health and Safety Regulation 2011*. This includes taking reasonable steps to ensure that council has and uses appropriate resources and processes to eliminate or minimise risks associated with asbestos.

12.1.2 Workers

The *Work Health and Safety Act 2011* states that:

“While at work, a worker must:

- take reasonable care for his or her own health and safety, and
- take reasonable care that his or her acts or omissions do not adversely affect the health and safety of other persons, and
- comply, so far as the worker is reasonably able, with any reasonable instruction that is given by the person conducting the business or undertaking to allow the person to comply with this Act, and
- co-operate with any reasonable policy or procedure of the person conducting the business or undertaking relating to health or safety at the workplace that has been notified to workers.”

Workers:

- may cease, or refuse to carry out, work if the worker has a reasonable concern that to carry out the work would expose them, or other persons, to a serious health or safety risk, emanating from an immediate or imminent exposure to a hazard
- should ensure they are using the latest version of all relevant procedures, plans, guidelines and legislation (refer to Appendix G).

Managers are responsible for ensuring workers who report to them have access to this policy and appropriate information, documentation and training.

12.1.3 Prohibited work activities

Work around asbestos will only be undertaken by Council staff who have been trained and authorised to do so.

12.2 Responsibilities of council to council workers

12.2.1 Council's general responsibilities

Council has general responsibilities under the *NSW Work Health and Safety Act 2011* and the *NSW Work Health and Safety Regulation 2011*. Accordingly council will:

- not use any asbestos containing materials (unless in accordance with part 8.1 (419) of the *NSW Work Health and Safety Regulation 2011*) and will not cause or permit asbestos waste in any form to be reused or recycled
- ensure that exposure of a person at the workplace to airborne asbestos is eliminated so far as is reasonably practicable
- ensure that the exposure standard for asbestos (defined in Appendix C) is not exceeded in the workplace
- notify SafeWork NSW immediately if persons are likely to be affected by asbestos fibres or if an air monitoring process records respirable asbestos fibre levels above 0.02 fibres/ml of air
- ensure that any contractors engaged to undertake the removal of asbestos for council are appropriately licensed
- consult with workers as required by the *Work Health and Safety Act 2011*.

12.2.2 Education, training and information for workers

As required by the *NSW Work Health and Safety Act 2011* and *NSW Work Health and Safety Regulation 2011*, council will:

- provide any information, training, instruction or supervision that is necessary to protect all persons at the workplace from risks to their health and safety arising from work carried out as part of the conduct of council business
- ensure workers who council reasonably believes may be involved in asbestos removal work or the carrying out of asbestos-related work in the workplace are trained in the identification, safe handling and suitable control measures for asbestos and asbestos containing material.

Any workers who are involved in any activity listed in Appendix A under section 3 on behalf of, or for, council shall be provided with access to a copy of this policy and information and training suitable to their role and the activity. Topics training may cover are outlined in the *Code of practice on how to safely remove asbestos* (catalogue no. WC03561). Training may include training in the hazards and risks associated with naturally occurring asbestos for workers who carry out work where naturally occurring asbestos is likely to be found.

A record of asbestos training undertaken by each worker will be kept by Council.

12.2.3 Health monitoring for workers

Council will ensure health monitoring is provided to a worker if they are carrying out licensed asbestos removal work, other ongoing asbestos removal work or asbestos-related work at the workplace for council and are at risk of exposure to asbestos when carrying out the work.

The health monitoring will be consistent with the *Code of practice on how to safely remove asbestos* (catalogue no. WC03561) and meet the requirements of the *NSW Work Health and Safety Regulation 2011* (part 8.5 Division 1).

Employees who were exposed to asbestos in the past and if there is a risk to the health of the employee as a result of that exposure, are covered by the *NSW Work Health and Safety*

Regulation 2011 (clauses 435-444). Council will ensure these employees are monitored as appropriate.

13. IDENTIFYING AND RECORDING ASBESTOS HAZARDS IN THE COUNCIL WORKPLACE

This section outlines how council will identify and record asbestos hazards in the workplace. This section does not cover naturally occurring asbestos which is addressed in section 5 or illegal dumping which is addressed in section 10.5.

13.1 Identifying asbestos

Council will ensure, so far as is reasonably practicable, that all asbestos or asbestos containing material at the workplace is identified by a competent person (as defined by the *NSW Work Health and Safety Regulation 2011*). If a material cannot be identified or accessed, it will be assumed to be asbestos. This does not apply if council has reasonable grounds to believe that asbestos or asbestos containing material is not present.

13.1.1 Material sampling

Council may choose to identify asbestos or asbestos containing material by arranging for a sample to be analysed. Where council arranges sampling of asbestos containing material, this will be undertaken by an appropriately trained and competent council worker or a competent person will be contracted to undertake this task. Analysis of the sample must only be carried out by a National Association of Testing Authorities (NATA) accredited laboratory (refer to Appendix E) or a laboratory approved or operated by the regulator.

13.2 Indicating the presence and location of asbestos

Council will clearly indicate the presence and location of any asbestos or asbestos containing material identified or assumed at the workplace. Where it is reasonably practicable to do so, council will indicate the presence and location of the asbestos or asbestos containing material by a label.

13.3 Asbestos register

Council will prepare an asbestos register in a staged process and keep it at the workplace.

Council's asbestos register will be maintained to ensure the register lists all identified (or assumed) asbestos in the workplace and information in the register is up to date. The asbestos register will be accessible, reviewed, revised and otherwise managed as mandated by the *NSW Work Health and Safety Regulation 2011* (clauses 425 – 428).

Council will ensure that any worker carrying out or intending to carry out work at a council workplace that involves a risk of exposure to airborne asbestos, is given a copy of the asbestos register.

13.4 Suspected asbestos

If a worker suspects there is asbestos in a council workplace, they should inform their manager or supervisor. A competent worker should check the asbestos register for existing asbestos locations and control measures and may need to arrange for an inspection and sampling of the material (refer to section 13.1.1). If it is likely that asbestos or suspected

asbestos is present, the asbestos register will be updated and workers will be notified of any newly identified asbestos locations.

Council may need to manage the suspected asbestos as outlined in section 14. If the suspected asbestos has been disturbed and has, or could, become airborne, council may need to respond immediately as outlined in section 15.

14. MANAGING ASBESTOS-RELATED RISKS IN THE COUNCIL WORKPLACE

14.1 Asbestos management plan

Council is preparing asbestos management plans for each facility in a staged process. Where an asbestos management plan has been prepared for a facility, a copy is available at that facility. A master plan of all asbestos management documentation is held at Council's Civic Centre in an electronic format.

The asbestos management plan will be accessible, reviewed, revised and otherwise managed as mandated by the *NSW Work Health and Safety Regulation 2011* clause 429.

14.2 Asbestos management plan for naturally occurring asbestos

Council is not aware of any naturally occurring asbestos in the workplace. If naturally occurring asbestos is discovered, council will prepare an asbestos management plan in relation to the naturally occurring asbestos in accordance with the *NSW Work Health and Safety Regulation 2011* part 8.4 (Management of naturally occurring asbestos).

14.3 Management options for asbestos-related risks in the council workplace

Council's asbestos management plan includes decisions and reasons for decisions about the management of asbestos at the workplace.

Options for managing asbestos-related risks include:

- removal of asbestos or asbestos containing materials (preferred wherever reasonably practicable)
- interim control measures: enclosure (only for non-friable asbestos), encapsulation (when the original asbestos bond is still intact) or sealing (where the sealed material is unlikely to be subject to mechanical damage) asbestos containing material, to be implemented along with regular inspections by a competent person
- leaving asbestos containing material in situ (deferring action).

Council may undertake an asbestos risk assessment, in consultation with workers, in order to inform decision-making. Only competent persons will perform risk assessments or any subsequent reviews or revisions of risk assessments.

For all asbestos work or asbestos-related work, safe work practices will be in place and suitable personal protective equipment will be used.

14.4 Sites contaminated with asbestos that are council workplaces

Where asbestos is identified as contaminating a workplace, the site will be included in council's asbestos register and asbestos management plan.

Council may need to ensure that an exposure assessment is undertaken and that appropriate risk management options are determined and implemented.

For asbestos in soil or aggregate, a suitably qualified occupational hygienist must carry out an assessment if the material in the soil and aggregate is unknown or classified as friable.

Council should engage specialists, who may include asbestos removalists, for all cases except in the case of minor, non-friable contaminations.

Further details on managing land contaminated with asbestos may be found in section 6.

14.5 Demolition or refurbishment of council buildings and assets

Council will ensure that before any demolition or refurbishment of a council structure or plant constructed or installed before 31 December 2003 is undertaken, the asbestos register is reviewed and a copy provided to the business undertaking the demolition or refurbishment. Council will ensure that any asbestos that is likely to be disturbed is identified and, so far as is reasonably practicable removed.

14.6 Removal of asbestos in the council workplace

Removal of asbestos or asbestos containing materials in the council workplace will be undertaken in accordance with the:

- *NSW Work Health and Safety Act 2011*
- *NSW Work Health and Safety Regulation 2011.*

Council may also refer to the *Code of practice on how to safely remove asbestos* (catalogue no. WC03561).

For licensed asbestos removal work, a licensed asbestos removalist must meet the requirements of the *NSW Work Health and Safety Regulation 2011*. The licensed asbestos remover should obtain a copy of the asbestos register for the workplace before carrying out asbestos removal work at the workplace (this does not apply if the asbestos removal work is to be carried out at residential premises, for example cleaning up asbestos that has been illegally dumped at a residential premises).

Where council is informed that asbestos removal work is to be carried out at the workplace, council will inform workers and those in the immediate vicinity of the workplace and limit access to the asbestos removal area as per the *NSW Work Health and Safety Regulation 2011*.

14.6.1 Removal by council employees

Council staff do not undertake licensed asbestos removal.

14.6.2 Removal by contractors

Where council commissions the removal of asbestos at the workplace, council will ensure asbestos removal work is carried out only by a licensed asbestos removalist who is appropriately licensed to carry out the work, unless specified in the *NSW Work Health and Safety Regulation 2011* that a licence is not required.

Where council requires the services of asbestos removalists, council will require the licence details of asbestos removalists prior to engaging their services and will verify the licence details with SafeWork NSW's Certification Unit prior to entering a contract or agreement with the licensed asbestos removalists.

Council is required to ensure that the work is carried out by a competent person who has been trained in the identification and safe handling of, and suitable control measures for,

asbestos and asbestos containing material. Council will therefore require a statement in a written contract or agreement with the licensed asbestos removalist that the licensed asbestos removalist who will undertake the work has been adequately trained and is provided with appropriate health monitoring by their employer

The licensed asbestos removalist is to provide the following documentation prior to carrying out asbestos removal work:

- Asbestos removal control plan
- Public liability certificate of currency
- Workers compensation certificate of currency
- SafeWork NSW confirmation details to carry out the removal work

Council will provide a copy of the asbestos register to the licensed asbestos removalist.

Where council becomes aware of any breaches by licensed asbestos removalists, council will report this to SafeWork NSW.

14.6.3 Clearance inspections and certificates

Where council commissions any licensed asbestos removal work, council will ensure that once the licensed asbestos removal work has been completed, a clearance inspection is carried out and a clearance certificate is issued by an independent licensed asbestos assessor (for Class A asbestos removal work) or an independent competent person (in any other case) before the asbestos removal area is re-occupied.

The friable asbestos clearance certificate will require visual inspection as well as air monitoring of the asbestos removal site. Air monitoring is mandatory for all friable asbestos removal. The air monitoring must be conducted before and during Class A asbestos removal work by an independent licensed asbestos assessor.

The friable asbestos clearance certificate is to state that there was no visible asbestos residue in the area or vicinity of the area where the work was carried out and that the airborne asbestos fibre level was less than 0.01 asbestos fibres/ml.

15. ACCIDENTAL DISTURBANCE OF ASBESTOS BY WORKERS

In situations where asbestos is accidentally disturbed by council work and has, or could, become airborne, council will act to minimise exposure of workers and the wider public to airborne asbestos.

It may be appropriate that council:

- stop works in the vicinity of the asbestos immediately
- inform the site supervisor immediately, inform necessary workers and record the incident
- evacuate the area
- provide personal protective equipment and briefing to appropriately trained workers who will respond to the incident
- restrict access to the area and ensure only appropriately trained and equipped council workers attend the site
- exclude the public from the site and provide information to the public if in a public area
- wet surfaces to reduce the dust levels
- prevent the spread of contamination by using wash down facilities

- provide information, training and supervision to all workers potentially at risk
- contact SafeWork NSW to report the disturbance. SafeWork NSW must be immediately notified if persons are likely to be effected by asbestos fibres or if an air monitoring process records a level above 0.02 fibres/ml of air
- implement an air monitoring program to assess asbestos exposure levels and specific risk control measures.
- liaise with or consult the appropriate agencies
- seek advice from an occupational hygienist
- follow the Code of practice on how to safely remove asbestos (catalogue no. WC03561)
- ensure that asbestos materials are disposed of at a facility licensed to accept asbestos materials, and where contractors have been engaged to dispose of asbestos waste, sight proof of appropriate disposal through weighbridge dockets or similar documentation
- update the asbestos register and notify workers of any newly identified asbestos locations.

16. COUNCIL'S ROLE IN THE DISPOSAL OF ASBESTOS WASTE

16.1 Responding to illegal dumping

Where council commissions the removal of illegally dumped asbestos material or suspected asbestos material, council will ensure this is undertaken in accordance with section 14.6.2.

Where council becomes aware of illegally dumped asbestos material outside of council's jurisdiction, council will promptly notify the relevant authority.

16.2 Transporting and disposing of asbestos waste

Council will transport and dispose of waste in accordance with the legislation and as outlined in section 10.

16.3 Operating council's waste facility licensed to accept asbestos waste

Waste management facilities must be managed in accordance with the *Protection of the Environment Operations (Waste) Regulation 2014* including clause 80 which specifies that:

- (1) A person disposing of asbestos waste off the site at which it is generated must do so at a landfill site that can lawfully receive the waste.
- (2) When a person delivers asbestos waste to a landfill site, the person must inform the occupier of the landfill site that the waste contains asbestos.
- (3) When a person delivers asbestos waste at a landfill site, the person must prevent:
 - (a) Any dust being generated from the waste, and
 - (b) Any dust being stirred up
- (4) The occupier of a landfill site must ensure that asbestos waste disposed of at the site is covered with virgin excavated natural material or (if expressly authorised by an environment protection licence held by the occupier) other material:
 - (a) Initially (at time of disposal), to a depth of at least 0.15 metre, and
 - (b) At the end of each day's operation, to a depth of 0.5 metre, and
 - (c) Finally, to a depth of at least 1 metre (in the case of bonded asbestos material or asbestos contaminated soils) or 3 metres (in the case of friable asbestos material) beneath the final land surface of the landfill site.

Council has developed a charging policy for receiving asbestos waste, which reflects the actual cost of managing the asbestos waste, plus any applicable levies.

When council is receiving construction, renovation and demolition waste, council may screen and inspect incoming loads to minimise asbestos contamination risk as this waste may be high risk for asbestos materials. Council shall develop procedures to avoid asbestos contamination in material intended for resource recovery.

Council may issue a receipt for asbestos waste received at a licensed landfill facility. The receipt provided may note the time, date and location of disposal, weight of asbestos containing material disposed, method of disposal (note on handling) and a receipt number. This information must be recorded by the facility, regardless of whether a receipt is issued.

16.3.1 Asbestos waste incorrectly presented to council's waste facility

This section applies to situations where asbestos waste is taken to a council waste facility and the waste is:

- not correctly packaged for delivery and disposal (as per sections 9.2 and 9.3)
- not disclosed by the transporter as being asbestos or asbestos containing materials
- taken to a waste facility that does not accept asbestos waste.

In these situations, council may record relevant details such as the:

- contact details of the transporter
- origin of the asbestos or asbestos containing material
- amount and type of asbestos or asbestos containing material
- reasons why the asbestos waste was not properly packaged, disclosed or transported to a waste facility licensed to receive asbestos waste
- development consent details (if applicable).

Where asbestos waste is not correctly packaged for delivery and disposal, or is not disclosed by the transporter as being asbestos or asbestos containing materials, council may:

- reject the asbestos waste from the facility
- suggest the transporter re-package the load correctly at the facility
- provide a bay for wetting and/or wrapping the asbestos and protective equipment for the transporter eg the option to purchase an asbestos waste handling kit (for non-commercial operators with less than 10 square metres of non-friable asbestos)
- provide the transporter with educational material such as SafeWork NSW fact sheets on correct methods for packaging, delivery and disposal of asbestos
- question the transporter about the source of asbestos waste
- issue a clean up notice or prevention notice under the Protection of the Environment Operations Act 1997
- issue a compliance cost notice under the Protection of the Environment Operations Act 1997
- issue a penalty infringement notice for improper transport of asbestos (under the Protection of the Environment Operations Act 1997).

Where asbestos waste is taken to a waste facility that does not accept asbestos waste, council may reject the waste. Where waste is rejected, council should complete a rejected loads register (a template is available from SafeWork NSW). Council will also inform the transporter of a waste facility to which the waste may be transported, that is, a waste facility at which the waste can be legally accepted (as required by the *Protection of the Environment*

Operations (Waste) Regulation 2014). If council suspects that there is a risk of illegal dumping of the rejected waste, council will inform council's rangers or council's compliance officers.

Suitable disposal for loads that are refused entry will remain the responsibility of the transporter and at a later date the transporter will need to demonstrate to council that the waste has been appropriately disposed.

Where asbestos waste is illegally dumped at an unstaffed waste station, management options for council include to:

- undertake surveillance via video cameras to issue fines or deter dumping
- provide targeted education to neighbouring landholders to ensure that they do not allow access to the waste station.

16.4 Recycling facilities

Council should screen and inspect incoming loads at recycling facilities for the presence of asbestos or asbestos containing materials to minimise asbestos contamination risk.

To prevent contamination of recycled products and to manage situations where contamination has occurred, council should adhere to the guide: *Management of asbestos in recycled construction and demolition waste*.

16.5 Re-excavation of landfill sites

The re-excavation of a council landfill site where significant quantities of asbestos waste are deposited is not encouraged and should only be considered with reference to any available records on the nature, distribution and quantities of asbestos waste required under the relevant legislation, and consultation with the Environment Protection Authority (as the appropriate regulatory authority under the *Protection of the Environment Operations Act 1997*).

17. **ADVICE TO TENANTS AND PROSPECTIVE BUYERS OF COUNCIL OWNED PROPERTY**

Council may provide advisory notes to tenants and prospective buyers of council owned property that is likely to contain asbestos.

Council will require that tenants in council property:

- advise council of any hazards relating to asbestos
- minimise damage to asbestos containing material
- co-operate with council in facilitating any risk management work arranged by council
- act on advice from council to minimise risks from asbestos.

18. **IMPLEMENTING COUNCIL'S ASBESTOS POLICY**

18.1 Supporting documents

Council also has several internal documents that support this policy.

- asbestos management plan
- asbestos register
- incident report form
- supervisors investigation form
- investigation of accidents and incidents procedure
- workplace induction procedure
- WHS resolution flow chart
- WHS training and supervision procedure
- Incident reporting and investigation procedure
- maintenance and inspection schedules for council owned assets
- training registers/ records (relevant to identifying, handling and removing of asbestos materials).
- Safe operating plan for wastes requiring immediate burial at Waste Management Centre

18.2 Communicating the policy

This is a publicly available policy. The policy is to be made available via:

- Council's Civic Centre, 158 Russell Street, Bathurst NSW 2795
- Council's website www.bathurst.nsw.gov.au

All employees shall receive information about the policy at induction from Council's Human Resources section.

Any workers (including employees, contractors, consultants and, where relevant, volunteers and members of the public) who are involved in any activity or activities listed in Appendix A under section 3 on behalf of, or for, council shall be provided with access to a copy of this policy and relevant supporting documents. This includes any workers involved in commencing, arranging, undertaking, regulating, inspecting or supervising a potentially hazardous activity or activities. Managers are responsible for ensuring workers who report to them have access to the policy and appropriate information, documentation and training in asbestos awareness (as per the *NSW Work Health and Safety Regulation 2011*) prior to planning the activity or activities. Further information about training is noted in section 12.2.2 of this policy.

18.3 Non-compliance with the policy

Failure by workers to adhere to the policy and failure by managers to adequately inform relevant workers of this policy shall be considered non-compliance with this policy and as such may result in disciplinary action under council's WHS and disciplinary policies.

Workers should approach their supervisor or manager if they are experiencing difficulties in understanding or implementing the policy or if they are concerned that other workers are not complying with the policy.

19. VARIATIONS TO THIS POLICY

Council reserves the right to review, vary or revoke this policy. The General Manager may allow variations to the policy for minor issues in individual cases.

APPENDICES

Appendix A – General information and guidance

1. What is asbestos?

Asbestos is the generic term for a number of naturally occurring, fibrous silicate materials. If asbestos is disturbed it can release dangerous fine particles of dust containing asbestos fibres. Breathing in dust containing elevated levels of asbestos fibres can cause asbestosis, lung cancer and mesothelioma.

There are two major groups of asbestos:

- the serpentine group contains chrysotile, commonly known as white asbestos
- the amphibole group contains amosite (brown asbestos) and crocidolite (blue asbestos) as well as some other less common types (such as tremolite, actinolite and anthophyllite).

Further information about the different types of asbestos can be found in Environment Health Standing Committee (enHealth), Asbestos: A guide for householders and the general public, Australian Health Protection Principal Committee, Canberra, 2013 (available at www.health.gov.au/internet/main/publishing.nsf/Content/asbestos-toc~asbestos-about)

In Australia, in the past asbestos was mined and widely used in the manufacture of a variety of materials. Asbestos was gradually phased out of building materials in the 1980s and the supply and installation of asbestos containing goods has been prohibited in Australia since 31 December 2003.

Asbestos legacy materials still exist in many homes, buildings and other assets. It is estimated that 1 in 3 Australian homes contains building materials with asbestos. Where the material containing asbestos is in a non-friable form (or bonded), undisturbed, and painted or otherwise sealed, it may remain safely in place. However, where the asbestos containing material is broken, damaged or mishandled, fibres can become loose and airborne posing a risk to health. Disturbing or removing asbestos unsafely can create a health hazard.

It is often difficult to identify the presence of asbestos by sight. If you are in doubt, it is best to assume that you are dealing with asbestos and take every precaution. The most accurate way to find out whether a material contains asbestos is to obtain an asbestos inspection by a person competent in the identification and assessment of asbestos such as an occupational hygienist. It can be unsafe for an unqualified person to take a sample of asbestos. Licensed asbestos removalists can be found by using the telephone directory. Council encourages residents to ask the contractor for a copy of their licence prior to engaging them. Residents can then check with SafeWork NSW NSW (phone 13 10 50) to confirm the contractor has the appropriate class of licence for the asbestos removal job.

2. Where is asbestos found?

Asbestos can be found where it occurs naturally and in a variety of materials (from prior to 2004) in residential, commercial and industrial premises and on public and private land.

2.1 Naturally occurring asbestos

Naturally occurring asbestos refers to the natural geological occurrence of asbestos minerals found in association with geological deposits including rock, sediment or soil.

Asbestos is found as a naturally occurring mineral in many areas of NSW. Asbestos may occur in veins within rock formations. The map provided in Appendix L gives an indication of areas in NSW known to have naturally occurring asbestos. Council is aware of an area of naturally occurring asbestos on privately owned land within the Bathurst Region LGA. Council understands that there is no public access to the site.

Work processes that have the potential to inadvertently release naturally occurring asbestos into the air include:

- agriculture
- forestry
- landscaping
- mining
- other excavation or construction activities
- pipe works and telecommunications works
- road construction and road works.

Further information can be found in this policy under section 5 and in the *Naturally-occurring asbestos fact sheet* (catalogue no. WC03728) published by SafeWork NSW, which provides a photograph of naturally occurring asbestos.

The SafeWork NSW website provides further information on naturally occurring asbestos and supporting documents on what people can do to avoid contact with naturally occurring asbestos.

2.2 Residential premises

As a general rule, a house built:

- Before the mid 1980s – is highly likely to contain asbestos containing products.
- Between the mid 1980s and 1990 – is likely to contain asbestos containing products.
- After 1990 – is unlikely to contain asbestos containing products. However, some houses built in the 1990s and early 2000s may have still used asbestos cement materials until the total ban on any activity involving asbestos products became effective from December 2003.

Pipelines installed prior to 1992, particularly black surface coated and grey surface pipes, may contain asbestos.

It is important to note, the most accurate way to find out whether a material contains asbestos is by engaging a licensed asbestos removalist or occupational hygienist to inspect and arrange testing where necessary.

Fibre cement sheeting, commonly known as 'fibro', 'asbestos sheeting' or 'AC sheeting' (asbestos containing sheeting) is the most commonly found legacy asbestos material in residential premises. Other asbestos containing materials were used in 'fibro' houses but also found in brick and timber housing stock from that period. Asbestos materials were sold under a range of commercial names. Some asbestos containing materials found in New South Wales domestic settings are listed in Appendix J.

Common places where asbestos is likely to be found in and around homes include:

Outside

- backyard garden sheds, carports, garages and dog kennels
- electrical meter boards
- imitation brick cladding
- lining under eaves
- wall and roof materials (flat, patterned or corrugated asbestos sheeting).

Inside

- insulation materials in heaters and stoves
- interior walls and sheeting
- sheet materials in wet areas (bathroom, toilet and laundry walls, ceilings and floors)
- vinyl floor tiles, the backing to cushion vinyl flooring and underlay sheeting for ceramic tiles including kitchen splashback.

Asbestos can also be found in:

- angle mouldings (internal and external)
- board around windows and fireplaces
- brake pads and clutch pads to vehicles
- buried and dumped waste materials
- carpet underlay
- ceilings (ceiling tiles or sprayed coatings or loose in the ceiling cavity and may have moved to wall cavities, cornices and sub-floor areas)
- cement flooring
- external toilets
- fencing
- guttering, downpipes and vent pipes
- inside appliances eg irons, whitegoods
- gable ends
- outbuildings
- ridge capping
- swimming pools – reinforcing marble swimming pools
- ventilators – internal and external.

Other places asbestos can be found are listed in Appendix J.

2.3 Commercial and industrial premises

In commercial and industrial premises, asbestos may be found in the abovementioned places and also:

- asbestos rope or fabric in expansion joints (for example exhaust flues) and insulation
- bituminous waterproof membrane on flat roofs
- brake disc pads and brake linings
- cloth, tapes, ropes and gaskets for packing
- electrical switchboards and duct heater units
- fillers and filters
- fire doors
- lagging on pipes such as heater flues
- lift motor rooms
- pipes, casing for water and electrical/ telecommunication services
- rubber, plastics, thermosetting resins, adhesives, paints, coatings, caulking compounds and sealants for thermal, electrical and insulation applications
- structural beams of buildings
- yarns and textiles eg fire blankets.

Other places asbestos can be found are listed in Appendix J.

2.4 Sites contaminated with asbestos

Contamination of soils from asbestos or asbestos containing materials can present a risk in urban and rural environments if the asbestos can give rise to elevated levels of airborne fibres that people can breathe. Whilst buried material may not give rise to airborne asbestos fibres if securely contained, inappropriate disturbance of this waste could give rise to harmful levels of asbestos fibres in air. Activities such as those listed in section 3 of this Appendix have the potential to encounter and disturb asbestos waste or contamination, particularly where the contamination is not known to be present at the site or has not been appropriately considered.

2.4.1 Situations where asbestos contamination may occur

Situations where asbestos contamination may occur include:

- industrial land, eg, asbestos-cement manufacturing facilities, former power stations, and rail and ship yards, especially workshops and depots
- waste disposal or dumping sites, including sites of illegal dumping eg, building waste
- sites with infill or burial of asbestos waste from former asbestos mining or manufacture processes
- buildings or structures damaged by fire or storm (particularly likely for those with pre-1980s building materials but also possible for those with materials from prior to 2004)
- land with fill or foundation material of unknown composition
- sites where buildings or structures have been constructed from asbestos containing material or where asbestos may have been used as insulation material, eg, asbestos roofing, sheds, garages, reservoir roofs, water tanks, boilers and demolition waste has been buried onsite
- sites where buildings or structures have been improperly demolished or renovated, or where relevant documentation is lacking (particularly likely for those with pre-1980s building materials but also those with materials from prior to 2004)
- disused services with asbestos containing piping such as water pipes (including sewage systems, water services and irrigation systems), underground electrical and telephone wires and telecommunications trenches or pits (usually within 1 metre of the surface).

2.4.2 Significantly contaminated land

For sites that are significantly contaminated, the EPA and SafeWork NSW are the lead regulatory authorities. The *Contaminated Land Management Act 1997* applies to significantly contaminated land. In general, significant contamination is usually associated with former asbestos processing facilities or where large quantities of buried friable asbestos waste has been uncovered and is giving rise to measureable levels of asbestos fibres in air. Such sites require regulatory intervention to protect community health where the source of the contamination is not being addressed by the responsible person. The Environment Protection Authority has details of sites that have been nominated as significantly contaminated on its Public Register at: www.environment.nsw.gov.au/clm/publiclist.htm

If land is contaminated but not determined to be 'significant enough to warrant regulation' then the *Contaminated Land Management Act 1997* does not apply. In such cases the provisions within the planning legislation and/or the *Protection of the Environment Operations Act 1997* may be the appropriate mechanism for management of such contamination.

Guidance on assessing land can be found in the document: *Guidelines on the duty to report contamination under the Contaminated Land Management Act 1997*.

3. Potentially hazardous activities

A number of activities could cause asbestos to be inadvertently disturbed and consequently create a health risk.

Before undertaking any of the activities listed below, it should be considered whether asbestos containing materials may be present. If asbestos is present, these activities may be illegal or certain precautions may be required, or an appropriately licensed person may be required to undertake the activity.

Members of the public could inadvertently disturb asbestos through activities including:

- renovations, refurbishments or repairs particularly those involving power tools, boring, breaking, cutting, drilling, grinding, sanding or smashing asbestos containing materials
- sealing, painting, brushing and cleaning asbestos cement products
- demolitions of homes or other structures (dismantling or destruction)
- relocating a house, building or structure
- using compressed air on asbestos containing materials
- water blasting asbestos containing materials
- cleaning gutters on asbestos cement roofs
- handling asbestos cement conduits or boxes
- maintenance work such as plumbing and electrical work on or adjacent to asbestos containing materials such as working on electrical mounting boards
- maintenance or servicing of materials from vehicles, plant or equipment
- checking, removing or replacing ceiling insulation which contains asbestos.

Council could inadvertently disturb asbestos through activities such as:

- abovementioned activities
- asset and building maintenance
- certifying
- inspections of sites and premises
- transport and disposal of illegally dumped materials
- collection, transport and disposal of incorrectly disposed of materials.

Naturally occurring asbestos and contaminated sites could be inadvertently disturbed during:

- road building
- site and construction work
- other excavation activities
- vehicle movements.

Natural processes can create a risk of exposure to asbestos including:

- extensive fire or storm damage to asbestos cement roofs or building materials
- extensive weathering and etching of unsealed asbestos cement roofs.

In addition, work that intentionally disturbs asbestos, such as sampling or removal, should be conducted by a competent person and in accordance with the relevant codes of practice and legislation.

4. Health hazards

Asbestos fibres can pose a risk to health if airborne, as inhalation is the main way that asbestos enters the body. The World Health Organisation has stated that concentrations of asbestos in drinking water from asbestos cement pipes do not present a hazard to human health.

Breathing in asbestos fibres can cause asbestosis, lung cancer and mesothelioma. The risk of contracting these diseases increases with the number of fibres inhaled and the risk of lung cancer from inhaling asbestos fibres is greatly increased if you smoke. Small fibres are the most dangerous and they are invisible to the naked eye. People who are at most risk are those who have been exposed to high levels of asbestos for a long time. The symptoms of these diseases do not usually appear for some time (about 20 to 30 years) after the first exposure to asbestos.

Asbestosis is the irreversible scarring of lung tissue that can result from the inhalation of substantial amounts of asbestos over a period of years. It results in breathlessness that may lead to disability and, in some case, death.

Lung cancer can be caused by asbestos. Lung cancer is related to the amount of fibre that is breathed in and the risk of lung cancer is greatly increased in those who also smoke tobacco.

Mesothelioma is a cancer of the pleura (outer lung lining) or the peritoneum (the lining of the abdominal cavity). Mesothelioma rarely occurs less than 15 years from first exposure, and most cases occur over 30 years after first exposure. Accordingly, the rates of malignant mesothelioma (an incurable cancer) are expected to rise from the year 2012 to 2020 and are expected to peak in this time.

If asbestos fibres are in a stable material, for example bonded in asbestos-cement sheeting (such as fibro), and these materials are in good condition they pose little health risk. However, where fibro or other non-friable asbestos sheeting is broken, damaged or mishandled, fibres can become loose and airborne posing a risk to health. Disturbing or removing asbestos containing materials unsafely can create a hazard.

The occupational standard for asbestos is 0.1fibre/ml of air and the environmental standard is 0.01fibre/ml in air.

When someone has potentially been exposed to asbestos, or receives or expects they may receive a diagnosis of an asbestos-related disease, they may experience psychological distress, including anxiety and may be in need of support. Their family and those around them may also be vulnerable to psychological distress.

Appendix B – Further information

Any accessing this policy should ensure that they seek the most current version of these reference documents from the document author.

Aboriginal communities

Illegal dumping prevention and clean-up. Handbook for Aboriginal communities, 2008 (EPA)
www.environment.nsw.gov.au/waste/illdumpabcommshandbook.htm

Asbestos contractors

Choosing an asbestos consultant fact sheet (catalogue no. WC04547) (SafeWork NSW NSW)

www.SafeWorkNSW.nsw.gov.au/formspublications/publications/Pages/Choosinganasbestosconsultant.aspx

For a listing of asbestos removal contractors in your area, refer to your local telephone directory or the Yellow Pages www.yellowpages.com.au or by contacting the Asbestos Removal Contractors Association NSW (ARCA) www.arca.asn.au Phone: (02) 8586 3521.

An asbestos removal contractor's licence can be verified by contacting the SafeWork NSW NSW's Certification Unit on 13 10 50.

Demolition & Contractors Association (DCA) NSW
<http://demolitioncontractorsassociation.com.au>

Asbestos waste

Crackdown on Illegal Dumping: A Handbook for Local Government, 2007 (EPA)
www.environment.nsw.gov.au/resources/warr/200845IllegalDumping.pdf

Management of asbestos in recycled construction and demolition waste, 2010 (SafeWork NSW NSW)

<http://www.SafeWorkNSW.nsw.gov.au/formspublications/publications/Pages/asbestoswaste.aspx>

Safely disposing of asbestos waste from your home, 2009 (EPA and SafeWork NSW NSW)

www.environment.nsw.gov.au/resources/waste/asbestos/09235Asbestos.pdf

For information on illegal dumping and safely disposing of asbestos waste visit the EPA website:

www.environment.nsw.gov.au

Contaminated land

Guidelines on the duty to report contamination under the Contaminated Land Management Act 1997, 2009 (EPA).

www.environment.nsw.gov.au/resources/clm/09438gldutycontclma.pdf

Managing land contamination: Planning guidelines SEPP 55 – Remediation of land, 1998 (Department of Planning and Infrastructure and EPA)

www.planning.nsw.gov.au/assessingdev/pdf/gu_contam.pdf

Environmental risk assessment

Environmental health risk assessment: Guidelines for assessing human health risks from environmental hazards, 2002 (Commonwealth of Australia)

<http://www.nphp.gov.au/enhealth/council/pubs/pdf/envhazards.pdf>

Health

Asbestos and health risks fact sheet, 2007 (Ministry of Health)

http://www.health.nsw.gov.au/factsheets/environmental/asbestos_fs.html

Further advice concerning the health risks of asbestos can be obtained from your local public health unit. Contact details for public health units may be found at: www.health.nsw.gov.au/publichealth/infectious/phus.asp

Renovation and development

Asbestos: A guide for householders and the general public, 2012 (Commonwealth of Australia)

[http://www.health.gov.au/internet/main/publishing.nsf/Content/7383C46948F649B7CA2579FA001AA20E/\\$File/asbestos-02-web-\(8may12\).pdf](http://www.health.gov.au/internet/main/publishing.nsf/Content/7383C46948F649B7CA2579FA001AA20E/$File/asbestos-02-web-(8may12).pdf)

Choosing and working with a principal certifying authority: A guide for anyone planning to build or subdivide, 2011 (Building Professionals Board)

<http://www.bpb.nsw.gov.au/resources/683/final%20PCA%20brochure.pdf>

Think asbestos website, 2011 (Asbestos Education Committee) (and Printable Website Handbook)

<http://www.asbestosawareness.com.au>

Working with asbestos guide, 2008 (SafeWork NSW NSW)

<http://www.SafeWorkNSW.nsw.gov.au/formspublications/publications/Pages/Workingwithasbestosguide.aspx>

Practical guidance

Code of practice on how to manage and control asbestos in the workplace (catalogue no. WC03560) published by SafeWork NSW NSW

<http://www.SafeWorkNSW.nsw.gov.au/formspublications/publications/Documents/how-to-manage-control-asbestos-workplace-code-of-practice-3560.pdf>

Code of practice on how to safely remove asbestos (catalogue no. WC03561) published by SafeWork NSW NSW

<http://www.SafeWork NSW.nsw.gov.au/formspublications/publications/Documents/how-to-safely-remove-asbestos-code-of-practice-3561.pdf>

Tenants

Tenants rights Fact sheet 26 Asbestos and lead, 2010 (Tenants NSW)
<http://www.tenants.org.au/publish/factsheet-26-asbestos-lead/index.php>

Tenants – Housing NSW tenants

Asbestos fact sheet, 2010 (Housing NSW)

<http://www.housing.nsw.gov.au/NR/rdonlyres/F4E1131F-2764-4CB1-BC07-98EB6C594085/0/Asbestos.pdf>

Appendix C – Definitions

The terms used in the policy are defined as below, consistent with the definitions in the:

- Code of practice on how to manage and control asbestos in the workplace (catalogue no. WC03560) published by SafeWork NSW NSW
- Code of practice on how to safely remove asbestos (catalogue no. WC03561) published by SafeWork NSW NSW
- Contaminated Land Management Act 1997
- Environmental Planning and Assessment Act 1979
- Emergency Pollution and Orphan Waste Clean-Up Program Guidelines 2008
- Protection of the Environment Operations Act 1997
- Waste classification guidelines part 1 classifying waste 2008
- NSW Work Health and Safety Act 2011
- NSW Work Health and Safety Regulation 2011.

accredited certifier in relation to matters of a particular kind, means the holder of a certificate of accreditation as an accredited certifier under the *Building Professionals Act 2005* in relation to those matters.

airborne asbestos means any fibres of asbestos small enough to be made airborne. For the purposes of monitoring airborne asbestos fibres, only respirable fibres are counted.

asbestos means the asbestiform varieties of mineral silicates belonging to the serpentine or amphibole groups of rock forming minerals including the following:

- a. actinolite asbestos
- b. grunerite (or amosite) asbestos (brown)
- c. anthophyllite asbestos
- d. chrysotile asbestos (white)
- e. crocidolite asbestos (blue)
- f. tremolite asbestos
- g. a mixture that contains 1 or more of the minerals referred to in paragraphs (a) to (f).

asbestos containing material (ACM) means any material or thing that, as part of its design, contains asbestos.

asbestos-contaminated dust or debris (ACD) means dust or debris that has settled within a workplace and is, or is assumed to be, contaminated with asbestos.

asbestos-related work means work involving asbestos that is permitted under the *Work Health and Safety Regulation 2011*, other than asbestos removal work.

asbestos removal licence means a Class A asbestos removal licence or a Class B asbestos removal licence.

asbestos removal work means:

- h. work involving the removal of asbestos or asbestos containing material, or
- i. Class A asbestos removal work or Class B asbestos removal work.

asbestos removalist means a person conducting a business or undertaking who carries out asbestos removal work.

asbestos waste means any waste that contains asbestos. This includes asbestos or asbestos containing material removed and disposable items used during asbestos removal work including plastic sheeting and disposable tools.

certifying authority means a person who is authorised by or under section 85A of the *Environmental Planning and Assessment Act 1979* to issue complying development certificates, or is authorised by or under section 109D of the *Environmental Planning and Assessment Act 1979* to issue part 4A certificates.

Class A asbestos removal licence means a licence that authorises the carrying out of Class A asbestos removal work and Class B asbestos removal work by or on behalf of the licence holder.

Class A asbestos removal work means the removal of friable asbestos which must be licensed under clause 485 of the *Work Health and Safety Regulation 2011*. This does not include: the removal of ACD that is associated with the removal of non-friable asbestos, or ACD that is not associated with the removal of friable or non-friable asbestos and is only a minor contamination.

Class B asbestos removal licence means a licence that authorises the carrying out of Class B asbestos removal work by or on behalf of the licence holder.

Class B asbestos removal work means the removal of more than 10 square metres of non-friable asbestos or asbestos containing material work that is required to be licensed under clause 487, but does not include Class A asbestos removal work.

competent person means: a person who has acquired through training or experience the knowledge and skills of relevant asbestos removal industry practice and holds:

- j. a certification in relation to the specified VET course for asbestos assessor work, or
- k. a tertiary qualification in occupational health and safety, occupational hygiene, science, building, construction or environmental health.

complying development is a fast track, 10 day approval process where a building meets all of the predetermined standards established in either a state or local council planning document. A complying development certificate can be issued by either a local council or an accredited certifier.

complying development certificate

contaminant means any substance that may be harmful to health or safety.

contamination of land means the presence in, on or under the land of a substance at a concentration above the concentration at which the substance is normally present in, on or under (respectively) land in the same locality, being a presence that presents a risk of harm to human health or any other aspect of the environment.

control measure, in relation to a risk to health and safety, means a measure to eliminate or minimise the risk.

demolition work means work to demolish or dismantle a structure, or part of a structure that is loadbearing or otherwise related to the physical integrity of the structure, but does not include:

- l. the dismantling of formwork, falsework, or other structures designed or used to provide support, access or containment during construction work, or

- m. the removal of power, light or telecommunication poles.

development means:

- n. the use of land
- o. the subdivision of land
- p. the erection of a building
- q. the carrying out of a work
- r. the demolition of a building or work
- s. any other act, matter or thing referred to in section 26 of the *Environmental Planning and Assessment Act 1979* that is controlled by an environmental planning instrument.

development application means an application for consent under part 4 of the *Environmental Planning and Assessment Act 1979* to carry out development but does not include an application for a complying development certificate.

emergency service organisation includes any of the following:

- t. the Ambulance Service of NSW
- u. Fire and Rescue NSW
- v. the NSW Rural Fire Service
- w. the NSW Police Force
- x. the State Emergency Service
- y. the NSW Volunteer Rescue Association Inc
- z. the NSW Mines Rescue Brigade established under the *Coal Industry Act 2001*
- aa. an accredited rescue unit within the meaning of the *State Emergency and Rescue Management Act 1989*.

exempt development means minor development that does not require any planning or construction approval because it is exempt from planning approval.

exposure standard for asbestos is a respirable fibre level of 0.1 fibres/ml of air measured in a person's breathing zone and expressed as a time weighted average fibre concentration calculated over an eight-hour working day and measured over a minimum period of four hours in accordance with the Membrane Filter Method or a method determined by the relevant regulator.

friable asbestos means material that:

- bb. is in a powder form or that can be crumbled, pulverised or reduced to a powder by hand pressure when dry
- cc. contains asbestos.

health means physical and psychological health.

health monitoring, of a person, means monitoring the person to identify changes in the person's health status because of exposure to certain substances.

independent, in relation to clearance inspections and air monitoring means:

- dd. not involved in the removal of the asbestos
- ee. not involved in a business or undertaking involved in the removal of the asbestos, in relation to which the inspection or monitoring is conducted.

in situ asbestos means asbestos or asbestos containing material fixed or installed in a structure, equipment or plant, but does not include naturally occurring asbestos.

licence holder means: in the case of an asbestos assessor licence – the person who is licensed:

- ff. to carry out air monitoring during Class A asbestos removal work
- gg. to carry out clearance inspections of Class A asbestos removal work
- hh. to issue clearance certificates in relation to Class A asbestos removal work, or
 - in the case of an asbestos removal licence – the person conducting the business or undertaking to whom the licence is granted, or
 - in the case of a major hazard facility licence – the operator of the major hazard facility to whom the licence is granted or transferred.

licensed asbestos assessor means a person who holds an asbestos assessor licence.

licensed asbestos removalist means a person conducting a business or undertaking who is licensed under the *Work Health and Safety Regulation 2011* to carry out Class A asbestos removal work or Class B asbestos removal work.

licensed asbestos removal work means asbestos removal work for which a Class A asbestos removal licence or Class B asbestos removal licence is required.

NATA means the National Association of Testing Authorities, Australia.

NATA-accredited laboratory means a testing laboratory accredited by NATA, or recognised by NATA either solely or with someone else.

naturally occurring asbestos means the natural geological occurrence of asbestos minerals found in association with geological deposits including rock, sediment or soil.

non-friable asbestos means material containing asbestos that is not friable asbestos, including material containing asbestos fibres reinforced with a bonding compound. **Note.** Non-friable asbestos may become friable asbestos through deterioration (see definition of friable asbestos).

occupational hygienist means a person with relevant qualifications and experience in asbestos management who is a full member of the Australian Institute of Occupational Hygienists (AIOH).

occupier includes a tenant or other lawful occupant of premises, not being the owner.

officer means an officer as defined in the *NSW Work Health and Safety Act 2011*

orphan waste means materials that have been placed or disposed of on a premises unlawfully that may have the potential to pose a risk to the environment or public health.

person conducting a business or undertaking a 'person' is defined in laws dealing with interpretation of legislation to include a body corporate (company), unincorporated body or association and a partnership.

personal protective equipment means anything used or worn by a person to minimise risk to the person's health and safety, including air supplied respiratory equipment.

respirable asbestos fibre means an asbestos fibre that:

- ii. is less than three micrometres wide
- jj. more than five micrometres long
- kk. has a length to width ratio of more than 3:1.

specified VET course means:

- ll. in relation to Class A asbestos removal work – the following VET courses:
 - remove non-friable asbestos
 - remove friable asbestos, or
- mm. in relation to Class B asbestos removal work – the VET course Remove non-friable asbestos, or
- nn. in relation to the supervision of asbestos removal work – the VET course Supervise asbestos removal, or
- oo. in relation to asbestos assessor work – the VET course Conduct asbestos assessment associated with removal.

structure means anything that is constructed, whether fixed or moveable, temporary or permanent, and includes:

- pp. buildings, masts, towers, framework, pipelines, transport infrastructure and underground works (shafts or tunnels)
- qq. any component of a structure
- rr. part of a structure
- ss. volunteer means a person who is acting on a voluntary basis (irrespective of whether the person receives out-of-pocket expenses).

waste includes:

- any substance (whether solid, liquid or gaseous) that is discharged, emitted or deposited in the environment in such volume, constituency or manner as to cause an alteration in the environment, or
- any discarded, rejected, unwanted, surplus or abandoned substance, or
- any otherwise discarded, rejected, unwanted, surplus or abandoned substance intended for sale or for recycling, processing, recovery or purification by a separate operation from that which produced the substance, or
- any process, recycled, re-used or recovered substance produced wholly or partly from waste that is applied to land, or used as fuel, but only in the circumstances prescribed by the regulations, or
- any substance prescribed by the regulations made under the Protection of the Environment Operations Act 1997 to be waste.

waste facility means any premises used for the storage, treatment, processing, sorting or disposal of waste (except as provided by the regulations).

worker a person is a worker if the person carries out work in any capacity for a person conducting a business or undertaking, including work as:

- tt. an employee, or
- uu. a contractor or subcontractor, or
- vv. an employee of a contractor or subcontractor, or
- ww. an employee of a labour hire company who has been assigned to work in the person's business or undertaking, or
- xx. an outworker, or
- yy. an apprentice or trainee, or

- zz. a student gaining work experience, or
- aaa. a volunteer, or
- bbb. a person of a prescribed class.

workplace a workplace is a place where work is carried out for a business or undertaking and includes any place where a worker goes, or is likely to be, while at work. Place includes: a vehicle, vessel, aircraft or other mobile structure, and any waters and any installation on land, on the bed of any waters or floating on any waters.

Appendix D – Acronyms

ACD	Asbestos Containing Dust (an acronym used in the legislation)
ACM	Asbestos Containing Material (an acronym used in the legislation)
ARA	Appropriate Regulatory Authority (an acronym used in the legislation)
DA	Development Application
EPA	Environment Protection Authority
JRPP	Joint Regional Planning Panel
LGA	Local Government Area
NATA	National Association of Testing Authorities
NSW	New South Wales
SEPP	State Environmental Planning Policy
VET	Vocational Education and Training

Appendix E – Relevant contacts

Environmental, Planning and Building Services
Ground Floor, Civic Centre
158 Russell Street, Bathurst
02 6333 6211
www.bathurst.nsw.gov.au/planning/development

Bathurst Waste Management Centre
College Road, South Bathurst
02 6332 9111
www.bathurst.nsw.gov.au/environment/waste

For licensed removal contractors please refer to the White Pages or contact SafeWork NSW

Asbestos-related disease organisations (non-exhaustive)

Asbestos Diseases Foundation Australia Inc

Phone: (02) 9637 8759
Helpline: 1800 006 196
Email: info@adfa.org.au
Website: www.adfa.org.au

Asbestos Diseases Research Institute

Phone: (02) 9767 9800
Email: info@adri.org.au
Website: www.adri.org.au

Australian Institute of Occupational Hygienists Inc.

Phone: (03) 9336 2290
Email: admin@aioh.org.au
Website: www.aioh.org.au

Dust Diseases Board

Phone: (02) 8223 6600
Toll Free: 1800 550 027
Email: enquiries@ddb.nsw.gov.au
Website: www.ddb.nsw.gov.au

Environment Protection Authority (EPA)

Phone: (02) 9995 5000
Environment line: 13 15 55
Email: info@environment.nsw.gov.au
Website: www.environment.nsw.gov.au/epa

Licensed Asbestos Contractors

For a listing of asbestos removal contractors in your area, refer to your local telephone directory or the Yellow Pages website: www.yellowpages.com.au or contact:

Asbestos Removal Contractors Association NSW (ARCA)

Phone: (02) 9642 0011
Email: info@arca.net.au
Website: www.arca.asn.au
Verification of an asbestos removal contractor's licence can be checked by contacting SafeWork NSW's Certification Unit Phone: 13 10 50

Civil Contractors Federation (CCF)

Phone: (02) 9009 4000

Email: mtearle@civilcontractors.com

Website: www.civilcontractors.com

Demolition & Contractors Association (DCA) NSW

Phone: (02) 8586 3555

Email: demolitionassn@bigpond.com

Website: <http://demolitioncontractorsassociation.com.au>

Local Government and Shires Associations of NSW (LGSA)

Phone: (02) 9242 4000

Email: lgsa@lgsa.org.au

Website: www.lgsa.org.au

NSW Ombudsman

Phone: (02) 9286 1000

Toll free (outside Sydney metro): 1800 451 524

Email: nswombo@ombo.nsw.gov.au

Website: www.ombo.nsw.gov.au

SafeWork NSW NSW

SafeWork NSW Information Centre Phone: 13 10 50

SafeWork NSW NSW – Asbestos/Demolition Hotline Phone: (02) 8260 5885

Website: www.SafeWorkNSW.nsw.gov.au

Appendix F – Waste management facilities that accept asbestos wastes

Waste management facilities that can accept asbestos waste may be operated by council, the State Government or private enterprise. The fees charged by the facility operators for waste received are determined by the facility.

Not all waste management centres accept asbestos waste from the public. Management of asbestos waste requires special precautions such as a separate disposal location away from other general waste and controls to prevent the liberation of asbestos fibres, such as the immediate covering of such waste.

The Bathurst Waste Management Centre accepts non-friable asbestos waste subject to certain conditions.

The Bathurst Waste Management Centre is located at the end of College Road, South Bathurst.

Hours of Operation for Waste Management Centre

The Waste Management Centre is open seven (7) days a week except Good Friday and Christmas Day.

The Waste Management Centre Hours of Operations are as follows:

Monday to Friday 7:30am to 4:30pm

Saturday and Sunday 8:30am to 3:00pm

Non-friable asbestos waste must be buried immediately and is only accepted by prior arrangement with the Waste Management Centre on 6332 9111. Non-friable asbestos waste is only accepted for delivery at specific times.

Immediate burial operating hours:

Monday to Friday	8:00am–9:30pm
	10:00am–1:00pm
	2:00pm–3:30pm
Saturday to Sunday	9:00am–10:00pm
	10:30am–12:30pm
	1:00pm – 2:30pm

Current fees for disposal are listed in Council's revenue policy and at www.bathurst.nsw.gov.au

The Council operated transfer stations in Sofala, Trunkey, Rockley and Sunny Corner do not accept asbestos waste. The Hill End landfill does not accept asbestos waste.

Waste management facilities in other areas that accept asbestos wastes.

A list of licensed landfills that may accept asbestos waste from the public is available on the EPA website at: <http://www.epa.nsw.gov.au/managewaste/house-asbestos-land.htm>

Some of the landfills may accept non-friable asbestos waste but not friable asbestos waste. Some landfills may not accept large quantities of asbestos waste.

Always contact the landfill before taking asbestos waste to a landfill to find out whether asbestos is accepted and any requirements for delivering asbestos to the landfill. EPA does not endorse any of the landfills listed on the website or guarantee that they will accept asbestos under all circumstances.

Appendix G – Asbestos-related legislation, policies and standards

- Demolition work code of practice 2015 (catalogue WC03841)
- Contaminated Land Management Act 1997
- Code of practice on how to manage and control asbestos in the workplace (catalogue no. WC03560) published by SafeWork NSW NSW
- Code of practice on how to safely remove asbestos (catalogue no. WC03561) published by SafeWork NSW NSW
- Code of practice for demolition work published by Safe Work Australia, 2012
- Environmental Planning and Assessment Act 1979
- Environmental Planning and Assessment Regulation 2000
- Local Government Act 1993
- Local Government (General) Regulation 2005
- Protection of the Environment Operations (General) Regulation 2009
- Protection of the Environment Operations (Waste) Regulation 2014
- Protection of the Environment Operations Act 1997
- State Environmental Planning Policy No. 55 – Remediation of Land
- State Environmental Planning Policy (Exempt and Complying Development Codes) 2008
- NSW Work Health and Safety Act 2011
- NSW Work Health and Safety Regulation 2011
- Workers' Compensation (Dust Diseases) Act 1942.

Appendix H – Agencies roles and responsibilities

NSW organisations

Department of Planning (DoP) and the Building Professionals Board (BPB)

DoPs primary role in the management of asbestos relates to administration of State Environmental Planning Policies, and the *Environmental Planning and Assessment Act 1979* (and associated Regulation).

Whilst DoP's does not have an operational role in the management of asbestos, it has a regulatory function and provides policy support relating to asbestos and development. In assessing proposals for development under the *Environmental Planning and Assessment Act 1979*, consent authorities are required to consider the suitability of the subject land for the proposed development. This includes consideration of the presence of asbestos and its environmental impact.

Where asbestos represents contamination of the land (ie it is present in excess of naturally occurring levels), *State Environmental Planning Policy No. 55 – Remediation of Land* imposes obligations on developers and consent authorities in relation to remediation of the land and the assessment and monitoring of its effectiveness.

The *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* enables exempt and complying development across the state. While this includes demolition and the removal of asbestos, the *Environmental Planning and Assessment Regulation 2000* specifies particular conditions that must be contained in a complying development certificate in relation to the handling and lawful disposal of both friable and non-friable asbestos material under the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.

The Building Professionals Board (BPB) which reports to the Minister for Planning, also has a role in the management of asbestos. The BPB's role involves providing practice advice and educational programs to assist certifying authorities (private and council) in carrying out their role and this includes education in relation to managing asbestos. The BPB certifies and audits both private and council certifiers. Further information about the BPB may be found at: www.bpb.nsw.gov.au

Dust Diseases Board (DDB)

The DDB provides a system of no fault compensation to people who have developed a dust disease from occupational exposure to dust as a worker in New South Wales and to their dependants. The DDB's statutory function is to administer the *Workers' Compensation (Dust Diseases) Act 1942*. Services include:

- payment of compensation benefits to eligible workers and dependants
- co-ordination and payment of medical and related health care expenses of affected
- medical examination of workers exposed to dust in the workplace
- information and education.

Environment Protection Authority (EPA)

EPA's role is to regulate the classification, storage, transport and disposal of waste in NSW, including asbestos waste. The waste regulatory framework includes the *Protection of the Environment Operations Act 1997* and the *Protection of the Environment Operations (Waste) Regulation 2014*. Clause 42 of the *Protection of the Environment Operations (Waste)*

Regulation 2014 sets out the special requirements relating to the transportation and disposal of asbestos waste.

EPA is the appropriate regulatory authority for activities that require an environment protection licence or are carried out by public authorities such as local councils, the Roads and Traffic Authority and Sydney Water. Local councils are the appropriate regulatory authority for activities that are not regulated by the EPA, which typically include building demolition, construction sites, residential properties, commercial sites and small to medium sized industrial facilities.

EPA is responsible for assisting councils in fulfilling their regulatory responsibilities. EPA has developed resources to assist Local Government to regulate asbestos waste incidents and prevent illegal dumping. Website links to these resources are provided in Appendix B.

The EPA maintains the regulatory framework for the remediation of contaminated land (the *Contaminated Land Management Act 1997*) and actively regulates land that is declared to be 'significantly contaminated' under the *Contaminated Land Management Act 1997*.

Heads of Asbestos Coordination Authorities (HACA)

The HACA is chaired by the Chief Executive Officer of SafeWork NSW NSW with senior officials from:

- Department of Planning and Infrastructure
- Department of Trade and Investment, Regional Infrastructure and Services
- Division of Local Government
- Dust Diseases Board
- Environment Protection Authority
- Local Government and Shires Association of NSW
- Ministry for Police and Emergency Services
- Ministry of Health.

The HACA group will improve the management, monitoring and response to asbestos issues in NSW by developing coordinated prevention programs. These programs include a comprehensive public awareness campaign to promote the safe handling of asbestos and help prevent the risk of exposure to asbestos-related diseases in the NSW community. Further information about the HACA can be found on the SafeWork NSW website: www.SafeWorkNSW.nsw.gov.au.

Local Government and Shires Associations of NSW (LGSA)

The Local Government Association of NSW and the Shires Association of NSW represent general purpose councils, 12 special purpose councils and the NSW Aboriginal Land Council.

The Associations represent the views of these councils by:

- presenting councils views to governments
- promoting Local Government to the community
- providing specialist advice and services.

The Associations hold annual conferences where members are able to vote on issues affecting Local Government. The Annual Conferences are the supreme policy making events.

In 2012, the Associations commenced a project funded by SafeWork NSW to assist councils to adopt and implement a model asbestos policy. The project is outlined at: www.lgsa.org.au/key-initiatives/asbestos

NSW Ministry of Health

The NSW Ministry of Health does not have express statutory responsibilities for managing asbestos-related risks and incidents in NSW. The Ministry provides an expert advisory service to other governmental agencies on public health issues. This service may include technical information or assistance to prepare public health information bulletins.

NSW Ombudsman

The NSW Ombudsman is an independent and impartial watchdog body. The NSW Ombudsman is responsible for ensuring that public and private sector agencies and employees within its jurisdiction fulfil their functions appropriately. The NSW Ombudsman assists those agencies and their employees to be aware of their responsibilities to the public, to act reasonably and to comply with the law and best administrative practice.

SafeWork NSW NSW

SafeWork NSW is responsible for the issuing and control of licences that are issued to all asbestos removal and demolition contractors. SafeWork NSW works with the employers, workers and community of NSW to achieve safer and more productive workplaces, and effective recovery, return to work and security for injured workers.

SafeWork NSW administers work health and safety, injury management, return to work and workers compensation laws, and manage the workers compensation system. SafeWork NSW's activities include: health and safety, injuries and claims, licensing for some types of plant operators, registration of some types of plant and factories, training and assessment, medical and healthcare, law and policy.

The SafeWork NSW website provides a wide range of asbestos resources, support networks and links at: www.SafeWorkNSW.nsw.gov.au/newlegislation2012/health-and-safety-topics/asbestos/Pages/default.aspx

National organisations

National Association of Testing Authorities (NATA)

This body has the role of providing accreditation to firms licensed to remove asbestos.

NSW (Head Office) and ACT
Phone: (02) 9736 8222
National Toll Free: 1800 621 666
Website: www.nata.asn.au

Environmental Health Committee (enHealth)

The Environmental Health Committee (enHealth) is a subcommittee of the Australian Health Protection Committee (AHPC). enHealth provides health policy advice, implementation of the National Environmental Health Strategy 2007-2012, consultation with key players, and the development and coordination of research, information and practical resources on environmental health matters at a national level.

Website: www.health.gov.au/internet/main/publishing.nsf/content/ohp-environ-enhealth-committee.htm

Safe Work Australia

Safe Work Australia is an Australian Government statutory agency established in 2009, with the primary responsibility of improving work health and safety and workers' compensation arrangements across Australia.

Phone: (02) 6121 5317

Email: info@safeworkaustralia.gov.au

Website: www.safeworkaustralia.gov.au

Appendix I – Scenarios illustrating which agencies lead a response in NSW

The tables show which agencies are responsible for regulating the following scenarios in NSW:

- emergency management
- naturally occurring asbestos
- residential settings
- site contamination
- waste
- workplaces.

Further details are provided in the *Asbestos Blueprint: A guide to roles and responsibilities for operational staff of state and local government*, 2011 (NSW Government).

Emergency management

Scenario	Lead organisation	Other regulators
Emergency response	Emergency services	Fire and Rescue (Hazmat) SafeWork NSW NSW
Handover to Local council, owner of property or NSW Police – crime scene following a minor incident	Local council NSW Police	
Handover to State Emergency Recovery Controller	State Emergency Recovery Controller	Recovery Committee Local council EPA SafeWork NSW NSW
Handover to Recovery Committee following a significant incident	Recovery Committee (formed by State Emergency Recovery Controller)	Local council EPA SafeWork NSW NSW
Remediation not requiring a licensed removalist	Local council	Principal Certifying Authority SafeWork NSW NSW (workers)
Remediation requiring licensed removal work	SafeWork NSW NSW	Local council Principal Certifying Authority
Clearance Certificate issued by an Asbestos Assessor	SafeWork NSW NSW	Principal Certifying Authority

Naturally occurring asbestos

Scenario	Lead organisation	Other regulators
Naturally occurring but will be disturbed due to a work process including remediation work	Department of Industry	Local council EPA (<i>Protection of the Environment Operations Act 1997</i> Scheduled Activities Public Authorities)
Naturally occurring asbestos part of a mineral extraction process	Department of Industry	Local council EPA (<i>Protection of the Environment Operations Act</i>

		1997 Scheduled Activities Public Authorities)
Naturally occurring but will remain undisturbed by any work practice	Local council	EPA (<i>Protection of the Environment Operations Act 1997</i> Scheduled Activities Public Authorities) SafeWork NSW NSW (workers)
Soil contaminated with asbestos waste and going to be disturbed by a work practice	SafeWork NSW	EPA (<i>Protection of the Environment Operations Act 1997</i> Scheduled Activities Public Authorities, declared contaminated land sites)
Soil contaminated with asbestos waste but will remain undisturbed by any work practice	Local council	EPA (<i>Protection of the Environment Operations Act 1997</i> Scheduled Activities Public Authorities, declared contaminated land sites) SafeWork NSW (workers on site)
Potential for exposure on public land	EPA (<i>Protection of the Environment Operations Act 1997</i> Scheduled Activities Public Authorities)	Local council SafeWork NSW (workers on site)
Soil contaminated with asbestos waste but at a mine site	Department of Industry EPA (<i>Protection of the Environment Operations Act 1997</i> Scheduled Activities Public Authorities)	Local council

Residential settings

Scenario	Lead organisation	Other regulators
Safe Management of asbestos including: <ul style="list-style-type: none"> • identification • in situ management • removal requirements • disposal requirements. 	Local council Private Certifiers	SafeWork NSW EPA
Site contaminated due to past uses	Local council	SafeWork NSW EPA
Licensed removal work required	SafeWork NSW NSW	Local council Private Certifiers
Removal does not require a licensed removalist	Local council Private Certifiers	SafeWork NSW (workers)
Transport or waste disposal issues	Local council	EPA
Derelict property with fibro debris	Local council or Multi-agency	Multi- agency

Site contamination

Scenario	Lead organisation	Other regulators
Asbestos illegally dumped	Local council	EPA SafeWork NSW
Site contamination at commercial premises	See Workplaces	
Site contamination at residential premises	See Residential settings	

Waste

Scenario	Lead organisation	Other regulators
Waste temporarily stored on-site	SafeWork NSW (worksites) EPA and Local council (non-worksites)	
Waste transported by vehicle	EPA	SafeWork NSW
Waste disposed of onsite	Council or EPA as illegal dumping or pollution of land if no valid council development consent	Local council (consent required to dispose onsite) (section 149 property certificate and development assessment process)
Waste going to landfill site	EPA (advice)	Local council (if managing licensed landfill)
Waste to be transported interstate	EPA	
Waste for export	Australian Customs and Border Protection Service	SafeWork NSW Department of Education, Employment and Workplace Relations

Workplaces

Scenario	Lead organisation	Other regulators
Asbestos installed/supplied after 2003 (illegally)	SafeWork NSW	Australian Customs and Border Protection Service Australian Competition and Consumer Commission (Imported Goods)
Risks to the health of workers	SafeWork NSW	
Asbestos management and asbestos going to be removed	SafeWork NSW Department of Industry (mine sites)	
Risks to the health of the public from worksites	SafeWork NSW (Risks to workers) Local council (Risks to the wider public) Department of Planning and	

	Infrastructure (part 3A approvals) EPA (<i>Protection of the Environment Operations Act 1997</i> licensed sites)	
Waste stored temporarily on-site at worksites	SafeWork NSW	
Transport or waste disposal issues	EPA	SafeWork NSW Local council
Asbestos contaminated clothing going to a laundry	SafeWork NSW	EPA Local council
Contaminated land not declared under the <i>Contaminated Land Management Act 1997</i>	Local council	EPA
'Significantly contaminated' land declared under the <i>Contaminated Land Management Act 1997</i>	EPA	Local council

Appendix J – Asbestos containing materials

Some asbestos containing materials found in New South Wales domestic settings (non-exhaustive list)

Asbestos containing materials	Approximate supply dates
Cement sheets	Imported goods supplied from 1903 locally made
Cement roofing / lining slates	Imported goods supplied from 1903 locally made
Mouldings and cover strips	Available by 1920s and 1930s
Super-six (corrugated) roofing	Available by 1920s and 1930s – 1985
‘Tilex’ decorative wall panels	Available by 1920s and 1930s
Pipes and conduit piping	Available by 1920s and 1930s
Motor vehicle brake linings	Available by 1920s and 1930s
Striated sheeting	Available from 1957
‘Asbestolux’ insulation boards	Available from 1957
‘Shadowline’ asbestos sheeting for external walls, gable ends and fences	Available from 1958 – 1985
Vinyl floor tiles impregnated with	Available up until 1960s
Asbestos containing paper backing for linoleum	Available up until 1960s
‘Durasbestos’ asbestos cement	Available up until 1960s
‘Tilex’ marbletone decorative wall	Available from early 1960s
‘Tilex’ weave pattern decorative wall	Available from early 1960s
‘Hardiflex’ sheeting	Available from 1960s – 1981
‘Versilux’ building board	Available from 1960s – 1982
‘Hardiplank’ and ‘Hardigrain’ woodgrain	Available from mid 1970s – 1981
Loose-fill, fluffy asbestos ceiling insulation	Supplied from 1968 – 1978 by a Canberra contractor and believed to be generally restricted to houses in the Australian Capital Territory with some materials supplied to the Queanbeyan area and some south coast towns
Asbestos rope gaskets for wood heaters. Heater and stove insulation	Dates of supply availability unknown but prior to 31 December 2003
Compressed fibro-cement sheets	Available from 1960s – 1984
Villaboard	Available until 1981
Harditherm	Available until 1984
Highline	Available until 1985
Coverline	Available until 1985
Roofing accessories	Available until 1985
Pressure pipe	Available until 1987

Source: NSW Government, 2011, *Asbestos Blueprint: A guide to roles and responsibilities for operational staff of state and local government*.

Asbestos containing materials that may be found in various settings (non-exhaustive list)

A

Air conditioning duct, in the exterior or interior acoustic and thermal insulation
Arc shields in lift motor rooms or large electrical cabinets
Asbestos-based plastics products as electrical insulates and acid resistant compositions or aircraft seats
Asbestos ceiling tiles
Asbestos cement conduit
Asbestos cement electrical fuse boards
Asbestos cement external roofs and walls
Asbestos cement in the use of form work for pouring concrete
Asbestos cement internal flues and downpipes
Asbestos cement moulded products such as gutters, ridge capping, gas meter covers, cable troughs and covers
Asbestos cement pieces for packing spaces between floor joists and piers
Asbestos cement (underground) pit as used for traffic control wiring, telecommunications cabling etc
Asbestos cement render, plaster, mortar and coursework
Asbestos cement sheet
Asbestos cement sheet behind ceramic tiles
Asbestos cement sheet over exhaust canopies such as ovens and fume cupboards
Asbestos cement sheet internal walls and ceilings
Asbestos cement sheet underlay for vinyl
Asbestos cement storm drain pipes
Asbestos cement water pipes (usually underground)
Asbestos containing laminates, (such as Formica) used where heat resistance is required
Asbestos containing pegboard
Asbestos felts
Asbestos marine board, eg marinate
Asbestos mattresses used for covering hot equipment in power stations
Asbestos paper used variously for insulation, filtering and production of fire resistant laminates
Asbestos roof tiles
Asbestos textiles
Asbestos textile gussets in air conditioning ducting systems
Asbestos yarn
Autoclave/steriliser insulation

B

Bitumen-based water proofing such as malthoid (roofs and floors, also in brickwork)
Bituminous adhesives and sealants
Boiler gaskets
Boiler insulation, slabs and wet mix
Brake disc pads
Brake linings

C

Cable penetration insulation bags (typically Telecom)
Calorifier insulation
Car body filters (uncommon)
Caulking compounds, sealant and adhesives
Ceiling insulation (which may have moved into wall cavities, cornices and sub-floor areas)
Cement render

Chrysotile wicks in kerosene heaters
Clutch faces
Compressed asbestos cement panels for flooring, typically verandas, bathrooms and steps for demountable buildings
Compressed asbestos fibres (CAF) used in brakes and gaskets for plant and automobiles

D

Door seals on ovens

E

Electric heat banks – block insulation
Electric hot water services (normally no asbestos, but some millboard could be present)
Electric light fittings, high wattage, insulation around fitting (and bituminised)
Electrical switchboards see Pitch-based
Exhausts on vehicles

F

Filler in acetylene gas cylinders
Filters: beverage wine filtration
Fire blankets
Fire curtains
Fire door insulation
Fire-rated wall rendering containing asbestos with mortar
Fire-resistant plaster board, typically on ships
Fire-retardant material on steel work supporting reactors on columns in refineries in the chemical industry
Flexible hoses
Floor vinyl sheets
Floor vinyl tiles
Fuse blankets and ceramic fuses in switchboards

G

Galbestos™ roofing materials (decorative coating on metal roof for sound proofing)
Gaskets: chemicals, refineries
Gaskets: general
Gauze mats in laboratories/chemical refineries
Gloves: asbestos

H

Hairdryers: insulation around heating elements
Header (manifold) insulation

I

Insulation blocks
Insulation in electric reheat units for air conditioner systems

L

Laboratory bench tops
Laboratory fume cupboard panels
Laboratory ovens: wall insulation
Lagged exhaust pipes on emergency power generators
Lagging in penetrations in fireproof walls
Lift shafts: asbestos cement panels lining the shaft at the opening of each floor and asbestos packing around penetrations
Limpet asbestos spray insulation

Locomotives: steam, lagging on boilers, steam lines, steam dome and gaskets

M

Mastik

Millboard between heating unit and wall

Millboard lining of switchboxes

Mortar

P

Packing materials for gauges, valves, etc can be square packing, rope or loose fibre

Packing material on window anchorage points in high-rise buildings

Paint, typically industrial epoxy paints

Penetrations through concrete slabs in high rise buildings

Pipe insulation including moulded sections, water-mix type, rope braid and sheet

Plaster and plaster cornice adhesives

Pipe insulation: moulded sections, water-mix type, rope braid and sheet

Pitch-based (zelemite, ausbestos, lebah) electrical switchboard

R

Refractory linings

Refractory tiles

Rubber articles: extent of usage unknown

S

Sealant between floor slab and wall, usually in boiler rooms, risers or lift shafts

Sealant or mastik on windows

Sealants and mastik in air conditioning ducting joints

Spackle or plasterboard wall jointing compounds

Sprayed insulation: acoustic wall and ceiling

Sprayed insulation: beams and ceiling slabs

Sprayed insulation: fire retardant sprayed on nut internally, for bolts holding external building wall panels

Stoves: old domestic type, wall insulation

T

Tape and rope: lagging and jointing

Tapered ends of pipe lagging, where lagging is not necessarily asbestos

Tilux sheeting in place of ceramic tiles in bathrooms

Trailing cable under lift cabins

Trains: country – guards vans – millboard between heater and wall

Trains – Harris cars – sprayed asbestos between steel shell and laminex

V

Valve and pump insulation

W

Welding rods

Woven asbestos cable sheath

Source: *Environmental health notes number 2 guidelines for local government on asbestos*, 2005 (Victorian Department of Human Services).

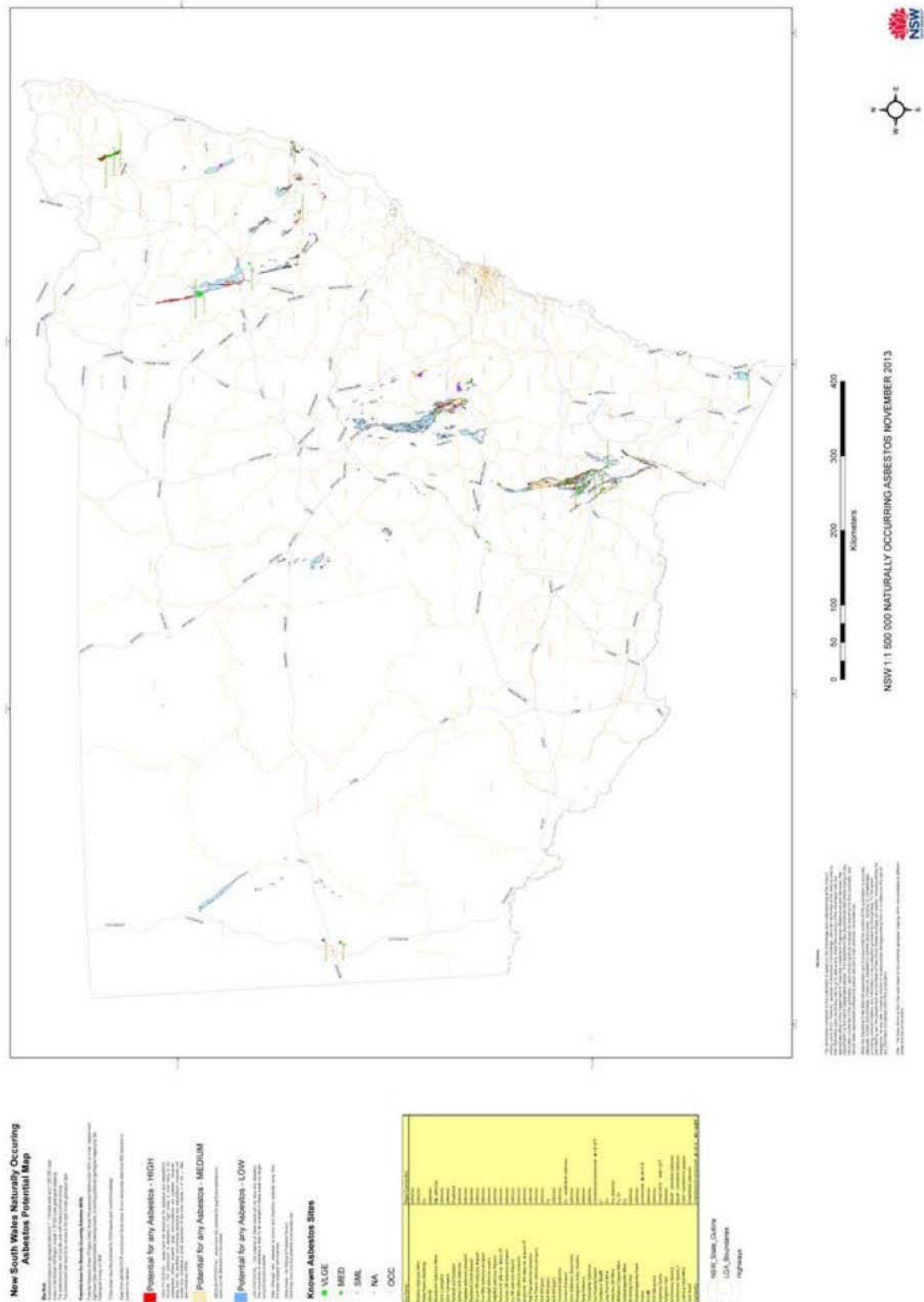
http://www.health.vic.gov.au/environment/downloads/hs523_notes2_web.pdf

Appendix K – Asbestos licences

Type of licence	What asbestos can be removed?
Class A	<p>Can remove any amount or quantity of asbestos or asbestos containing material, including:</p> <ul style="list-style-type: none"> any amount of friable asbestos or asbestos containing material any amount of asbestos containing dust any amount of non-friable asbestos or asbestos containing material
Class B	<p>Can remove:</p> <ul style="list-style-type: none"> any amount of non-friable asbestos or asbestos containing material <p>Note: A Class B licence is required for removal of more than 10 m² of non-friable asbestos or asbestos containing material but the licence holder can also remove up to 10 m² of non-friable asbestos or asbestos containing material.</p> <ul style="list-style-type: none"> asbestos containing dust associated with the removal of non-friable asbestos or asbestos containing material. <p>Note: A Class B licence is required for removal of asbestos containing dust associated with the removal of more than 10 m² of non-friable asbestos or asbestos containing material but the licence holder can also remove asbestos containing dust associated with removal of up to 10m² of non-friable asbestos or asbestos containing material.</p>
No licence required	<p>Can remove:</p> <ul style="list-style-type: none"> up to 10 m² of non-friable asbestos or asbestos containing material asbestos containing dust that is: <ul style="list-style-type: none"> associated with the removal of less than 10 m² of non-friable asbestos or asbestos containing material not associated with the removal of friable or non-friable asbestos and is only a minor contamination.

An asbestos removal contractor's licence can be verified by contacting SafeWork NSW NSW's Certification Unit on 13 10 50.

Appendix L – Known areas of naturally occurring asbestos



POLICY:	BURIAL ON PRIVATE PROPERTY
DATE ADOPTED:	Director Corporate Services & Finance Report # 8.2.1 Policy 5 June 2024 Council 19 June 2024 Resolution Number: ORD2024-170
ORIGINAL ADOPTION:	Director Environmental, Planning & Building Services Report # 1 Policy 7 April 2010 Council 21 April 2010 Minute Book No. 10890
FILE REFERENCE:	09.00039
OBJECTIVE:	To guide the creation and subsequent use of burial grounds on private property for one or multiple burials.

1. SELECTION OF SITE AND COUNCIL APPROVAL

- 1.1 The area of land holding must be a minimum of 5 hectares.
- 1.2 The land holding must not be zoned for urban, village or rural residential purposes or be within an area identified strategically for rezoning to urban, village or rural residential purposes under the Bathurst Region Urban Strategy or the Bathurst Region Rural Strategy.
- 1.3 The site of the proposed burial ground must be a minimum of:
 - (a) 100 metres from the nearest water course or water body and not within a flood prone area (Council may require a Geotechnical report if the site is within a drinking water catchment area or if the applicant seeks to reduce the above distance); and
 - (b) 100 metres from the nearest dwelling or outbuilding;
- 1.4 The proposed burial ground is to be subdivided from the overall holding (Council will consider the above criteria, Points 1.1-1.3, in assessing the Development Application for subdivision). The area of the proposed burial ground lot is to be a minimum of 25m². A larger area may be necessary if the burial ground is likely to be used for multiple burials (i.e. multiple family members over a long period of time).
- 1.5 As part of the subdivision a right of carriageway is to be created from the nearest public road to the proposed burial ground lot.

NOTE: Council will not accept benefit of a right of carriageway to a private burial ground lot.

- 1.6 As part of the subdivision, a restriction as to user is to be created over the private burial ground lot preventing the use of such a lot for any purpose other than for burial or the erection of monuments.

2. UPON COMPLETION OF SUBDIVISION

A stock proof fence is to be provided around the perimeter of the burial ground lot prior to the first interment.

3. USE OF BURIAL GROUND

- 3.1 A minimum cover of 900mm must be achieved between the lid of the coffin and natural ground level.

NOTE: Council officers must be given 48 hours notice to inspect the first and each subsequent grave prior to interment.

- 3.2 Each grave is to be permanently marked with details of the deceased persons. Some delineation of the area of excavation is preferable (e.g. a low fence or bund, to prevent accidental future disturbance and to assist in defining the grave if exhumation is required).
- 3.3 The precise grave location is to be described by an accurate diagram. This information is to be submitted to Council along with details of the deceased as soon as possible after the first and each subsequent interment.
- 3.4 Above ground burial chambers are not permitted.
- 3.5 Bodies must be placed in a coffin prior to burial.

4. KEEPING OF RECORDS

Council will maintain a register of all private burial grounds created under this policy. Details of each burial ground, the location of each grave site and details of the deceased persons will be kept on the property file and in such a register.

NOTE: Appropriate recording of private burial grounds created prior to the commencement of this policy cannot be guaranteed.

POLICY:	CONSTRUCTION AND TRANSFER OF CROWN ROADS
DATE ADOPTED:	Director Corporate Services & Finance Report # 8.2.1 Policy 5 June 2024 Council 19 June 2024 Resolution Number: ORD2024-170
ORIGINAL ADOPTION:	Director Environmental, Planning & Building Services Report #8 Council 31 January 2007 Minute Book No. 10040
FILE REFERENCE:	25.00155
OBJECTIVE:	To establish guidelines for construction and transfer of Crown roads.

-
1. Where it is intended to upgrade or construct a Crown Road all costs and maintenance relating to that road will be the responsibility of the applicant or owner of the land the subject of the Development Application and the road will be constructed and maintained in accordance with Council's Engineering Policy.
 2. Where the Department of Lands advises that dedication of a road is required, any costs or applications associated with such dedication will be the responsibility of the applicant or owner of the land of the subject Development Application.
 3. Where the road reserve is to be fenced, all such work, gates and grids will be erected at the expense of the applicant or owner of the land of the subject Development Application.
 4. The developer is to provide the written consent of the Department of Lands relating to the construction of the Crown Road prior to the commencement of any Crown road works.

POLICY:	CONTAMINATED LAND
DATE ADOPTED:	Director Environmental, Planning & Building Services Report #8.2.11 Council 15 June 2022 Resolution Number: ORD2022-195
ORIGINAL ADOPTION:	Director Environmental, Planning & Building Services Report #14 Council 14 December 2016 Minute Book No. 12407
FILE REFERENCE:	16.00141
OBJECTIVE:	Describes how Council will keep relevant records regarding potentially contaminating activities and contaminated land, provide information to interested parties and make decisions regarding activities on contaminated land in the Bathurst Regional Council local government area

1 Background

The contaminated land regulatory framework was established to protect human health and the environment from contamination associated with historical land use activities. Land may have become contaminated by actions in the past when contamination, pollution and waste management were not well regulated and the long-term effects of some chemicals on the environment and human health were poorly understood.

Contaminated land in New South Wales (NSW) is primarily managed through two avenues:

1. Sites where contamination is considered significant enough to warrant regulation are the management responsibility of the NSW Environment Protection Authority (EPA) through the powers provided to it under the *Contaminated Land Management Act 1997*.
2. Other sites are managed by Councils via land use planning instruments, through the powers provided to it under the *Environmental Planning and Assessment Act 1979*.

Via the second avenue, contaminated land is managed by Council to minimise the impacts of past land use on the orderly development of land in the future. To do this Council must:

- Ensure that changes in land use will not increase the risk to human health or the environment
- Consider the likelihood of land contamination as early as possible in the planning and development control process;
- Link decisions about the development of land with the information available about contamination possibilities;
- Adopt a policy approach which will provide strategic and statutory planning options based on the information about contamination; and
- Exercise statutory planning functions with a reasonable standard of care and diligence.
- Ensure that site investigations and remediation works are carried out in a satisfactory manner, and where appropriate, are independently verified by a Site Auditor

- Avoid inappropriate restrictions on land use arising from contamination
- Provide information to support decision making, and to inform the community of potential restrictions on property arising from contaminated land matters.

This policy is made to guide Council on how it will carry out its planning functions, and to provide a local context for decision making in relation to contaminated land. It intends to supplement, and should be read together with, the *Managing Land Contamination Planning Guideline* (1998) with reference to Part 7A of the *Environmental Planning and Assessment Act 1979*. The policy also provides information to stakeholders in the land use planning, rezoning and development process, regarding Council's requirements for contaminated, and potentially contaminated, land.

It is expected that the reader of this policy is familiar with the general contaminated land management framework that is set out in the *Managing Land Contamination Planning Guideline* (Department of Urban Affairs and Planning and EPA 1998), *State Environmental Planning Policy 55 Remediation of Land* (SEPP 55), the *National Environmental Protection (Assessment of Site Contamination) Measure 1999 (amended in 2013)*, and other applicable legislation.

This policy sets out the local requirements for Bathurst Regional Council and must be read in conjunction with the other documents referred to in Section 7. Further information about the general principles of contaminated land management and how Council's policy may relate to the sale or redevelopment of land can be found on www.bathurst.nsw.gov.au.

This policy is based on the Central West Councils Regional Contaminated Land Policy Template, developed with assistance from the New South Wales Government through the EPA's Contaminated Land Management Program under funding by the NSW Environment Trust.

2 Policy Objectives

The objectives of the policy are to describe how Council will keep relevant records, provide information to interested parties and make decisions regarding contaminated land. Specifically this policy will describe how:

- Information about potentially contaminated land is collected;
- Information is to be maintained in a Contaminated Lands Information System (LUIS);
- Council will use information to appropriately manage the use of land and what information is required for rezoning, and the development of the land;
- Information will be provided to owners of affected land and the public;
- Information will be provided on s10.7 planning certificates;
- Council should be notified of remediation activities within it's LGA;
- Category 1 remediation activities are identified;
- Remediation activities should be conducted;
- Consultants should report on contaminated sites, and certification requirements;
- A Site Audit may be required;
- The duty to report contamination to the NSW EPA is triggered;
- An ongoing Environmental Management Plan will be enforced;
- Council will use contaminated land standards and principles to address illegal land filling;
- The *Protection of the Environment (Underground Petroleum Storage System) Regulation 2019* is to be administered by Council.

3 Application

This policy applies to all land within the Bathurst Regional Council Local Government Area and includes:

- 1 Where Council is duly exercising one of the following planning functions:
 - a. Preparation of an environmental planning instrument, including a planning proposal for the proposed environmental planning instrument;
 - b. The preparation or making of a development control plan;
 - c. Processing and determination of a development application or the modification of a development consent;
 - d. Processing and determination of an application for a complying development certificate;
 - e. Furnishing of advice in a certificate under section 10.7 of the *NSW Environment Planning and Assessment Act 1979*; and
 - f. Anything incidental or ancillary to the carrying out of any function listed above.
- 2 Where Council is:
 - a. Investigating or remedying illegal land filling; or
 - b. Administering the *Protection of the Environment (Underground Petroleum Storage System) Regulation 2019*.

Note: the functions described in paragraph 2 above are not 'planning functions' to which Council is afforded protection from liability under Schedule 6, section 2 of the EP&A Act. Where Council is duly exercising (substantially in accordance with the contaminated land planning guidelines) the functions described in paragraph 1, it does not incur any liability of anything done or omitted to be done in good faith in relation to contaminated or potentially contaminated land.

4 Policy Statement

Where Council is aware of any past or present potentially contaminating land uses or activities (as described in this policy) it will maintain relevant information about the land on which that use or activity occurred or is occurring to ensure:

- That land owners and other interested parties can be made aware of those uses; and
- Council can assess land contamination issues and monitor remediation under *State Environmental Planning Policy (Resilience and Hazards) 2021 (SEPP (Resilience and Hazards))*.

The information held is intended to aid decision-making regarding contaminated land investigations, land use planning and determinations.

This policy restricts the use of land by:

- 1 Prescribing the circumstances where land is required to undergo some level of assessment for land contamination, or remediation, before consent can be granted for any development on that land or the land can be rezoned; and
- 2 Enforce any restrictions outlined in an ongoing Environmental Management Plan that, in the opinion of the certified consultant or accredited site auditor, are required to render the land suitable for the proposed land use following remediation.

Council will set standards for the conduct of remediation and reporting of contaminated land matters to ensure that contamination and remediation can be effectively managed and monitored for the benefit of the community.

While Council will endeavour to develop and maintain a comprehensive collection of relevant information, it does not guarantee the completeness or accuracy of all the information held. To the degree that information is not required to be provided to Council or hitherto has not been required to be kept by Council, Council may not be in possession of all the relevant information for any given property at any given time.

5 Abbreviations

CLM	Contaminated Land Management
CLM Act	<i>Contaminated Land Management Act 1997</i>
DA	Development Application
DCP	Development Control Plan
DSI	Detailed Site Investigation
EMP	Environmental Management Plan
EPA	NSW Environment Protection Authority
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Reg	<i>Environmental Planning and Assessment Regulation 2000</i>
EPI	Environmental Planning Instrument
LEP	Local Environment Plan
LUIS	Land Use Information System
NEPM	<i>National Environmental Protection (Assessment of Site Contamination) Measure 1999 (ASC NEPM, amended in 2013)</i>
POEO Act	<i>Protection of the Environment Operation Act 1997</i>
PSI	Preliminary Site Investigation
RAP	Remediation Action Plan
SAR	Site Audit Report
SAS	Site Audit Statement
SEPP	<i>State Environmental Planning Policy</i>
UPSS	Underground Petroleum Storage System
UST	Underground Storage Tank

6 Glossary

Assessment of site contamination	A formal investigation and reporting process carried out by a contaminated land consultant (certification requirements are outlined in this policy) in accordance with the <i>ASC NEPM, Consultants reporting on contaminated land</i> (NSW EPA, 2020), and other guidelines made by NSW EPA under sec 105 of the CLM Act, or the UPSS Regulation. The process includes several stages of investigations and actions. The level ultimately required is determined by the circumstances and outcomes from the previous stage. The potential stages of the Contaminated Land Process are: Preliminary Site Investigation (PSI), Sampling and Analysis Quality Plan (SAQP), Detailed Site Investigation (DSI - several reports, such as additional investigations, contamination delineation, monitoring, and/or site specific
----------------------------------	---

	risk assessments may be needed after this stage), Remedial Action Plan (RAP), Remediation, Validation (including monitoring if applicable), Ongoing Environmental Management Plan, and Monitoring
Category 1 remediation	As defined in SEPP (Resilience and Hazards), being remediation that requires development consent.
Category 2 remediation	As defined in SEPP (Resilience and Hazards), being remediation that may be undertaken without development consent.
Contaminated Land Management	In regard to Council's responsibilities as a regulatory authority through the land use planning process: The management of records relating to past or present land use, assessment of site contamination, provision of relevant information, monitoring of remediation and the determination of suitability for rezoning and development consents as described within this policy.
Contamination	<p>As defined in EP&A Act: contaminated land means land in, on or under which any substance is present at a concentration above the concentration at which the substance is normally present in, on or under (respectively) land in the same locality, being a presence that presents a risk of harm to human health or any other aspect of the environment.</p> <p>or in CLM Act: Contamination of land, for the purposes of this Act, means the presence in, on or under the land of a substance at a concentration above the concentration at which the substance is normally present in, on or under (respectively) land in the same locality, being a presence that presents a risk of harm to human health or any other aspect of the environment.</p> <p>Note: Contamination and Pollution have similar statutory definitions, and while Council has statutory powers to regulate pollution (in particular under the <i>Protection of the Environment Operations Act 1997</i>) this policy is primarily concerned with contamination. A pollution incident is considered to be a matter that is dealt with in the short term by the relevant powers. Pollution can result in contamination if the pollution is not cleaned up in the short term or Council does not become aware of the issue within a reasonable time to be able to enforce a suitable remedy.</p>
Contamination assessment	See Assessment of site contamination.
Deferred Commencement	A development consent is granted subject to a condition that the consent is not to operate until the applicant satisfies the consent authority as to any matter specified in the condition, in accordance with s 4.16 (3) of the <i>Environmental Planning and Assessment Act 1979</i> .
Detailed Site Investigation	Detailed Investigation as defined in ASC NEPM, and the <i>Consultants reporting on contaminated land</i> (NSW EPA, 2020), is an investigation that will define the type, extent, level and risks posed by contamination.
Duty to Report	The duty to report significant contamination to the NSW EPA is a requirement under the <i>Contaminated Land Management Act 1997</i> , with updates provided in the <i>Contaminated Land Management Amendment Act 2008</i> .

	<p>The triggers for reporting are presented in the “<i>Guidelines on the Duty to Report Contamination under the Contaminated Land Management Act 1997</i>” (2015).</p>
Environmental Management Plan	<p>A plan to enforce the management of residual contamination (e.g. onsite containment of contamination) following suitable remediation of a site.</p>
Initial Evaluation	<p>An evaluation undertaken by Council to determine whether contamination is likely to be an issue, and to assess whether further information is required for it to conduct its planning functions in good faith.</p>
Local Environmental Plan (LEP)	<p>An LEP guides planning decisions for Local Government Areas (LGAs) through zoning and development controls, which provide a framework for the way land can be used. LEPs are Planning Instruments from the <i>Environmental Planning & Assessment Act 1979</i>.</p>
Ongoing Monitoring	<p>Ongoing monitoring, as defined in <i>ASC NEPM</i>, and the <i>Consultants reporting on contaminated land</i> (NSW EPA, 2020), may be required for assessment, validation and / or management purposes. In these cases, a monitoring program must be documented detailing the proposed strategy, parameters to be monitored, locations, frequency, decision process for additional actions and for ending monitoring, and reporting requirements.</p>
Phase	<p>A term commonly used to refer to the formal stages of contamination assessment; however, it is not reliably consistent with the terms defined in this policy.</p>
Planning Guideline	<p><i>Managing Land Contamination Planning Guideline</i> (Department of Urban Affairs and Planning and EPA 1998) or otherwise specified by s 145C <i>Environmental Planning and Assessment Act 1979</i>.</p>
Pollution	<p>As defined in POEO Act</p> <p><i>pollution</i> means:</p> <ul style="list-style-type: none"> a water pollution, or b air pollution, or c noise pollution, or d land pollution. <p><i>pollution incident</i> means an incident or set of circumstances during or as a consequence of which there is or is likely to be a leak, spill or other escape or deposit of a substance, as a result of which pollution has occurred, is occurring or is likely to occur. It includes an incident or set of circumstances in which a substance has been placed or disposed of on premises, but it does not include an incident or set of circumstances involving only the emission of any noise.</p> <p><i>land pollution</i> or <i>pollution of land</i> means placing in or on, or otherwise introducing into or onto, the land (whether through an act or omission) any matter, whether solid, liquid or gaseous:</p> <ul style="list-style-type: none"> a that causes or is likely to cause degradation of the land, resulting in actual or potential harm to the health or safety of human beings, animals or other terrestrial life or ecosystems, or actual or potential loss or property damage, that is not trivial, or b that is of a prescribed nature, description or class or

	<p>that does not comply with any standard prescribed in respect of that matter, but does not include placing in or on, or otherwise introducing into or onto, land any substance excluded from this definition by the regulations.</p> <p>See note under contamination.</p>
Preliminary Site Investigation	<p>Preliminary site investigation as defined by ASC <i>NEPM</i>, and the <i>Consultants reporting on contaminated land</i> (NSW EPA, 2020),, is an investigation that is to assess whether contamination has the potential to exist on the site and whether further investigation is needed..</p>
Remediation	<p>As defined in SEPP (Resilience and Hazards) remediation means:</p> <ol style="list-style-type: none"> removing, dispersing, destroying, reducing, mitigating or containing the contamination of any land, or eliminating or reducing any hazard arising from the contamination of any land (including by preventing the entry of persons or animals on the land).
Remediation Action Plan	<p>Remediation Action Plan as defined by ASC <i>NEPM</i>, and the <i>Consultants reporting on contaminated land</i> (NSW EPA, 2020),, is a plan that sets out how a contaminated site can be made suitable for its intended use including methodology, clean-up criteria and validation procedures.</p>
s10.7 planning certificate	<p>A planning certificate as defined under section 10.7 of the EP&A Act.</p>
Site Audit	<p>Non Statutory Site Audit means a site audit undertaken by a site auditor that is not a requirement of a statutory instrument such as a development consent or regulation by the <i>Contaminated Land Management Act (1997)</i>.</p> <p>Statutory Site Audit as defined in section 47 of the <i>Contaminated Land Management Act (1997)</i> means a site audit carried out in order to secure compliance with, among other things, a requirement of SEPP55 or a development consent.</p> <p>Site Audit Report is a report which summarises the report(s) audited, and provides the Auditor's opinion and conclusions. A Site Audit Report must be accompanied by a Site Audit Statement</p> <p>Site Audit Statement summarises the Site Auditor's findings and is in the form approved by the EPA. See s53B CLM Act.</p> <p>Further information about Site Audits can be found in the NSW EPA website: http://www.epa.nsw.gov.au/clm/auditorscheme.htm</p>
Sampling and Analysis Quality Plan	<p>The objective of a sampling and analysis quality plan (SAQP), as defined by ASC <i>NEPM</i>, and the <i>Consultants reporting on contaminated land</i> (NSW EPA, 2020), is to provide the context, justification and details of the selected sampling and analysis approach. The SAQP has a critical role in ensuring that the data collected is representative and provides a robust basis for site assessment decisions.</p>
Site-specific risk assessment and modelling	

	<p>The objective of a site-specific risk assessment, as defined by <i>ASC NEPM</i>, and the <i>Consultants reporting on contaminated land</i> (NSW EPA, 2020), is to further assess potential for harm to human health and/or the environment from a specific site. The adopted process follows a three tiered approach where each tier progressively builds on the data collection and analysis undertaken at the previous tier. Tier one is the screening assessment stage where site analytical data is compared with generic assessment criteria. A Tier 2 and Tier assessment may be undertaken where tier one criteria are exceeded, assessment criteria are not available for a certain contaminant, or where uncertainties and site specific conditions need to be considered.</p>
Specific potentially contaminating	<p>A land use specified in Appendix A that will, if determined to land use have been carried out on the land, be used to identify land for contaminated land management under this policy.</p>
Suitably qualified person	<p>Means a person who has such competence and experience in relation to the assessment of site contamination as is recognised as appropriate by the contaminated land management industry. They will also be, or be reasonably able to be, or supervised by a consultant who is, certified under a contaminated land consultant certification scheme recognised by the EPA.</p>
UPSS regulation	<p><i>Protection of the Environment Operations (Underground Petroleum Storage Systems) Regulation 2019</i></p>
Remediation and Validation	<p>Remediation and Validation as defined by <i>ASC NEPM 1999 (amended in 2013)</i>, and the <i>Consultants reporting on contaminated land</i> (NSW EPA, 2020),, is a report detailing the results of the post-remediation testing against the objectives stated in the RAP including whether the site is suitable for the proposed land use.</p>

7 Legislation and Planning Instruments

Contaminated Land Management Act 1997

Sets out the role of the EPA and the rights and responsibilities of parties it might direct to manage land where contamination is significant enough to warrant regulation. Amongst other things, it provides for Site Auditing (s47), specific requirements for Sec 10.7 planning certificates in relation to the Act (s59), and allows the NSW EPA to make or adopt guidelines under sec 105. Statutory guidelines can be found here: <https://www.epa.nsw.gov.au/your-environment/contaminated-land/statutory-guidelines>

Environmental Planning and Assessment Act 1979

Provides the basis of the planning system in NSW and permits the creation of State Environmental Planning Policies. Part 6, section 2 specifically details the protection from liabilities for Councils in respect of contaminated, or potentially contaminated, land if Council is duly exercising (substantially in accordance with the contaminated land planning guidelines) its functions in good faith. .

Environmental Planning and Assessment Regulation 2021

Provides the overarching structure for the regulation of planning and development in NSW together with the Environmental Planning and Assessment Act 1979. It sets out

(amongst other things) the requirements for s10.7 planning certificates in part 15, division 5, and schedule 2, sec.10.

National Environmental Protection (Assessment of Site Contamination) Measure 1999
(amended in 2013)

Sets a national standard for contaminated site assessment.

Protection of the Environment Operations Act 1997

Enables the EPA, and Councils, to regulate pollution and waste in NSW.

Protection of the Environment Operations (Waste) Regulation 2014

Regulation of waste in NSW.

Protection of the Environment Operations (Underground Petroleum Storage Systems) Regulation 2019

Requires best practice design, installation, maintenance, and monitoring of UPSS in NSW.

State Environmental Planning Policy (Resilience and Hazards)

Establishes the mandatory considerations for consent authorities when considering development applications in relation to contaminated land, and criteria for remediation of land before development can occur.

NSW Managing Land Contamination Planning Guidelines – SEPP 55 Remediation of Land (1998)

The Planning Guidelines support the former SEPP55 (now SEPP – Resilience and Hazards) and address the policy framework, identification and investigation of contamination, the decision making process, management of contaminated sites and remediation, information management, and principles for proactively preventing future contamination.

Bathurst Regional Local Environment Plan 2014

The Bathurst Regional LEP is a legal document that contains details about zoning, development controls and other provisions that will affect how land in the Bathurst Region can be developed and used in the future. The written instrument should be read in conjunction with the associated LEP maps. The written instrument and maps can be downloaded from the NSW Legislation website.

Bathurst Regional Development Control Plan 2014

A Development Control Plan (DCP) contains detailed planning and design guidelines for new development, which need to be considered in preparing a Development Application. It comprises a written document together with supporting maps and diagrams.

The DCP supports and supplements (but cannot override or replace) the provisions in the LEP. While DCPs do not have the same level of statutory weight as an LEP, they are an important consideration in the development assessment and approval process.

8 Potentially contaminating land uses

This policy identifies potentially contaminating land uses and activities that need to be considered during development in Appendix A.

These land uses have the potential to cause land contamination because of the materials typically used, processed or stored on-site, the generation of contaminating waste products or the use of thermal processing.

For example, the storage of significant volumes of petroleum or chemicals, or activities involving the maintenance of motor vehicles or mechanical plant is considered to be potentially contaminating landuses.

Where a land use (current or historical) from Appendix A has been identified for a property,, it will be included in the Land Use Information System (LUIS, see Section 9.1) so that relevant information can be recorded and considered in accordance with this policy.

9 Information management

Council has an important role in supplying the community with information regarding land use history, land contamination and remediation activities. It must assess the potential for contamination in the initial investigations of the land use planning process, and trigger the contaminated land process if needed through the land use planning process. Council also has a statutory responsibility to include certain information on certificates issued for the purposes of s10.7 of the *Environmental Planning and Assessment Act 1979*. Councils Land Use Information System (LUIS) assists Council to protect its community, and meet its legislative obligations by providing easily searchable and relevant information.

Note: Council's records and classifications are not intended to reflect the risk of harm to human health or the environment for a property in its current state or by its current land use. Where there are concerns that need to be addressed in the short term, the Council should use its powers under the Protection of the Environment Operations Act 1997 or refer the matter to the NSW EPA if it triggers the Duty to Report under Section 60 of the CLM Act (as outlined in the Guidelines on the Duty to Report Contamination under the Contaminated Land Management Act 1997 (2015)).

9.1 Land Use Information System

Council maintains LUIS to record relevant information regarding land, including:

- Current and historical property description;
- Current and historical land uses or activities that have the potential to contaminate (see Appendix A);
- The land contamination investigation, remediation and management status;
- Reports and notices relating to contamination assessment, remediation and management;
- Reference to and brief comments relating to development applications, development consents, planning proposals to rezone land approved (or refused on the basis of contamination-related issues) and complying development certificates;
- Site Audit Statements and Site Audit Reports; and
- EPA correspondence.

The information will not include personal information except personal information that is included in an assessment report.

9.2 What the information is used for

The information held in the LUIS will be used for the purpose of fulfilling the policy statement (see Section 4 Policy Statement above).

Specifically the information will be used to:

- Provide information on s10.7 planning certificate;
- Inform development applications, modification applications, complying development certificate applications and assessments, including pre-DA meetings and assessment;
- Inform strategic planning and the preparation of Planning Proposals;
- Monitor and regulate remediation of contaminated land;
- Administer the UPSS regulation; and
- Managing contamination on Council land.

9.3 Including or removing land from Council's Land Use Information System

Land is included in the LUIS based primarily on information known to Council regarding land use and does not necessarily reflect whether the land is actually contaminated or not.

Land will be identified on the LUIS if Council:

- Holds records, or is aware, that the land has been used for a potentially contaminating land use as defined in Appendix A;
- Has carried out an inspection that suggests the land is likely to have been affected by contamination, pollution, landfilling, or by being used in an environmentally unsatisfactory manner (refer to definitions in the POEO Act);
- Is aware that the land has been the subject of remediation;
- Believes the land could have lawfully been used for a purpose listed in Appendix A and has no evidence to the contrary; or
- Is aware that the land is, or has been, zoned for industrial purposes.

Any land where a new development is commenced, whether approved by Council, subject to a Complying Development Certificate or exempt development, that is consistent with land uses defined in Appendix A will be included on LUIS when Council becomes aware of it.

Land will not be included where:

- The use is at a domestic scale;
- The land use is clearly operated at a scale that is unlikely to cause land contamination; or
- The activity is, and has always been, generally of a retail or warehousing nature provided that any fuels, oil and chemicals remain in sealed containers from the manufacturer and are not dispensed or decanted into other containers; and,
- Council is not otherwise aware that the land is likely to be contaminated.

Note: It is acknowledged that both agricultural and residential land can be subject to incidental contamination and that, in some circumstances, could give rise to a risk to human health and the environment, however it is considered unreasonable to apply this policy where there is no evidence of circumstances presenting such a risk. Areas of agricultural land such as fuel storages and stock dips will be considered for contamination assessment when a DA is received however the whole land parcel will not be included in the LUIS unless specific reports are provided to Council.

A maximum of three land use descriptors will apply to each record.

As it is a requirement that Council review its records every time it issues a s10.7 planning certificate and considers land contamination before determining a development application, a record of land must not be removed from the LUIS unless Council is satisfied that the

information held does not relate to the land, or that any potentially contaminating activity has not taken place on the land.

Where land is subdivided or consolidated, information about the former land uses on the land will be carried onto the new property description(s).

9.3.1 Land contained within the Sunny Corner Village

Mining activities have occurred in the Sunny Corner area for more than one hundred years. In response to community concerns over the possibility of heavy metal contamination on residential lots in the locality and surrounds preliminary soil testing was undertaken on some residential lots nominated by the owners. Due to the broad occurrence of contamination exceeding Health-based Investigation Levels, Council previously adopted a policy that specifically dealt with the risk associated with the risk of contamination in the locality. Due to the risk of uncertified fill or other mining by-products being deposited or disposed of in the locality, any property previously identified within the previous Sunny Corner – Contaminated Land policy and identified in the attachment map, will be included in the LUIS and therefore covered by this policy. This includes land that may have been previously remediated to residential criteria.

Additional land may be included where it meets the requirements detailed in section 9.3 above.

Land will not be included or may be removed from the LUIS where a sufficient site assessment has been undertaken to determine that the land has not been used in association with mining activities or for the disposal of uncertified fill and meets the additional requirements detailed in section 9.3 above.

9.4 Land Contamination Investigation Status

To assist Council to monitor and communicate the level and quality of information about contamination on any land parcel, each parcel on the LUIS will be classified according to the significance of the information Council holds about the parcel. Each parcel on the LUIS will be classified into one of five classifications:

Table 1. Contaminated site investigation status classification

Investigation Class	Description
A - Identified	<ul style="list-style-type: none"> • Council has identified that the land should be included on the LUIS because a potentially contaminating land use is known to have been undertaken (Appendix A), but the results of any formal investigation have not been provided to Council. • At this status, it is not possible to determine if land could be suitable for any particular use.
A1 – Identified Intensive Agricultural Activity	<ul style="list-style-type: none"> • Council has identified that the land should be included on the LUIS because the land has been used for commercial intensive agricultural activities, but the results of any formal investigation have not been provided to Council. • At this status, it is not possible to determine if land could be suitable for any particular use.
B - Assessed	<ul style="list-style-type: none"> • Council has been provided with a contamination assessment report or other documentation indicating that the land is (or has been) contaminated, but is not satisfied, based on information provided in contamination assessment reports, that the land is suitable for any specific land uses and, therefore, further consideration of investigation, remediation or validation is required to determine a relevant application. Reports may indicate that the land may be suitable for some uses with conditions such as limited depth of excavation or contamination remaining in inaccessible areas due to existing structure etc. • For any land adjacent to identified potentially contaminated land where a contamination assessment report received by Council has identified that contamination has migrated to the adjoining land will be classified as assessed.
C – Environmental Management Plan	<ul style="list-style-type: none"> • The land has been remediated, however, is subject to an environmental management plan (EMP). Any new DA must consider the requirements of a EMP that applies to the land.
D - Suitable for Limited Uses	<ul style="list-style-type: none"> • Council has been provided with a contamination assessment report or other documentation indicating that the land is (or has been) contaminated, but is satisfied, based on information provided in contamination assessment reports, that the land is suitable for some specific land uses without conditions. • Further consideration of investigation, remediation or validation would be required to determine a relevant application for more sensitive land uses.
E - Unrestricted	<ul style="list-style-type: none"> • Council is satisfied based on information provided in contamination assessment reports that the land is suitable for all land uses and, therefore, no further investigation is required to determine a relevant application. This category shall only be used where no further assessment of contamination is required to determine the suitability of any permissible DA.

The land contamination investigation status classification does not necessarily indicate that land is or is not contaminated but indicates whether or not appropriate information is available to make a decision in respect of the land.

Whenever new information about a land parcel or property is received by Council, the status classification should be reconsidered and changed if necessary.

If contamination investigations standards change, it should be considered whether any land with a status class of “E – Unrestricted” should have its status changed. If investigation thresholds are reduced it may be appropriate that all “D - suitable for limited uses” and “E – Unrestricted” statuses be changed to “B - Assessed” until a thorough review of each assessment report can be carried out.

9.5 Provision of information

Information on the LUIS may be provided to any person in the form of an s10.7 planning certificate in accordance with the EP&A Act.

Otherwise, a person with a valid interest may seek to view:

- 1 The LUIS register information; and
- 2 Reports held by Council.

However, due to Council’s privacy policy or copyright restrictions (and the legislative requirements of *Government Information (Public Access) Act 2009* and *Privacy and Personal Information Protection Act 1998*), Council may not be able to provide all information it holds.

A person with a valid interest may include the following people in respect of the relevant land:

- 1 The owner;
- 2 The owner of neighbouring land;
- 3 State Government agencies such as the NSW EPA;
- 4 Contaminated land consultants investigating the land or neighbouring land;
- 5 Utilities providers;
- 6 Conveyancers acting on behalf of the owner; or
- 7 With the owner’s permission:
 - a. A potential purchaser;
 - b. A purchaser’s conveyancer; or
 - c. A real estate agent.

The general release of information on the LUIS is not considered to be in the public interest.

9.6 Information provided on the s10.7 planning certificate

Section 10.7 planning certificates provide a range of information regarding the rights and restrictions placed on a parcel of land.

Council is obliged to provide certain information on the s10.7 planning certificate as specified in Schedule 2 of the *Environmental Planning and Assessment Regulations 2021* and s59 of the *Contaminated Land Management Act 1997*. That is:

- 1 Clause 10, Schedule 2 of the *Environmental Planning and Assessment Regulations 2000* requires that the certificate identify whether or not the land is affected by any policy (adopted by Council or by a public authority for the express purpose of its adoption being referred to in s10.7 certificates issued by Council) that restricts the development of land because of the likelihood of any risk, including contamination. Information pertinent to clause 10 are noted in 1A and 1B below; and
- 2 Section 59 of the *Contaminated Land Management Act 1997* requires that the certificate address the specific matters relating to the management of contaminated land set out in that section. Information pertinent to s59 is noted in 2A and 2B below.

This Policy intends to be an adopted policy of the kind referred to in numbered paragraph 9.6, 1. above, that restricts the development of land because of the likelihood of contamination risk as set out in the Policy Statement (Section 4. above).

The following wording will be used for each Contamination Investigation Status and where other relevant information is known about the land:

1A Notation to be included on s10.7 planning certificate issued under s10.7(2), as required by Clause 10, Schedule 2 of the EP&A Reg – adopted policies that restrict the development of the land because of the likelihood of any risk:

Land not considered to require restriction under this policy

Council's adopted Contaminated Land Policy does not place any specific restriction on the land to which this certificate relates at this time.

Land classed as "A - Identified"

The land to which this certificate relates has been used for purposes that have the potential to contaminate land. Council records do not have sufficient information to determine whether the land is contaminated. Council's adopted Contaminated Land Policy restricts the development on the land by requiring that the land undergoes some level of assessment for land contamination, and/or remediation if required, where zoning changes are proposed or consent is required for the carrying out of any development. Council's adopted policy provides information on how these restrictions will be applied in accordance with provisions under relevant State legislation. It is recommended that persons relying on this certificate undertake their own assessment of the land's suitability for purposes that do not require development consent.

Land classed as "A1- Identified Intensive Agricultural Activity"

The land has been used for commercial intensive agricultural activities. Some agricultural activities have the potential to contaminate land. Council records do not have sufficient information to determine whether the land is contaminated. Council's adopted Contaminated Land Policy restricts the development on the land by requiring that the land undergoes some level of assessment for land contamination, and/or remediation if required, where zoning changes are proposed or consent is required for the carrying out of any development. Council's adopted policy provides information on how these restrictions will be applied in accordance with provisions under relevant State legislation. It is recommended that persons relying on this certificate undertake their own assessment of the land's suitability for purposes that do not require development consent.

Land classed as "B - Assessed"

The land to which this certificate relates has been used for purposes that have the potential to contaminate land. Council's adopted Contaminated Land Policy restricts the development on the land by requiring that the land undergoes some level of assessment for land contamination, and/or remediation if required, where zoning changes are proposed or consent is required for the carrying out of any development. Council's adopted policy provides information on how these restrictions will be applied in accordance with provisions under relevant State legislation. It is recommended that persons relying on this certificate undertake their own assessment of the land's suitability for purposes that do not require development consent.

Land classed as C - Environmental Management Plan

The land to which this certificate relates has been used for purposes that have the potential to contaminate land. Council has been advised that the site has undergone some remediation of site contamination; however, remains subject to a site management plan to mitigate the risk posed by land contamination on the land. The site management plan may place restrictions on development or use of the land and may include ongoing obligations by the owner or occupier. Council's adopted Contaminated Land Policy restricts the development of the land by ensuring compliance with the applicable site management plan. Further investigation may be required where zoning changes are proposed or consent is required for the carrying out of any development. Council's adopted policy provides information on how these restrictions will be applied in accordance with provisions under relevant State legislation. It is recommended that persons relying on this certificate undertake their own assessment of the land's suitability for purposes that do not require development consent.

Land classed as D - Suitable for Limited Uses

The land to which this certificate relates has been used for purposes that have the potential to contaminate land. An assessment of site contamination has recommended that the land is suitable for certain types of use. Council's adopted Contaminated Land Policy restricts the development on the land by requiring that the land undergoes some level of assessment for land contamination, and/or remediation if required, where zoning changes are proposed or consent is required for the carrying out of development not consistent with the assessment of site contamination recommendations. Council's adopted policy provides information on how these restrictions will be applied in accordance with provisions under relevant State legislation. It is recommended that persons relying on this certificate undertake their own assessment of the land's suitability for purposes that are not consistent with the assessment of site contamination recommendations and do not require development consent.

Land classed as E - Unrestricted

The land to which this certificate relates has been used for purposes that have the potential to contaminate land. An assessment of site contamination has recommended that the land is now suitable for all types of use.

1B Notation to be included on s10.7 planning certificates issued under s10.7(5) of the EP&A Act – advice on such other relevant matters affecting the land of which Council may be aware.

Where the site is known to be subject to the UPSS regulation as regulated by Council.

The land is subject to the Protection of the Environment (Underground Petroleum Storage System) Regulation 2019.

Where the land has been used for specific purposes listed in this policy

The land has been used for the following purposes:

(See list from Appendix A for potentially contaminating land uses and activities that may be listed).

Where Council is in possession of contamination assessment reports.

Council has one or more reports on the assessment of site contamination on land to which this certificate relates.

Where Council is in possession of a Site Audit Statement.

Council has received a site audit statement that relates to this land.

Where remediation has been approved in accordance with SEPP (Resilience and Hazards).

Development consent has been granted to carry out Category 1 Remediation on the land.

Where remediation has been notified in accordance with SEPP (Resilience and Hazards).

Council has been notified that Category 2 remediation is to be carried out on the land.

2A Notation to be included on s10.7 planning certificate issued under s10.7(2) of the EP&A Act, as required by s59(2) of the CLM Act

Where Council has received a Site Audit Statement that relates to the land.

Council has received a Site Audit Statement that relates to the land.

Where the site has not been regulated by the CLM Act.

Council has not received notification that the land to which this certificate relates is not subject to an ongoing maintenance order under the Contaminated Land Management Act 1997.

Where the site has been declared significantly contaminated under the CLM Act.

Council has received notification that the land to which this certificate relates is significantly contaminated land under the Contaminated Land Management Act 1997.

Where the site is subject to a management order under the CLM Act.

Council has received notification that the land to which this certificate relates is subject to a management order under the Contaminated Land Management Act 1997.

Where the land is subject to a voluntary management proposal under the CLM Act.

Council has received notification that the land to which this certificate relates is subject to an approved voluntary management proposal under the Contaminated Land Management Act 1997.

Where the land is subject to an ongoing maintenance order under the CLM Act.

Council has received notification that the land to which this certificate relates is subject to an ongoing maintenance order under the Contaminated Land Management Act 1997.

2B Notation to be included on s10.7 planning certificates issued under s10.7(2) of the EP&A Act, as required by section 59(3) of the CLM Act

Where the land has been, but is no longer declared significantly contaminated under the CLM Act.

Council has received notification that the land to which this certificate relates was, but is no longer significantly contaminated land under the Contaminated Land Management Act 1997.

Where the land has been, but is no longer subject to a management order under the CLM Act

Council has received notification that the land to which this certificate relates was, but is no longer subject to a management order under the Contaminated Land Management Act 1997.

Where the land has been, but is no longer subject to a voluntary management proposal under the CLM Act.

Council has received notification that the land to which this certificate relates was, but is no longer subject to an approved voluntary management proposal under the Contaminated Land Management Act 1997.

Where the land has been, but is no longer subject to an ongoing maintenance order under the CLM Act.

Council has received notification that the land to which this certificate relates was, but is no longer subject to an ongoing maintenance order under the Contaminated Land Management Act 1997.

10 Rezoning

The rezoning of land is controlled by Part 2 of the EP&A Act. A planning proposal is prepared by the Council and submitted for consideration and determination by the Minister (gateway determination). A gateway determination will determine what further studies may be required.

Clause 6 of SEPP (Resilience and Hazards) requires the consideration of contamination before preparing a planning proposal that would have the effect of zoning or rezoning land. In order to assess the potential for land contamination, Council will need a thorough land use history for the site with reference to the potentially contaminated land uses and activities defined in this policy.

Preliminary Site Investigations may be required prior to the preparation of the planning proposal if such an investigation can reasonably be carried out. A planning proposal may also recommend that further contamination investigations are carried out.

Council must have regard to a Preliminary Site Investigation, where such an investigation has been carried out or it is practicable that such an investigation can be carried out, before making a planning proposal where:

- 1 The land is declared significantly contaminated land under Division 2, section 11 of the CLM Act;
- 2 An activity referred to in Appendix A is being carried out on the land;
- 3 Council's records show that an activity or use referred to in Appendix A has been carried out on the land; or
- 4 Council has incomplete records about the use of the land, and the land is proposed to be used for residential, educational, recreational, childcare or hospital purposes (either as a dominant or ancillary use), and during the periods not covered by those records it would, according to the uses formerly permitted on the land, have been lawful to carry out an activity referred to in Appendix A.

If a planning proposal proposes to change a land use zone in a local environmental plan:

- 1 For a particular parcel of land, it would not be appropriate to proceed with the planning proposal unless the land was proven suitable for all kinds of development that would be permitted in the new zone or for the development contemplated in the planning

- proposal or it could be demonstrated that the land could, and would, be remediated to make the land suitable; or
- 2 For a large area of land (Generalised Rezonings), the planning proposal should seek to adopt measures in the local environmental plan or development control plan to ensure that the potential for contamination and the suitability of the land for any proposed use are assessed before any development consent within the rezoned land is granted.

If a preliminary site investigation indicates that contamination would make land unsuitable for particular uses, and:

1. The land may be appropriately remediated for those uses, provisions are needed in the local environmental plan or development control plan to require the remediation before those uses can occur.
2. Where remediation may not be appropriate for those uses, either the planning proposal should not proceed or the range of permissible uses should be restricted in the local environmental plan for that land use zone; that is, the land use options should be reconsidered.

Information on contamination possibilities can be used to locate uses according to land suitability, for example, sensitive uses only being allowed in areas of low contamination probability.

11 Development Applications

11.1 Pre Development Application Meetings

A pre DA meeting may be held between Council staff and a potential applicant to discuss the matters that need to be considered under heads of consideration (Part 4, division 4.3 EP&A Act), the Local Environment Plan and the Development Control Plan for the Council.

A pre DA meeting is not a planning function covered by the EP&A Act, and any advice provided regarding land contamination matters is subject to the same limitations and liabilities as any other advice provided in a pre DA meeting.

Council's advice in a pre DA meeting should acknowledge:

- 1 That the potential for land contamination must be considered for each and every development application;
- 2 That any pre-existing reports, studies or site audit statement need be considered in terms of the specific development proposal;
- 3 Whether or not the pre-existing reports or studies will meet the reporting requirements of the Council at the time the development application is lodged.

After acknowledging the factors above, Council may be able to provide advice as to whether any further site assessment is required in order to assess the specific proposal. However, Council may not prejudice the assessment of suitability of the site for that proposed use. The provisions of the Development Assessment section 11.2 below may be applied regardless of any advice provided during any pre DA meeting.

11.2 Development Assessment consideration of contamination

Upon receipt of a Development Application in respect of any land, SEPP (Resilience and Hazards (ch 4.6) requires that land contamination must be considered. Any Statement of

Environmental Effects or environmental impact statement should address the historical uses of the land.

Land contamination shall be considered by Council's assessing officer by:

- 1 Referring to the LUIS to determine if any information is held by Council regarding the potential for land contamination;
- 2 Considering the past known uses for the land having regard to the potentially contaminating land uses listed in Appendix A, and if there is an opportunity confirm past uses through a records search or seeking relevant information from the proponent;
- 3 Consideration of evidence of possible land contamination or potentially contaminating activities discovered during a site inspection relating to the development application; or
- 4 Considering information received through the public consultation process.

Where land has been remediated in the past, the issue of land contamination must again be considered for any subsequent development application. Council will need to ensure that any remediation that has been carried out is appropriate in terms of the specific development proposal. Council will need to determine if the remediation standards meet the requirements of the proposed use, if the standards have changed since the time of the remediation or if there is any residual contamination that may cause concern for the new proposal.

Where the information held by Council is not sufficient to determine if the land is suitable for the proposed development, relevant information, studies, investigations and or reports will be requested to assist in making the determination.

Changes of use on contaminated land may proceed provided that:

- 1 The land is suitable for the intended use; or
- 2 Conditions are attached to the development consent to ensure that the subject land can and will be remediated to a level appropriate to its intended use prior to or during the development stage.

When considering the suitability of the land for development under Part 4, division 4.3 of the EP&A Act, the risk to health and the environment from contamination must be included in this assessment. This includes risks during the construction and operation of the development. The former includes work safety issues as well as the potential for construction to disturb contamination and cause off-site movement of chemicals.

The Planning Guideline sets out four stages of the contamination investigation process, however; more up to date references to the stages in the contaminated land process are found in ASC NEPM, and *Consultants reporting on contaminated land - Contaminated Land Guidelines* (2020) and all references to contamination investigations and reports should use those descriptions (refer to the Glossary Section).

If a development consent can be granted without the need to carry out any formal contaminated site investigation or remediation (for example, due the nature of the development or the circumstances of the potential contamination, such as contamination that is present under a building that it not being demolished), a Construction Environmental Management Plan (CEMP) is required. The purpose of a CEMP is to ensure appropriate environmental management practices are followed during the construction phase of a project, regardless of whether contamination is present or not. Where contamination is present, the CEMP needs to specifically consider the contamination and its potential impacts during the construction stage. Where there is a risk that physical evidence of past, potentially contaminating activities will be destroyed if the development goes ahead, a photographic

survey and oral history of the use of the land will required to form part of the CEMP and be submitted to Council for its records.

11.3 Triggers for preliminary site investigation

As a minimum requirement, a preliminary site investigation will be required when considering a development application for land on which Council:

- 1 Has knowledge of a potentially contaminating land use specified in Appendix A having occurred; or
- 2 Has reasonable grounds to believe the land may be contaminated because of the land's history, condition or other information known to Council,

and one or more of the following circumstances have occurred:

- 3 The circumstances suggest that the past use could reasonably have significantly contaminated the site;
- 4 The proposed development will involve any disturbance of soil including boring or trenching for foundations or services;
- 5 The contaminating activity that potentially caused contamination on the land involved illegal or unauthorised work;
- 6 The proposed development will include construction over land that may be contaminated;
- 7 The proposed development will interfere with groundwater; or
- 8 The potential contamination is from an underground storage tank (not including operating sites subject to the UPSS regulation).

The triggers specified above are in addition to the minimum assessment criteria set by the SEPP (Resilience and Hazards) in Section 4.6 (2), (3) and (4).

Note: land used for extensive agriculture should be assessed for site contamination where development applications relate to redevelopment in the vicinity of stock yards, stock dip or farm sheds where fuel or chemicals have been stored or handled.

11.4 Conditions of consent requiring remediation

Where a development will require remediation so that the site can be suitable for the proposed use the development consent may include conditions that require remediation and validation as well as a site management plan and site audit reports and statement. Such conditions may be included as Deferred Commencement Conditions.

Standard conditions that may be applied to the consent of any Development Application are in Appendix B Standard Conditions of Consent. Each application will be considered on its merit and the use, or modification, of any standard condition is at the discretion of Council in each circumstance.

11.5 Unexpected findings protocol

In circumstances where land contamination has not been able to be identified prior to a development being approved and contamination or infrastructure is uncovered during development, work should cease and Council should be advised immediately.

Please be aware that in managing any unexpected finding of contamination, the provisions of SEPP (Resilience and Hazards) apply and modification to the development consent or a new development consent application may need to be considered.

Council will impose a condition on all development consents to this effect.

12 Remediation

12.1 Remediation Overview and SEPP (Resilience and Hazards)

Remediation is any process that will remove, disperse, destroy, reduce, mitigate or contain contamination of land or eliminate or reduce any hazard arising from the contamination on land (including by preventing the entry of persons or animals to the land).

Remediation activities should be defined in a Remediation Action Plan (RAP), being a plan that sets out how a contaminated site can be made suitable for its intended use including methodology, clean-up criteria and validation procedures. An RAP must be prepared, or reviewed and approved by, a certified consultant (as per Section 13) in accordance with the applicable EPA guidelines.

The consultant will determine the most suitable way to remediate a site and prepare an RAP. SEPP (Resilience and Hazards) states as one of its objects:

...promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment

Where remediation of contaminated land is necessary, the remediation should be carried out (whenever reasonably possibly to do so) within the context of a proposed development to achieve the highest best use. If there is doubt over whether remediation must be carried out to ensure the land is suitable for the use, then it is preferred that remediation be carried out. Under SEPP (Resilience and Hazards) there are two categories of remediation Category 1 and Category 2.

Category 1 remediation requires development consent from Council and Category 2 does not. Criteria are specified for each, if the proposed remediation is considered to be Category 1 remediation, a development application must be made to the appropriate consent authority, generally Council. Category 2 remediation must be notified to Council prior to works commencing.

Please note that the EP&A Act requires compliance with SEPP (Resilience and Hazards) and provides provision by which Council may enforce compliance through the NSW Land and Environment Court.

12.2 Category 1 remediation (requires consent)

Ch 4.8 of SEPP (Resilience and Hazards) sets out the criteria for Category 1 remediation and each remediation proposal must consider whether or not it is Category 1 or 2.

The following information is provided in order to identify land that is referred to in SEPP (Resilience and Hazards) ch 4.8: (b) land declared to be a critical habitat, (c) likely to have a significant effect on a critical habitat or a threatened species, population or ecological community and (e) area or zone to which any classifications to the following effect apply under an environmental planning instrument.

SEPP (Resilience and Hazards, ch 4.8	Equivalent Bathurst Regional Council mapped land
(b) land declared to be a critical habitat,	Not mapped and would need to be assessed on a site by site basis
(c) critical habitat or a threatened species, population or ecological community	Not mapped and would need to be assessed on a site by site basis
(e) (i) coastal protection	Such an area or zone is not classified by the Bathurst Regional LEP 2014
(ii) conservation or heritage conservation	Refer to the Bathurst Regional LEP 2014 Heritage Maps
(iii) habitat area, habitat protection area, habitat or wildlife corridor	Such an area or zone is not classified by the Bathurst Regional LEP 2014
(iv) environment protection	Such an area or zone is not classified by the Bathurst Regional LEP 2014
(v) escarpment, escarpment protection or escarpment preservation	Such an area or zone is not classified by the Bathurst Regional LEP 2014
(vi) floodway	Refer to the Bathurst Regional LEP 2014 Flood Planning Maps
(vii) littoral rainforest	Such an area or zone is not classified by the Bathurst Regional LEP 2014
(viii) nature reserve	Such an area or zone is not classified by the Bathurst Regional LEP 2014
(ix) scenic area or scenic protection	Such an area or zone is not classified by the Bathurst Regional LEP 2014
(x) wetland	Such an area or zone is not classified by the Bathurst Regional LEP 2014

Note: any Environmental Planning Instrument (EPI) made or amended after the adoption of this policy should be considered when determining the remediation category under SEPP (Resilience and Hazards).

The above information does not limit the consideration of SEPP (Resilience and Hazards) CH 4.8 (a) designated development and (d) development for which another State environmental planning policy or a regional environmental plan requires development consent.

In accordance with ch 4.8 (f) of SEPP (Resilience and Hazards), it is considered that where Category 2 remediation will not or cannot be conducted in compliance with it and this policy (see section 12.3.2 below), the remediation should be considered as Category 1 remediation. An RAP will be required to be submitted with any application for Category 1 remediation.

In assessing a proposal for Category 1 remediation, the consequences of not carrying out the remediation will need to be considered and weighed up against the environmental impacts of carrying out the remediation. This involves an assessment of matters such as how the work will contribute to a net improvement in environmental quality, reduce health risks or promote the economic use and development of the land. Both the applicant and Council need to consider this issue.

However, Council must not refuse development consent for Category 1 remediation work unless Council is satisfied that there would be a more significant risk of harm to human health or some other aspect of the environment from the carrying out of the work than there would be from the use of the land concerned (in the absence of the work) for any purpose for which it may lawfully be used (ch 4.10 of SEPP (Resilience and Hazards)).

Standard conditions that may be applied to the consent of any Category 1 Development Application are in Appendix B (Standard Conditions of Consent). Each application will be considered on its merit and the use of or modification of any standard condition is at the discretion of the Council in each circumstance.

In addition to the matters listed for consideration under section Part 4, division 4.3 of the EP&A Act, the following issues may also be relevant when assessing a development application for Category 1 remediation:

- 1 Is the risk to the environment from the remediation actions greater than the consequences of not carrying out the remediation with respect to the matter that triggered Category 1 remediation?
- 2 Does the Remediation Action Plan meet the criteria set out in the *Consultants reporting on contaminated land - Contaminated Land Guidelines* (2020)?
- 3 Is the Environmental Management Plan acceptable?
- 4 Does the proposal require other approvals from regulatory authorities?
- 5 Is the remediation proposed to be supervised by a certified consultant (see section 13 for requirements)?
- 6 Is the proposal for validating the remediation adequate?
- 7 Are reporting and monitoring mechanisms and proposals adequate?

12.3 Category 2 remediation (carried out without consent, SEPP (Resilience and Hazards))

12.3.1 Notification

The Council will be notified in writing using the form available from the Council at the time of notification and consistent with notice requirements set out in ch 4.13 of SEPP (Resilience and Hazards).

A copy of the Remediation Action Plan is to be provided with the notification.

Council will acknowledge receipt of the notification and provide any relevant comments as soon as practicable prior to the proposed works start date if possible. The notice period for Category 2 remediation is 30 days, however SEPP (Resilience and Hazards) permits a lesser notice period in specific circumstances (ch 4.13).

Failure to notify Council within the prescribed timeframes or to carry out remediation in the manner described in this policy shall be considered as a contravention of Part 4, division 4.1 of the *Environmental Planning and Assessment Act 1979*.

12.3.2 Conduct of remediation

To reduce the potential for offsite impacts and to comply with the requirements of the POEO Act, Category 2 remediation shall be conducted in the following manner:

Communication

- 1 *Adjoining property owners must be notified in writing of the commencement date, duration and nature of the remediation activities at least 7 days prior to remediation activities commencing on site.*
- 2 *A sign identifying the contact details of the remediation contractor must be displayed at the site for the duration of the remediation activities. The sign must identify the phone numbers for the duration of the remediation activities.*

- 3 While the remediation activities are being undertaken the contractor must maintain a written record of any complaints received in relation to the conduct of the remediation. The written record must include each complainant's name and address, the time and date that each complaint was made, the nature of each complaint and the actions taken to address the complaint. The record may be requested by Council officers during the conduct of remediation, in which case the record must be made available to Council.

Managing Impacts

- 4 Remediation activities must not cause any environmental harm outside of the area nominated for remediation within the site. The remediation area is to be contained by a suitable barrier or fencing to prevent all unauthorised access. Erosion and sediment controls must be in place to prevent any soil leaving the remediation site. Runoff from areas of contaminated soil, whether in situ, stockpiled or in excavation pits, must not be permitted to leave the site without relevant testing or treatment.
- 5 Remediation must not create visible dust that extends beyond any site boundary.
- 6 Remediation activities must not cause offensive noise (as defined by POEO Act) and avoid the production of vibration that may impact nearby properties.
- 7 Remediation activities must be managed to ensure that dust, odour, gases or fumes are not emitted beyond the boundary of the remediation site. Appropriate monitoring equipment must be used to demonstrate compliance with the condition.

Dealing with Waste

- 8 All liquid and solid waste must be classified in accordance with the Protection of the Environment (Waste) Regulation 2014 and related guidelines.
- 9 All waste transported from the remediation site must be covered in a vehicle suitable for that waste material. There must be no tracking of soil onto public roads.
- 10 Any receiver of waste material must be properly licensed by the EPA to receive that waste. If a non-licensed premises is intended to receive waste from the site then an approved notice within the meaning of s143(4) of the POEO Act (s143 notice) must be supplied prior to removal of the material from the remediation site.
- 11 Details of material removed including volume, mass, classification, destination and any s143 notices are to be included in the validation report.
- 12 All waste transport routes must avoid where possible all sensitive land uses such as residential areas, schools, preschools, etc., avoid bus routes and particularly school bus pick up and drop off periods.

Validation report

- 13 A validation and summary report shall be provided to Council along with the notice of completion required under ch 4.15 of SEPP (Resilience and Hazards) to confirm that the remediation has been carried out in accordance with the requirement of SEPP (Resilience and Hazards) and provide a statement regarding the suitability of the site for use. The validation report must be prepared in accordance with Council's Contaminated Land Policy, the Managing Land Contamination Planning Guidelines (1998), relevant EPA Guidelines and the National Environmental Protection (Assessment of Site Contamination) Measure (1999, amended in 2013). Please note the requirements specified in Council's Contaminated Land Policy relating to consultants reporting and Site Audits.

Site management plan

- 14 *If the validation report recommends or requires the implementation of an ongoing site management plan or a site management plan is otherwise required, assistance must be provided to Council (including by executing relevant documents) to enable registration of a restriction or covenant requiring compliance with the site management plan that must be registered on the title under section 88E of the Conveyancing Act 1919 or section 29(3) of the Contaminated Land Management Act 1997. Council is to be named as the only party able to vary or release the restriction or covenant.*
- 15 *If the validation report recommends or requires the implementation of an ongoing site management plan or a site management plan is otherwise required, the site management plan must be prepared in consultation with Council in regard to how land use will be restricted, compliance with any ongoing monitoring and responses to unsatisfactory monitoring results. Such a Site Management plan may be required to be subject to a Site Audit in accordance with Part 4 Contaminated Land Management Act 1997.*
- 16 *A restriction or covenant requiring compliance with the site management plan must be registered on the title under section 88E of the Conveyancing Act 1919 or section 29(3) of the Contaminated Land Management Act 1997.*
- 17 *Assistance must be provided to Council (including by executing relevant documents) to enable registration (without unreasonable delay) of the restriction or covenant and Council is to be named as the only party able to vary or release the restriction or covenant.*

12.4 Underground Storage Tanks and Underground Petroleum Storage Systems

The presence of an underground storage tank (UST) may not always be associated with an Underground Petroleum Storage System (UPSS) within the meaning of the *Protection of the Environment (Underground Petroleum Storage Systems) (UPSS) Regulation 2019*. In particular USTs used for material that is waste or is not petroleum or if the UST has not been operated since before 1 June 2008 may not necessarily be regulated by the UPSS Regulation.

For the removal of doubt, the removal of any underground storage tank (UST) used for the storage of liquids that in themselves constitute potential contaminants, will be considered to be remediation for the purpose of SEPP (Resilience and Hazards) only if validation of surrounding soils is carried out, and groundwater contamination is considered. Validation of UST removal or replacement is a requirement for sites that come under the UPSS regulation.

Where no validation sampling and laboratory analysis (in accordance with appropriate guidelines) is carried out, the site will be considered unremediated and will require suitable validation sampling before any determination under SEPP (Resilience and Hazards) can be made. However, to carry out the removal of a UST without validation is considered to be development that requires consent.

The modification of an Underground Petroleum Storage System as defined in clause 3 of the *UPSS Regulation 2019* is deemed to be development that requires consent.

12.5 Validation reports and notice of completion of remediation

The Planning Guideline highlights the importance of validation reporting to remediation process. Requirements are outlined in ASC NEPM, and the Consultants reporting on contaminated land - Contaminated Land Guidelines (2020). The latter outlines requirements of a validation report and states that:

“The site remedial work must be ‘validated’ to ensure that the objectives stated in the remedial action plan have been achieved once remediation is complete including whether the site is suitable for the proposed use. A report detailing the results of the site validation is required.”

The UPSS Regulation 2019 requires that a validation report be submitted in relation to modification and decommissioning of UPSS (ccl 13 and 15).

SEPP (Resilience and Hazards) requires a Notice of Completion under ch 4.14. The Notice of Completion criteria is specified in ch 4.15.

For the purpose of this policy, a validation report is not considered to be the same as a Notice of Completion.

Following any remediation, it is required that:

- 1 A validation report be provided within 30 days of completion of work (except where legislation or a development consent permits another time period).
- 2 The Notice of Completion may be incorporated into the Summary Report, as specified in section 13.4, where it is provided with a complete validation report.

13 Contaminated Land Consultants

13.1 Reports

All reports regarding the assessment of site contamination, as set out in the Planning Guideline and the ASC NEPM, must be prepared by, or reviewed and approved by, a certified consultant (see section 13.2) and be completed in accordance with the Consultants reporting on contaminated land - Contaminated Land Guidelines (2020).

A report may be provided to Council as:

- 1 A validation report for Category 2 remediation;
- 2 A validation report required by clauses 13 and 15 of the UPSS Reg following modification or decommissioning of a UPSS;
- 3 A contamination assessment report in order for Council to carry out its planning function in relation to development applications or compliance with development consent; or,
- 4 A report intended to provide information in order to amend the LUIS status.

Council may need to determine whether or not a report meets the requirements of relevant standards and may enforce compliance with the relevant standards of reporting if necessary.

If a report is to be used for DA assessment or for amending the LUIS, whether or not it was provided in the first instance for that or another purpose, Council will only consider that report if it meets the reporting standards of this policy. Council may not necessarily advise at the time of submission whether a report is considered to be satisfactory for another purpose at a later time.

If Council does consider that it cannot rely on a particular report because it does not meet the standards of this policy, it may request that another report be submitted to address the particular concern.

The below matters set out in this section of the policy below will be considered by Council in determining if any given report should be relied upon.

Any report received may be subject to review by Council staff and conclusions and recommendations will not necessarily be accepted or adopted by Council. Before any determination is made that relies on any report submitted to Council at any time; that report may be required to be reviewed by a Site Auditor, subject to the policy statement regarding Site Audits.

All reports must:

- 1 Reference Council's policy and specifically refer to any conditions for remediation;
- 2 Be accompanied by a Summary Report as defined in this Policy in section 13.4.
- 3 Not have liability exclusions that prevent Council from relying on the information provided for carrying out its functions including maintaining and sharing information in accordance with this policy.

Reports provided to Council should contain factual information and avoid subjective opinion, language or analysis that has the potential to mislead Council or a third party to whom the report may be disclosed under s10.7 of the EP&A Act.

13.2 Certification of consultant

All reports submitted to Council for the purposes of fulfilling the land use planning process under the EP&A Act, SEPP (Resilience and Hazards) and the UPSS regulation are to be prepared, or reviewed and approved, by a consultant who is certified under a contaminated land consultant certification scheme recognised by the EPA, which are identified on their website: <https://www.epa.nsw.gov.au/your-environment/contaminated-land/managing-contaminated-land/engaging-consultant>

The front cover of a report submitted to Council is to include the details of the consultant's certification.

Any report that does not include the consultant's certifications details will not be accepted.

Any report provided to Council following the adoption of this policy that does not meet the requirements set out above may not be recognised for the purpose of any subsequent Development Application.

13.3 Insurance

Consultants must carry professional indemnity insurance that specifically identifies contamination and pollution coverage to a value of at least \$10,000,000.

13.4 Summary Report

Council requires that any Assessment of Site Contamination report be accompanied by a summary report which provides a succinct overview of the site investigation or remediation on the parcel of land. The report will assist Council, landholders, purchasers and neighbours in reviewing matters associated with that land. A summary report cannot be relied upon solely for decision making in the land use planning process.

A summary report shall be one A4 page with one A4 page site plan or map. It should be completed on the template available from Council (see Appendix C for an example template). The report will provide a summary of the key facts, and provide a reference to the location of the information in the main report, as follows:

- 1 Consultant's name and contact details;
- 2 Real property description (Lot, DP, address);
- 3 Main areas of concern;
- 4 Source of contamination;
- 5 Dates of investigations and remediation;
- 6 Nature and extent of contamination:
 - a Key contaminants involved;
 - b Highlight concentrations e.g. highest, % of samples above HSL, HIL etc.;
 - c On the plan, an estimate of the lateral extent and depths;
 - d A cross section if useful;
- 7 What remediation was carried out including waste removed;
- 8 What contamination remains and where;
- 9 Brief recommendations of next steps;
- 10 Recommendation of suitability; and
- 11 Sign off, certification details and reference to full report.

Council shall be granted the right to copy summary reports for the use of owners or developers of the subject land or adjoining land.

14 Site Auditing

A statutory site audit in accordance with s47 *Contaminated Land Management Act 1997* may be required as a condition of consent or as partial notice of completion of remediation work (ch4.15 SEPP (Resilience and Hazards)).

The Planning Guideline states that a Site Audit can be requested when the planning authority:

- *believes on reasonable grounds that the information provided by the proponent is incorrect or incomplete;*
- *wishes to verify the information provided by the proponent adheres to appropriate standards, procedures and guidelines;*
- *does not have the internal resources to conduct its own technical review."*

Under this policy, a Site Audit will be required for reports on sites where:

- *Site specific investigations threshold levels are used in a Tier 21 risk assessment;*
- *A Tier 3 risk assessment is relied upon for determination of suitability;*
- *A groundwater investigation is not carried out where underground tanks or infrastructure has been identified;*
- *An Environmental Management Plan is to be imposed;*
- *Council does not accept the consultant's recommendation; or,*
- *Council considers it necessary.*

¹ Details of what is involved in Tier 2 and 3 risk assessments can be found in the NEPM Schedule B4 Section 2.4

A Site Audit may be requested at any stage of the investigation (see Glossary) to assist Council in making its determinations under SEPP (Resilience and Hazards), however, Council will not require a Site Audit Report (SAR) and Site Audit Statement (SAS) at every stage without cause.

Site Audits can be undertaken for various purposes throughout the contaminated land process. The Auditor must specify the purpose on the SAS as one of the following:

- A1 To determine land use suitability
- A2 To determine land use suitability subject to compliance with either an active or passive environmental management plan
- B1 To determine the nature and extent of contamination
- B2 To determine the appropriateness of:
 - an investigation plan
 - a remediation plan
 - a management plan
- B3 To determine the appropriateness of a site testing plan to determine if groundwater is safe and suitable for its intended use as required by the Temporary Water Restrictions Order for the Botany Sands Groundwater Resource 2017
- B4 To determine the compliance with an approved:
 - voluntary management proposal or
 - management order under the Contaminated Land Management Act 1997
- B5 To determine if the land can be made suitable for a particular use (or uses) if the site is remediated or managed in accordance with a specified plan.

It is essential that the consent conditions identify the purpose of the audit where one is required.

15 Environmental Management Plans

An Environmental Management Plan (EMP) is required when contamination is to remain on site. The EMP should be developed in consultation with Council to determine that it can be reasonably complied with and enforced. It should make provisions for Council to carry out checks of relevant compliance.

Further information of the use and need for an EMP can be found in section 3.4.6 (Environmental management plans) in Contaminated Land Management Guidelines for the NSW Site Auditor Scheme (3rd edition) (NSW EPA, 2017).

Council may charge a fee for inspections or other services in relation to the monitoring of compliance of the EMP in accordance with provisions of the *Local Government Act 1993*.

EMPs should be provided to Council along with any other report that recommends such a plan. The existence of an EMP will be noted on s10.7 planning certificates and included in the LUIS.

Where there is an EMP, and where Council is able to do so, a standard condition of consent will require the registration of a covenant on title requiring compliance with the EMP. This shall be a standard condition of consent for all development applications and Category 1 remediation where there is an EMP. It is a requirement relating to the conduct of Category 2 remediation under this policy.

Council will endeavour to have any EMP that Council is aware of, or relating to a consent condition predating this policy, registered on title by the land owner or relevant party.

16 Duty to report contamination to the NSW EPA

The duty to report contamination to the NSW EPA is a requirement under Section 60 of the *Contaminated Land Management Act 1997*, with updates provided in the *Contaminated Land Management Amendment Act 2008*. The following people are required to report contamination as soon as practical after they become aware of any contamination that meets the triggers for the duty to report, as outlined in the “*Guidelines on the Duty to Report Contamination under the Contaminated Land Management Act 1997*” (2015):

- Anyone whose activities have contaminated land
- An owner of land that has been contaminated.

It should be noted that although the above people have the duty to report contamination, anyone can at any time report suspected contamination to the NSW EPA.

17 Contaminated land standards for pollution

Individual pollution incidents, illegal dumping or spills of hazardous materials do not necessarily constitute contamination. Pollution incidents and waste offences should primarily be managed under the legislative framework set out in Chapters 4, 5, 7 and 8 of the *Protection of the Environment Operations Act 1997* and Part 6 of the *Environmental Planning and Assessment Act 1979*.

Such offences include but are not limited to:

- Filling land without consent under the EP&A Act;
- Filling land with material that is not approved i.e. where a development consent specifies that imported fill must meet certain standards;
- Water or land pollution as described in the POEO Act; or
- Unlawfully use of land for waste facility ss143,144 POEO Act

Waste is defined in the POEO Act and may include any type of soil with or without contaminants.

When dealing with matters of waste or pollution, it is not appropriate to use the ASC NEPM as the basis for investigation. Waste classification (as per EPA guidelines) should be used. When considering clean-up criteria for pollution incidents, illegal dumping or spills of hazardous materials, the original state of the land or “background” levels of contaminants should be used as the clean-up goal.

Only if the land cannot be returned to its original condition or the pollution or waste activities are deemed to be no longer current, may it be considered a potentially contaminated site.

18 The Protection of the Environment Operations (Underground Petroleum Storage System (UPSS) Regulation (2019) enforcement

The Protection of the Environment Operations (Underground Petroleum Storage Systems) Regulation 2019 requires that the local Council is to be advised of certain matters including

the validation reports for UPSS removal or modification and the notification of environmental harm.

All reports for validation of remediation under the UPSS regulation must meet the requirements for consultants' reporting set out in this policy, and in Consultants reporting on contaminated land Contaminated Land Guidelines (2020), including consultant certification (see section 13) and the provision of summary reports.

The requirement of the UPSS regulation is generally to ensure that:

- 1 Infrastructure and equipment are properly designed installed, commissioned and operated;
- 2 A secondary loss detection system is in place; and,
- 3 An environmental protection plan is in place.

Council will consider the requirements of the UPSS regulation in regard to Development Applications for removal, modification or installation of underground petroleum storage systems.

The regulatory authority (formerly the NSW EPA, now Council) has the right under the POEO Act to enter the property and request to view records at any reasonable time.

Council may schedule routine inspections of UPSS sites to ensure compliance with the regulation. A fee will be charged in line with Council's Schedule of Fees and Charges. Council is able to issue penalty infringement notices for any non-compliance with the regulations.

Appendix A - potentially contaminating land uses

The following land use definitions generally relate to the land use definitions used in the *Standard Instrument—Principal Local Environmental Plan*. Additional definitions and comments are included in the table to assist in identifying the potential to contaminate land from that land use.

Should only be used where specific information about the site is available

* Table 1 activities where a Preliminary Investigation is mandatory for change of use DA.

See cl 7(20 & (4) SEPP55.

Grouping	Potentially contaminating land use	Definition or comments
Agriculture	Aquaculture	Cultivating or keeping fish or marine vegetation for commercial purposes; Fisheries Management Act 1994
	*Extensive agriculture [#]	Used to capture farm shed activities such as chemical storage and handling
	Food manufacturing	All types of food and drink manufacturing that may have included boilers or cooking, needs to be at reasonable scale
	*Intensive livestock agriculture	Feed lots, piggeries, dairies, concentrated waste products Designated development triggers
	*Intensive plant agriculture	Vineyards, orchards, irrigated cropping, turf farming
	Livestock processing industries	Production of products derived from the slaughter of animals (including poultry) or the processing of skins or wool of animals, and includes abattoirs, knackeries, tanneries, wool scours and rendering plants.
	Rural supplies	Store large quantities of chemicals but should be only applied where chemicals are decanted or repackaged on site
	*Sheep and cattle dips	Public or private facilities
	Stock and sale yards	Associated with waste, wash-down facilities and stock dips or other pest treatments
	*Tanning and associated trades	
Asbestos	Asbestos Disposal [#]	Where asbestos containing material has been buried for permanent disposal
	*Asbestos production and disposal	Includes mining and asbestos product manufacturing
	Demolition without asbestos clearance	A building with significant ACM demolition without providing an asbestos clearance
Chemical	*Acid/alkali plant and formulation	
	Battery manufacture, storage and recycling	Commercial scale storage of used batteries
	Chemical storage facilities	Includes the bulk storage and handling of chemical in association with other activities

	*Chemicals manufacture and formulation	
	*Defence works	UXOs, fuels and chemical use or storage
	*Dry cleaning establishments	
	Hospitals	Incinerators and boilers, radioactive wastes
	Laboratory	Place equipped to conduct scientific experiments, tests, investigations, etc., or to manufacture chemicals, medicines, or the like. Includes large scale photographic labs etc.
	*Paint formulation and manufacture	
	Paper and printing works	Commercial printeries with significant stores of ink and solvents
	*Pesticide manufacture and formulation	
	*Wood preservation	
Fuel	Liquid fuel depots	
	*Oil production and storage	Oil refineries
	*Service stations	
	Store and dispense 450l or more of fuel or oils	Fuel storage on land where primary land use is not otherwise listed
Industry	Cement works	
	*Drum re-conditioning works	
	*Electrical manufacturing (transformers)	
	*Electroplating and heat treatment premises	
	*Engine works	Manufacture of engines
	*Explosives industry	Includes explosives magazines, ammunition and fireworks manufacture and testing.
	*Gas works	
	Heavy industrial storage establishment	Storage of goods, materials, plant or machinery for commercial purposes
	Heavy industrial workshops and metal fabrication	Includes welding, sand blasting, spray painting
	*Iron and steel works	
	*Metal treatment	
	*Mining and extractive industries	Including mineral or ore processing or coal washing etc.
	Paper pulp or pulp products industries	

	Pet food manufacturing	As distinct from food manufacturing
	*Power stations	
	Sawmill or log processing works	Relating to often being off grid using steam or liquid fuel driven machinery, also drying kilns and use of pesticides
	Small engine service and repairs	Lawnmowers and other small engine not considered motor vehicles
	*Smelting and refining	
	Storage of plant and equipment	Generally informal storage of equipment that may lead to land contamination
	Vehicle body repair workshops	Panel beaters and spray painting
Transport	*Air transport facilities	Includes heliports and all ancillary buildings
	Emergency services facilities	Police, Ambulance Fire, SES have often included fuel storage
	Freight transport facility	
	Motor vehicle service and repairs	Including cars sales yards and tyre shops
	*Railway yards	
	Truck or transport depots	Place used for the servicing and parking of trucks, earthmoving machinery and the like
	Vehicle washing	Where involved in truck washing or engine degreasing for the public or as a standalone operation
Waste	Contaminated soil and groundwater treatment works	
	Junk yard	land used for the collection, storage, abandonment or sale of scrap metals, waste paper, bottles or other scrap materials or goods, or land used for the collecting, dismantling, storage, salvaging, or abandonment of cars or other vehicles or machinery or for the sale of their parts.
	*Landfill sites	Sites use for the disposal of waste
	Oil Recycling	
	*Scrap yards	
	Sewage treatment plants	
	Site used for illegal waste disposal	
	Use of uncertified fill	Land has been levelled or reshaped with fill material that has not been certified as suitable and or the filling has not been approved
	*Waste storage and treatment	

Other	Commercial or industrial fixed plant with liquid fuels, e.g. generator sets.	
	Site that is impacted by off-site contamination [#]	Sites that would require contamination assessment due to the impacts of contamination derived from land that is being regulated by the EPA under Part 3 of the CLM Act.
	Site that includes large electrical transformers or switch gear	Including electrical substations and transformers or switchgear for large industrial premises.
	Rifle or shooting range	
	Land Identified through the Sunny Corner contaminated land investigation	

Appendix B: Standard Conditions of Consent

Development Applications for contaminated sites

Request for information:

Prior to determination of development application if additional information is required, one or more of the following may be relevant.

Preliminary investigations

A preliminary contaminated site investigation is required to be submitted prior to further assessment of DA Number/year. The preliminary investigation shall be carried out in accordance with Council's Contaminated Land Policy, the Managing Land Contamination Planning Guideline (1998), relevant EPA Guidelines, in particular noting the Consultants Reporting on Contaminated Land - Contaminated Land Guidelines (2020), and the Assessment of Site Contamination NEPM (1999 as amended 2013). Please note the requirements specified in Council's policy for the use of certified consultants to prepare, or review and approve assessments and reports (refer to the NSW EPA website for currently approved certification schemes), and for Site Audits.

Detailed investigations

A detailed contaminated site investigation is required to be submitted prior to further assessment of DA Number/year. The detail Investigation shall be carried out in accordance with Council's Contaminated Land Policy, the Managing Land Contamination Planning Guideline (1998), relevant EPA Guidelines and the Assessment, in particular noting the Consultants Reporting on Contaminated Land - Contaminated Land Guidelines (2020), and the Assessment of Site Contamination NEPM (1999 as amended 2013). Please note the requirements specified in Council's policy for the use of certified consultants to prepare, or review and approve assessments and reports (refer to the NSW EPA website for currently approved certification schemes), and for Site Audits. It should be noted that several investigations and associated reporting such as delineation, site specific risk assessments and monitoring may be needed in this stage of the process depending on the outcome of the previous stage.

Deferred Commencement or prior to Construction Certificate:

The following conditions may be applied to ensure that the land is remediated in accordance with the development proposal and the information provided in relevant contamination assessments. Each application will be considered on its merit and the use, or modification, of any of the standard condition is at the discretion of Council in each circumstance. Conditions may be tailored to meet the specific circumstance of the development.

Remediation Action Plans

A Remediation Action Plan (RAP) is to be prepared that addresses the contamination identified in [report(s) details Title, Author, Date] and sets out how the site can be made suitable for its intended use including methodology, clean-up criteria and validation procedures. The RAP must be prepared in accordance with Council's Contaminated Land Policy, the Managing Land Contamination Planning Guideline (1998), relevant EPA Guidelines, in particular noting the Consultants Reporting on Contaminated Land - Contaminated Land Guidelines (2020), and the Assessment of Site Contamination NEPM (1999 as amended 2013). Please note the requirements specified in Council's policy for the use of certified consultants to prepare, or review and approve assessments and reports

(refer to the NSW EPA website for currently approved certification schemes), and for Site Audits .

[A Site Audit statement stating that the land CAN BE MADE SUITABLE (Section B) for the proposed development as [insert SAS land use category of the development] land use shall be provided to Council. Please note the requirements specified in Council's policy for site audits.]

[Any remediation carried out prior to commencement is subject to the requirements to either obtain consent or notify Council in accordance with SEPP (Resilience and Hazards) and Council's policy.]

Validation

A validation report shall be provided to Council along with the summary report and notice of completion required under ch 4,14-15of SEPP (Resilience and Hazards) to confirm that the remediation has been completed generally in accordance with the RAP and that the site is suitable for the development. The validation report must be prepared in accordance with Council's Contaminated Land Policy, the Managing Land Contamination Planning Guideline (1998), relevant EPA Guidelines, in particular noting the Consultants Reporting on Contaminated Land - Contaminated Land Guidelines (2020), and the Assessment of Site Contamination NEPM (1999 as amended 2013). Please note the requirements specified in Council's policy for the use of certified consultants to prepare, or review and approve assessments and reports (refer to the NSW EPA website for currently approved certification schemes), and for Site Audits

Any recommendations identified in the validation report shall be binding on the development.

Construction Environmental Management Plan

Prior to [ISSUE OF A CONSTRUCTION CERTIFICATE, OR; COMMENCEMENT OF REMEDIATION], a Construction Environmental Management Plan (CEMP) for the [DEVELOPMENT, OR; REMEDIATION] must be provided to Council for approval. The CEMP must include management strategies for the potential risks to on-site workers and visitors, off-site receptors, and the environment from the contamination identified. The environmental site management measures must remain in place and be maintained throughout the period of the [DEVELOPMENT, OR; REMEDIATION], until completion of [DEVELOPMENT, OR; REMEDIATION AND UNTIL THE REMEDIATION HAS BEEN VALIDATED]. The CEMP must address all environmental aspects of the development's construction phases, and include where relevant, but not be limited to, the following:

- a. Asbestos Management Plan*
- b. Project Contact Information*
- c. Site Security Details*
- d. Timing and Sequencing Information*
- e. Site Soil and Water Management Plan*
- f. Noise and Vibration Control Plan*
- g. Dust Control Plan*
- h. Air Monitoring*
- i. Odour Control Plan*
- j. Health and Safety Plan*
- k. Waste Management Plan*
- l. Incident Management Contingency*
- m. Unexpected Finds Protocol*

The CEMP must be kept on site from the commencement and for the duration of the proposed works, and must be available to Council officers upon request. Where development will destroy evidence of potential contamination, a photographic survey and

oral history of the use of the land is to be submitted to Council for its records prior to any works commencing on the site.

Note for assessor: Depending on the conditions of the site, council may wish to include specific requirements for the CEMP. Further, CEMPs can relate to other aspects of environmental management during construction, which can be added to this template condition.

Environmental Management Plans

An Environmental Management Plan, if required to make the site suitable for the development, shall be submitted to Council for approval. The plan shall address what land use restrictions are required, any ongoing monitoring requirements, what responses should be made to any unsatisfactory monitoring results, and criteria for ending monitoring. The Site Management Plan must be prepared in accordance with Council's Contaminated Land Policy, the Managing Land Contamination Planning Guideline (1998), relevant EPA Guidelines, in particular noting the Consultants Reporting on Contaminated Land - Contaminated Land Guidelines (2020), and the Assessment of Site Contamination NEPM (1999 as amended 2013). Please note the requirements specified in Council's policy for the use of certified consultants to prepare, or review and approve assessments and reports (refer to the NSW EPA website for currently approved certification schemes), and for Site Audits.

A restriction or covenant requiring compliance with the approved site management plan must be registered on the title under section 88E of the Conveyancing Act 1919 or section 29(3) of the Contaminated Land Management Act 1997. Assistance must be provided to Council (including by executing relevant documents) to enable registration (without unreasonable delay) of the restriction or covenant. Council is to be named as the only party able to vary or release the restriction or covenant.

Site Audit

A Statutory Site Audit is required in accordance with Part 4 Contaminated Land Management Act 1997. The purpose of the Audit is to: [KEEP THE RELEVANT PURPOSE(S) AND REMOVE OTHERS(B3 and B4 are not relevant to Council and have been excluded)]:

- *A1 To determine land use suitability for [insert land use from the SAS land use categories, or a specific development plan]*
- *A2 To determine land use suitability for [insert land use from the SAS land use categories, or a specific development plan] subject to compliance with either an active or passive environmental management plan*
- *B1 To determine the nature and extent of contamination*
- *B2 To determine the appropriateness of:*
 - *an investigation plan*
 - *a remediation plan*
 - *a management plan*
- *B5 To determine if the land can be made suitable for a particular use (or uses) [define uses from the SAS land use categories, or a specific development plan] if the site is remediated or managed in accordance with a specified plan.*

A Site Audit Report and Site Audit Statement (SAR / SAS) must be provided to Council. Please note the requirements specified in Council's policy for Site Audits.

SAS land use categories are found on the Site Audit Statement template available on the EPA website <https://www.epa.nsw.gov.au/your-environment/contaminated-land/site-auditor-scheme>.

Recommended Conditions for ongoing site management:

All construction, development and use shall be bound by the recommendations of the validation report or any Environmental Management Plan coming from the remediation of the site.

Category 1 remediation:¹

- 1 Remediation activities shall be carried out in accordance with the Remediation Action Plan (RAP) [insert details of RAP: title, author, date]. Any variation to the RAP must be communicated to Council before work is commenced to determine if any proposed variation will require reassessment under the EP&A Act.*
- 2 Remediation work is to be carried out by a suitably qualified and experienced contractor under the guidance of a certified contaminated land consultant who meets the requirements of Council's Contaminated Land Policy in relation to reporting, certification and insurances.*
- 3 A site auditor shall oversee the remediation [and where practicable be the same site auditor that has reviewed the RAP]. A Part A site audit statement in accordance with Part 4 Contaminated Land Management Act 1997 shall be provided to Council for the validation report and any Environmental Management Plan stating that the land is suitable for the proposed development as [insert SAS land use category of the development] land use if a Part A1 Audit, and that the land is suitable for the proposed development as [insert SAS land use category of the development] land use, subject to compliance with either an active or passive environmental management plan, if a Part A2 Audit.*
- 4 A Construction Certificate shall be required for any structure required to carry out the remediation.*

Community consultation

- 5 Adjoining property owners must be notified in writing of the commencement date of the remediation activities at least 7 days prior to remediation activities commencing on site.*
- 6 A sign identifying the contact details of the remediation contractor must be displayed at the site for the duration of the remediation activities. The sign must identify the phone numbers for the duration of the remediation activities.*
- 7 While the remediation activities are being undertaken the contractor must maintain a written record of any complaints received in relation to the conduct of the remediation. The written record must include each complainant's name and address, the time and date that each complaint was made, the nature of each complaint and the actions taken to address the complaint. The record may be requested by Council officers during the conduct of remediation, in which case the record must be made available to Council.
Reason: So that any impacts on the surrounding environment are mitigated in a timely manner.*
- 8 Any complaint received by the contractor in relation to the remediation activities must be notified to Council during Council business hours as soon as possible and in all cases no later than 2 business days following the date that the complaint was received by the contractor.*

¹ Cat 1 remediation shall not be approved without a satisfactory RAP and Site Audit if deemed necessary.

Managing Impacts

- 9 *Remediation activities must not cause any environmental harm outside of the area nominated for remediation within the site. The remediation area is to be contained by a suitable barrier or fencing to prevent all unauthorised access. Erosion and sediment controls must be in place to prevent any soil leaving the remediation site. Runoff from areas of contaminated soil, whether in situ, stockpiled or in excavation pits, must not be permitted to leave the site without relevant testing or treatment.*
- 10 *Remediation must not create visible dust that extends beyond any site boundary.*
- 11 *Remediation activities must not cause offensive noise (as defined by POEO Act) and avoid the production of vibration that may impact nearby properties.*
- 12 *Remediation activities must be managed to ensure that dust, odour, gases or fumes are not emitted beyond the boundary of the remediation site. Appropriate monitoring equipment must be used to demonstrate compliance with the condition.*

Dealing with Waste

- 13 *All liquid and solid waste must be classified in accordance with the Protection of the Environment (Waste) Regulation 2014 and related guidelines. Waste classification reporting must follow the requirements in the Consultants Reporting on Contaminated Land - Contaminated Land Guidelines (2020).*
- 14 *All waste transported from the remediation site must be covered in a vehicle suitable for that waste material. There must be no tracking of soil onto public roads.*
- 15 *Any receiver of waste material must be properly licensed by the EPA to receive that waste. If a non-licensed premises is intended to receive waste from the site then an approved notice within the meaning of s143(4) of the POEO Act (s143 notice) must be supplied prior to removal of the material from the remediation site.*
- 16 *Details of material removed including volume, mass, classification, destination and any s143 notices are to be included in the validation report.*
- 17 *All waste transport routes must avoid where possible all sensitive land uses such as residential areas, schools, preschools, etc., as well as bus routes and particularly school bus pick up and drop off periods.*

Validation report

- 18 *A validation report along with the summary report shall be provided to Council along with the notice of completion required under ch 4.14-15 of SEPP (Resilience and Hazards) to confirm that the remediation has been carried out in accordance with the requirements of this consent and SEPP (Resilience and Hazards) and provide a statement regarding the suitability of the site for use in accordance with the generic land use settings identified by the National Environmental Protection (Assessment of Site Contamination) Measure (1999 amended in 2013). The validation report must be prepared in accordance with Council's Contaminated Land Policy, the Managing Land Contamination Planning Guideline (1998), relevant EPA Guidelines in particular noting the Consultants Reporting on Contaminated Land - Contaminated Land Guidelines (2020), and the Assessment of Site Contamination NEPM (1999 as amended 2013). Please note the requirements specified in Council's policy for the use of certified consultants to prepare, or review and approve assessments and reports (refer to the NSW EPA website for currently approved certification schemes), and for Site Audits.*

Environmental management plan

- 19 *If the validation report recommends or requires the implementation of an ongoing environmental management plan (,or a site management plan is otherwise required, the site management plan must be prepared in consultation with Council in regard to*

how land use will be restricted, compliance with any ongoing monitoring and responses to unsatisfactory monitoring results.

- 20 *A restriction or covenant requiring compliance with the site management plan must be registered on the title under section 88E of the Conveyancing Act 1919 or section 29(3) of the Contaminated Land Management Act 1997. Assistance must be provided to Council (including by executing relevant documents) to enable registration of the restriction or covenant. Council is to be named as the only party able to vary or release the restriction or covenant.*

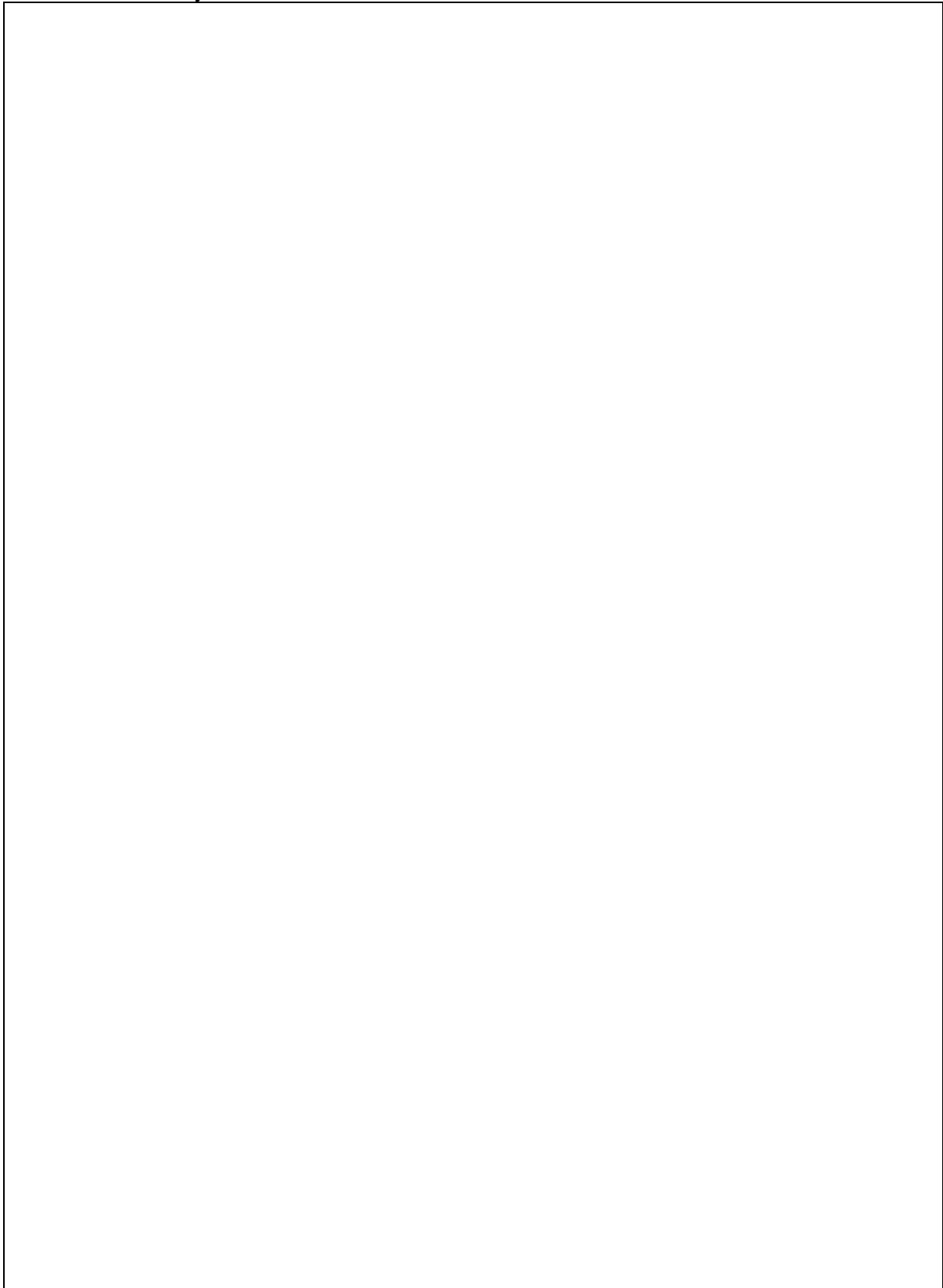
Appendix C Summary Report Template

Contaminated Land Management Summary Document - Pursuant to Bathurst Regional Council Contaminated Land Policy

Real property Description and address				
Address	Lot	DP	Parish	County
Dates of investigation or remediation				
Main Areas of Concern				
e.g. fuel tanks, waste area, storage of chemicals, processing area				
Notable contaminant concentrations e.g. maximum specific concentrations and validation results				
Maximum soil concentrations in soil removed – Analyte mg/kg, Residual soil concentration - Analyte mg/kg Maximum ground water concentration Analyte mg/l				
Nature of works carried out				
Soil investigation, ground water investigation, excavation, on-site remediation, removal of soil etc. Validation sampling, backfilled with imported soil with ENM classification.				
Nature and extent of residual contamination				
Contamination identified in investigation, Contamination unable to be remediated within the scope of the work, or areas not assessed.				
Risk Factors				
Reference to conceptual site model.				
Waste removed				
Include soil bore cuttings and groundwater from development and purging of wells Bulk waste removal from remediation				
Remediation Summary				
What was removed or treated? Was it successful, is residual remediation remaining?				
Statement of suitability				
The land is considered suitable for [residential, residential with limited soil access, open space, industrial/commercial] land use, other (describe)				
Endorsement				
This is an accurate summary of the report titled: Produced by: Dated: Provided to Bathurst Regional Council on: Name: _____ Signature: _____ Certification details				

Summary Document - Textual description may not extend beyond one page.

Summary Document – Site Plan. Please note areas of concern, contamination removed or remediated and any residual contamination or risk factors.



Summary Document – Site Plan description may not extend beyond one page.

POLICY:	CONTROL OF OPEN BURNING
DATE ADOPTED:	Director Environmental, Planning & Building Services Report #8.2.10 Council 17 November 2021 Resolution Number: ORD2021-400
ORIGINAL ADOPTION:	Director Environmental, Planning & Building Services Report #1 Policy 1 April 2009 Council 15 April 2009 Minute Book No. 10645
FILE REFERENCE:	13.00030
OBJECTIVE:	To establish guidelines for the safe burning on private land with minimal health and environmental impact.

BACKGROUND

The Protection of the Environment Operations (POEO) (Clean Air) Regulation (2021) allows Councils to approve open burning of material in certain instances and in certain areas. The POEO (Clean Air) Regulation (2021) s 6E states that:

- (2) A person must not burn any vegetation:
 - (a) in the open, or
 - (b) in an incinerator,
 in a local government area specified in Part 2 of Schedule 1 except in accordance with an approval.
- (3) A person must not burn anything (other than vegetation):
 - (a) in the open, or
 - (b) in an incinerator,
 in a local government area specified in Part 3 of Schedule 1 except in accordance with an approval.

Bathurst Regional Council is listed in Schedule 8 of the Protection of the Environment Operations (Clean Air) Regulation (2021) Part 2: Areas in which burning of vegetation is prohibited except with approval; and, Part 3: Areas in which all burning (other than vegetation) is prohibited except with approval or in relation to certain domestic waste.

AIM

The aim of this policy is to ensure the protection of the public health and the environment.

Further, this policy aims to reduce actions that may impact upon the quality of air and/or increase the risk of wildfire.

NOTE: This document outlines the procedure to gain **approval** to conduct a burn outside the declared Fire Danger Period. During the Declared Fire Danger Period a **permit** to burn is required from the NSW Rural Fire Service. To determine if the activity you are proposing is

exempt from the Council approval process, see Section 7. Burning activity where approval is not required.

LAND TO WHICH THIS POLICY APPLIES

This policy applies to **all** land within the Bathurst Regional Council Local Government Area.

BENEFITS

The indiscriminate burning of waste in the open can increase the levels of fine particulate material in the air which can impact upon community health. The main health effects of fine particulate material include:

- Increased frequency of asthma attacks
- Increased activity restrictions due to adverse lung reactions
- Increased potential for severe respiratory distress and heart attacks
- Increased mortality due to heart disease and respiratory illness.

In conjunction with these human health issues, there are also environmental concerns associated with open burning including:

- Reduced ground vegetation cover
- Increased soil erosion
- Reduced water quality
- Increase risk of fire spread
- Pollution or contamination from burning prohibited items

This policy aims to reduce the health and environmental impacts associated with open burning. Some materials such as general domestic waste, tyres, paint and treated timber will need to be disposed of appropriately which will further reduce health and environmental risks.

BURNING ACTIVITIES FOR WHICH APPROVAL IS REQUIRED

The following information outlines the type of burning for which this policy applies. Other burning activities may require a separate approval from the Rural Fire Service.

a) General burning for which Council approval is required:

The open burning of dry and dead vegetation that is not easily disposed of at Council Waste Management Facilities. This includes piled timber, fallen trees, limbs, stumps and logs. A fire for recreational activities, piled timber created as part of Asset Protection Zone maintenance, weed control or clearing activities and storm blown trees are included in this category. A Permit to Burn must be obtained from the Rural Fire Service during the Fire Danger Period (usually 1 October to 31 March)

b) Notification to the Rural Fire Service is required:

Before burning for **any** purpose (except for a fire for cooking or recreational purposes), notice must be provided to **all** adjoining landowners/occupiers as well as the Rural Fire Service 24 hours prior to burning.

- c) Burning which is classed as prohibited.

The burning of domestic, business, building, industrial and hazardous waste is classed as a prohibited activity and may have adverse impact upon the community and the environment. This type of material is not to be burnt unless through a licensed incinerator and must be disposed of through the appropriate waste facility.

BURNING ACTIVITY WHERE AN APPROVAL IS NOT REQUIRED

Open burning is allowed only on land greater than 2 hectares (20,000m²) and on land zoned RU1, RU4 and E4 under the Bathurst Regional Local Environment Plan 2014. Open burning is permitted only during the Approved Open Burning Period (generally April – September) and under the following circumstances:

1. A fire conducted as part of an allowable activity as defined by Schedule 5A of the *Local Land Services Act 2013* and in accordance with the self-assessable codes managed by Local Land Services
 2. The disposal of certain types of dry and dead vegetation
 3. An easily controlled fire for cooking or barbequing, with the fire area covering 1m x 1m or less
 4. To conduct an easily controlled fire for recreational purposes (eg: camping, scouting, and picnicking), excluding bonfires, with the fire area covering 1m x 1m or less
 5. To conduct training in methods of fire fighting by an authorised person
 6. In a licensed incinerator meeting the requirements of the Environment Protection Authority
 7. To carry out bush fire hazard reduction work under and in accordance with the Rural Fires Act (1997)
- NB.** You may also need an environmental approval, if:
- You are modifying native vegetation
 - The activity could threaten endangered species and or result in air or water pollution and or soil erosion
8. To destroy, by burning, of any prohibited plant or drug under the Drug Misuse and Trafficking Act (1985)
 9. To burn an animal that has died or is suspected to have died of a disease proclaimed under the Biosecurity Act 2015.

Note: A permit may be available for other rural and recreational zones subject to approval from the Rural Fire Service and Bathurst Regional Council. During the Fire Danger Period and on days of Total Fire Ban and / or Extreme and Catastrophic Fire Danger all burning activities are suspended.

RESTRICTED MATERIALS

The following materials must not be burnt at any time within the Bathurst Regional Council area and must be disposed of or recycled in the appropriate manner at a licensed waste facility:

- General or domestic waste
- Furniture
- Pallets
- Grass clippings

- Tyres
- Timber waste produced from a business activity
- Coated wires
- Paint containers and residues
- Solvent containers and residues
- Timber treated with copper chromium arsenate (CCA) or pentachlorophenol (PCP)
- Any material that may cause an explosion

APPROVAL CONDITIONS

Those wishing to conduct an open burn for non-agricultural purposes must first contact Council's Environmental, Planning and Building Services Department. In most cases an assessment can be conducted over the telephone. In some cases, Bathurst Regional Council officers will be required to conduct a site assessment of non- agriculturally related burning activities.

Once approved, the landowner will receive in writing the Approval to Burn designating a period of up to twenty-one (21) during which the burn may occur.

All non-agricultural burning may be approved subject to the following conditions:

1. The activity must comply with the Section 7 above: Burning Activity Where an Approval is Not Required.
2. The burning activity must not be dangerous or present a risk to any building or land.
3. Only dry and dead vegetation which grew on the premises may be burnt on the premises.
4. Must be greater than 100m away from other residences, businesses or schools
5. Must be greater than 10m from the property boundary
6. The material to be burnt is greater than five (5) metres from a designated watercourse or water body. Where this is not possible, appropriate erosion control and revegetation measures should be implemented as part of the activity.
7. Only vegetation which cannot be easily disposed of through Council's Waste Management Centre may be burnt.
8. The fire must be attended by a competent person for the duration of the activity and have sufficient fire-fighting resources on-hand to safely maintain the fire.
9. All combustible material must be removed at least two (2) metre radius of the material to be burnt.
10. Burning should only take place when weather conditions are calm and predicted to remain so.
11. The burning does not cause nuisance conditions or a smoke hazard outside the property of the burn.
12. Land owners / managers must notify the Rural Fire Service, Bathurst Regional Council and adjoining neighbours at least 24 hours prior to lighting.
13. Land owners / managers must obtain written approval from Bathurst Regional Council at least 24 hours prior to burning.
14. The provisions of the Protection of the Environment Operations (Clean Air) Regulation (2021) must be fully complied with.
15. The provisions of the Rural Fires Act (1997) must be fully complied with.
 - a. For burning outside the nominated Open Burning Period, written permit must be gained from the Rural Fire Service.
 - b. Even with written approval, fires must not be lit on declared days of Total Fire Ban and / or Severe, Extreme or Catastrophic Fire Risk.

FEES

It is deemed unnecessary to implement an application fee as part of this policy.

GLOSSARY

Allowable Activities: activities defined by Schedule 5A of the Local Land Services Act 2013 and subject to assessment through self-assessable codes. Such activities are regulated by Local Land Services and residents should always seek advice from Local Land Services prior to clearing of vegetation

Approval to Burn: an approval granted by Council as per the Protection of the Environment Operations (Clean Air) Regulation (2021). Generally granted outside the designated Fire Danger Period.

Approved Open Burning Period: generally from April through to September but may be restricted or extended depending upon current environmental conditions. To confirm this period, contact the Rural Fire Service on 1800 679 737.

Asset Protection Zone (APZ): the APZ is listed in the Rural Fire Service Planning for Bushfire Protection 2019 guide (Dictionary, p72). It is described as the “area surrounding a development managed to reduce the bush fire hazard to an acceptable level”. The APZ is only relevant to new Council Development Applications. For Hazard Reduction Burning, a permit to burn is required through the Rural Fire Service.

Designated watercourse / water body: includes any river, creek, stream, drain, drainage reserve, stormwater drain, brook, rivulet, dam, lake, pond, channel, gutter, billabong, oxbowlake or any other area, wet or dry, that contains or is likely to contain or receive or pass rainwater, floodwater or any other water.

Dry and dead vegetation: is defined as vegetation that does not have any living tissue or foliage present, i.e. does not contain any green leafy or woody material.

Easily disposed vegetation: includes material that by their size and nature can be transported to Council's Waste Management Centre. This includes grass clippings, small loads of tree waste and chipped tree waste.

Severe, Extreme and Catastrophic Fire Danger: is caused by a combination of dry vegetation and hot, dry, windy weather and is monitored and declared by the NSW Rural Fire Service.

General or domestic waste: includes any waste produced through normal activities. This includes but is not limited to plastics, metals, paper and paper products, food and food wrapping (including plastic, paper and metal), chemicals and chemical containers, aerosol cans, electrical items, household appliances, computers and computer accessories, and any other waste item associated with domestic, business and industry activities.

Material that may cause an explosion: includes any material that by its contents or construction may result in an explosion when heat or flame is applied. For example, ammunition, aerosol cans, petroleum, paint, solvent and chemical containers and sealed food items.

Open burning: the act of burning material in the open air, outside of a purposefully built area such as an internal domestic fire place or stove.

Permit to Burn: A permit granting permission to burn by the Rural Fire Service as per the Rural Fires Act (1997) and applicable to the Fire Danger Period.

Total Fire Ban Day: a day/s when fires are likely to escape and be difficult to contain. These days are declared by the Rural Fire Service. More information can be gained by calling the RFS on 1800 679 737 or going to www.rfs.nsw.gov.au.

POLICY:	DANGEROUS AND MENACING DOGS
DATE ADOPTED:	Director Corporate Services & Finance Report #8.1.1 Policy 3 July 2024 Council 17 July 2024 Resolution Number ORD2024-213
ORIGINAL ADOPTION:	Director Environmental, Planning & Building Services Report # 3 Policy 7 June 2017 Council 21 June 2017 Minute Book No. 12531
FILE REFERENCE:	02.00006
OBJECTIVE:	This policy describes how Council will assess the appropriate regulatory response regarding an alleged dog attack.

1. BACKGROUND

Attack or harassment by dogs can have serious public safety consequences. Councils are required to promptly investigate incidents and settle complaints. Its purpose is to ensure the consistent and accurate application of relevant legislation.

2. APPLICATION

This policy applies to the investigation of an alleged dog attack or dog displaying unreasonable aggression in the Bathurst Regional Council local government area.

3. LEGISLATIVE FRAMEWORK AND GUIDELINES

The Companion Animals Act 1998 (the Act) and associated regulation provide the legislative framework for the management of dogs and cats in NSW. The Division of Local Government has issued the “*Guidelines for the Exercise of Functions under the Companion Animals Act (2015)*”(guideline) and this policy must be considered in conjunction with these guidelines. As is stated in the guideline section 9.5.1 : “Authorised officers have discretion in the application of dangerous and menacing dog declaration provisions to suit the individual circumstances of incidents to which they are responding. The dominant factor is public interest and the safety of the community”.

Further, Council has adopted an Enforcement Policy which must be given consideration in any enforcement action.

4. ASSESSMENT MATRIX

The assessment matrix which is located at Appendix 1 must be completed by the Authorised Officer investigating an alleged dog attack or dog displaying unreasonable aggression. The Authorised Officer must seek endorsement of the completed risk assessment matrix from a supervisor. The risk assessment matrix must be recorded on the appropriate file in Council’s records system.

The risk assessment matrix must be completed based on an unbiased assessment by the Authorised Officer of the available evidence.

The Authorised Officer must then prepare a brief of evidence for review by the Manager Environment (or other senior staff) which includes the completed risk assessment matrix.

Approval to proceed with any regulatory action must be sought from the Director Environmental Planning and Building Services in writing.

5. CONSIDERATION OF REPRESENTATIONS IN RESPONSE TO A NOTICE OF INTENTION TO DECLARE A DOG TO BE DANGEROUS OR A NOTICE OF INTENTION TO DECLARE A DOG TO BE MENACING

The Act requires that Authorised Officers consider all representations made by the owner within 7 days of the issue of a notice of intention.

Representations must be considered by a panel of staff with a demonstrated understanding of the Act and whom have not been directly involved in the investigation. Typically this should include the Director Environmental, Planning & Building Services, a Manager from the Environmental, Planning & Building Services Department and an unbiased staff member.

The Act requires that Council notify the owner within 7 days of making a decision on whether or not to declare the dog dangerous or menacing.

6. REVOCATION OF A DANGEROUS OR MENACING DOG DECLARATION

The Act allows an owner to make an application to Council to revoke a dangerous or menacing dog declaration but not until at least 12 months have passed since the declaration was issued.

An owner may apply to the Local Court to revoke a Dangerous Dog declaration. A menacing dog declaration can only be the subject of an appeal to the Supreme Court.

APPENDIX 1 – RISK ASSESSMENT MATRIX



Civic Centre:
158 Russell Street
Correspondence:
Private Mail Bag 17
BATHURST NSW 2795

Telephone 02 6333 6111
Facsimile 02 6331 7211
council@bathurst.nsw.gov.au
www.bathurst.nsw.gov.au

OFFICE USE ONLY

DOG ATTACK (HUMAN) RISK ASSESSMENT

Section 34 Companion Animals Act 1998

File No: 05.00004 and

CCS No:

Section 1 Owner/dog details

Owners Name: Dogs Name:

Address:

Contact Nos: Mobile: Work: Home:

CRITERIA	Control		Provocation		Actions of Dog		History		Degree of Injury	
	Forced exit/entry to get to victim	5	No Provocation	3	Mauling/ Multiple Bite	4	Previously declared Menacing/Dangerous	5	Fatality	10
	Straying	4	Instinct/Natural Prey drive	2	Bite (Puncture)	3	Previous reports of aggression	2	Grievous Bodily Harm	8
	Legally Off Leash	3	Provoked	1	Bite (No Puncture)	2	Previous reports of straying	1	Serious Injury	6
	On Leash	2	Unknown	0	Circle or Rush with No Contact	1	No Previous History	0	Injury	4
	On Dog's Property	1							Minor Injury	2
	On Dog's Property - Trespassing	0							No Injury	0
Criteria Score										
Multiplier	1		2		3		4		5	
Total										

NOTE: This table is a guide to assist in the decision making process

TOTAL ASSESSMENT SCORE	
Assessment Score	Risk Level
> 65	Unacceptable
40 – 64	High
20 – 40	Medium
< 20	Low

Assessment Score	Risk Level	Action to be considered unless mitigating circumstances exist
> 65	Unacceptable	Declare the dog dangerous and seek destruction order
40 – 64	High	Declare the dog as a dangerous dog
20 – 40	Medium	Declare the dog as a menacing dog
< 20	Low	Nuisance Dog declaration

The information on this form is being collected to allow Council to process your application and/or carry out its statutory obligations. All information collected will be held by Council and will only be used for the purpose for which it was collected. An individual may view their personal information and may correct any errors.

Ref: 08.00016/605

Issue Date: 9 May 2018

Review Date: As required

Page 1 of 1

DOG ATTACK (ANIMAL) RISK ASSESSMENT

Section 34 Companion Animals Act 1998

CCS No: File No: 05.00004 and

Section 1 Owner/dog details	
Owners Name:	Dogs Name:
Address:	
Contact Nos:	Mobile: Work Home

CRITERIA	Control		Provocation		Actions of Dog		History		Degree of Injury	
	Forced exit/entry to get to victim	5	No Provocation	3	Mauling/ Multiple Bite	4	Previously declared Menacing/Dangerous	5	Multiple Fatalities or Serious Injuries	6
	Straying	4	Instinct/Natural Prey drive	2	Bite (Puncture)	3	Previous reports of aggression	2	Fatality	4
	Legally Off Leash	3	Provoked	1	Bite (No Puncture)	2	Previous reports of straying	1	Serious Injury Veterinary Overnight	3
	On Leash	2	Unknown	0	Circle or Rush with No Contact	1	No Previous History	0	Veterinary Treatment Injury	2
	On Dog's Property	1							Other Treatment	1
	On Dog's Property - Trespassing	0							No Injury	0
Criteria Score										
Multiplier	1		2		3		4		5	
Total										

NOTE: This table is a guide to assist in the decision making process

TOTAL ASSESSMENT SCORE		Assessment Score	Risk Level	Action to be considered unless mitigating circumstances exist
		> 65	Unacceptable	Declare the dog as a dangerous dog and seek destruction order
		45 – 64	High	Declare the dog as a dangerous dog
		20 – 44	Medium	Declare the dog as a menacing dog
		< 20	Low	Nuisance Dog declaration

The information on this form is being collected to allow Council to process your application and/or carry out its statutory obligations. All information collected will be held by Council and will only be used for the purpose for which it was collected. An individual may view their personal information and may correct any errors.

Comments:

Date

Officer Name:

Signature:

Date

Comments:

Date

Team Leader Name:

Signature:

Date

Comments:

Date

Manager Name:

Signature:

Term

Definition

Forible Exiting	Dog escapes from property, whether that is by jumping over, digging under, or pushing through the property
Wandering	Dog is out of its property with no responsible person around
Legally Off Leash	Dog is in an off leash area with the owner present
On Leash	Dog is on a leash with owner
On Dog's Property	Dog is on its own property
No Provocation	No factors present or identified that may have caused/led to the attack
Instinct/Natural Prey Drive	Factors present that could be considered as instinctive (e.g. chasing a cat, chicken)
Provoked	Factors present or identified that may have caused/led to the attack
Unknown provocation	Not able to be identified/no witnesses to the incident
Mauling or Repeat Lunging	Multiple Puncture wounds/ripping and tearing. Also loss of tissue
Bite (Puncture)	Single bite (in most cases) with puncture wounds
Bite (No Puncture)	Single bite (in most cases) with no puncture wounds
Circle/Rush/No Contact	Dog may not have bitten or may have tried but no contact was made.
Declared Dangerous/Menacing/Restricted Dog	Dog is a Dangerous/Menacing/Restricted Dog at the time of the incident
History of Attacks (Bite)	Council records contain previously reported attacks but not declared
History of Complaints (Major)	Council records contain a large number of previously reported complaints but not attacks (e.g. wandering)
History of Complaints (Minor)	Council records contain a small amount of previously reported complaints of a minor nature (e.g. barking)
No History	No previously reported complaints for the dog
(Human) Fatality	Death of a human
(Human) GSBH**	Grievous Bodily Harm
(Human) Actual Bodily Harm* - Admitted to Hospital	Actual Bodily Harm with a stay in hospital
(Human) Actual Bodily Harm* - Medical Treatment	Actual Bodily Harm with Doctor's certificate regarding injuries
(Human) Injury - Medical Treatment	Injuries but no Doctor's certificate or no Doctor seen
(Human) Injury - First Aid Treatment	Injuries with first aid treatment (e.g. bandaids)
(Human) No Treatment	Minor injuries with no treatment
(Human) No Injury	No injury received
(Animal) Fatality	Death of an animal
(Animal) Serious Injury - Vet Treatment Overnight	Serious injury to an animal with Vet certificate, overnight stay required
(Animal) Serious Injury - Vet Treatment	Serious injury to an animal with Vet certificate but overnight stay not required
(Animal) Injury - No Treatment	Injury to animal but no vet treatment
(Animal) No Injury	No injury received

Legal Definitions

	any hurt or injury calculated to interfere with the health or comfort of the victim, but such hurt or injury need to be permanent but more than merely transient and trifling. <i>R V Donovan [1934] 2 KB 498 at 509</i>
*Actual Bodily Harm	<i>Crimes Act 1960 s4 includes:</i>
**Grievous Bodily Harm	(a) the destruction (other than in the course of a medical procedure) of the foetus of a pregnant woman, whether or not the woman suffers any other harm, and (b) any permanent or serious disfiguring of the person, and (c) any grievous bodily disease (in which case a reference of the infliction of grievous bodily harm includes a reference to causing a person to contract a grievous bodily disease).

POLICY:	ENFORCEMENT POLICY
DATE ADOPTED:	Director Environmental, Planning & Building Services Report #1 Policy 7 August 2019 Enacted Policy 2 October 2019
ORIGINAL ADOPTION:	Director Environmental, Planning & Building Services Report #1 Policy 7 May 2008 Council 18 June 2008 Minute Book No. 10443
FILE REFERENCE:	03.00142 & 41.00088
OBJECTIVE:	To establish guidelines for the enforcement of unlawful activities

1. PREFACE

In recognition of the increase in the regulatory role of all Councils, the NSW Ombudsman in June 2002 published "Enforcement Guidelines for Councils" including a Model Enforcement Policy. That model Enforcement Policy forms the basis of this Bathurst Regional Council Policy.

In April 2007, the Department of Local Government conducted a review of Council under its "Promoting Better Practice" program. Amongst the recommendations of the Department was that Council prepare a formal enforcement and prosecutions policy.

The Enforcement Policy reflects the need for the decision making process of the Council authorised officers to be carried out in a transparent, efficient, fair and consistent manner having regard to all the circumstances.

The inclusion of Appendices A and B at the rear of the policy can be interpreted as a guide to indicate the relative level of seriousness of some offences and therefore, from a consistency viewpoint, to determine whether or not the Council may issue a warning prior to some level of formal action.

2. TITLE

Bathurst Regional Council Enforcement Policy.

3. PURPOSE

The purpose of this policy is to:

- (1) Enable the Council to acknowledge its obligation under Section 8 of the Local Government Act 1993 to ensure that the regulatory powers are carried out in a consistent manner and without bias, and

- (2) Provide a proactive policy statement regarding the enforcement of compliance with legislation and/or condition/s of development consent, and
- (3) Foster prompt, consistent and effective action by the Council in response to allegations of unlawful activity whilst ensuring that the principles of natural justice are respected.

4. POLICY OBJECTIVES

The aim of this policy is to establish clear guidelines for the exercise of discretion in dealing with proactive regulatory action by the Council and customer service requests or complaints about unlawful activity. It provides workable guidelines on:

- (1) How to assess whether complaints of unlawful activity require investigation;
- (2) Options for dealing with unlawful activity;
- (3) How to decide whether enforcement action is warranted.

5. ENFORCEMENT PRINCIPLES

Bathurst Regional Council is committed to:

- (1) Acting in the interest of protecting community health / safety and or the environment;
- (2) Acting consistently, fairly and impartially;
- (3) Preventing discrimination on the basis of race, religion, sex, national origin, political association or other personal reason/s;
- (4) Ensuring the proposed enforcement action is in keeping with the relative severity of the offence/s;
- (5) Ensuring enforcement action is taken against the right person for the correct offence;
- (6) Ensuring that any actual or potential conflict of interest situations are managed in a fair, consistent and impartial manner;
- (7) Disclosing all evidence relevant to the alleged offence/s;
- (8) Assisting the Court by providing all necessary information whether or not that information is in favour of the Council case;
- (9) Issuing cautions to the alleged offender/s, where necessary;
- (10) Making cost effective decisions concerning enforcement action having regard to the likely outcome at court;
- (11) Ensuring action is instigated within the specified time limits.

6. APPLICATION

This policy applies to the investigation and enforcement of complaints about unlawful activity or failure to comply with the terms or conditions of approvals and orders.

While primarily directed at the regulation of development activity, the policy is also applicable to pollution control, regulation of parking, control over animals, unauthorised development including buildings, non-compliance with development consent conditions, food safety, public health and safety issues, tree/s removal and land clearing.

7. RESPONSIBILITY

All the Council staff (in accordance with delegations) who deal with the proactive enforcement of relevant legislation in addition to written and verbal action requests or complaints alleging unlawful activity are responsible for implementing these policy guidelines.

All notifications of alleged unlawful activity should be appropriately recorded by the Council.

8. DEFINITIONS

“Unlawful activity” is any activity or work that has been or is being carried out:

- (1) Contrary to the terms or conditions of a development consent, approval, permission or other written authorisation from the Council;
- (2) Contrary to an environmental planning instrument that regulates the activities or work that can be carried out on particular land;
- (3) Contrary to a legislative provision regulating a particular activity or work;
- (4) Without a required development consent, approval, permission or the like;
- (5) Contrary to New South Wales legislation for which the Council is the appropriate regulatory authority.

9. INVESTIGATING UNLAWFUL ACTIVITIES

All complaints and matters regarding unlawful activities will be reviewed to determine whether the matter requires enquiry or investigation. Further enquiries/investigation will not be initiated where:

- (1) The matter has already been investigated and resolved, or
- (2) The Council has no jurisdiction (for example, NSW WorkCover issues on building sites or amusement devices or an internal matter within strata buildings or where the Department of Environment and Climate Change is the Appropriate Regulatory Authority etc), or
- (3) The activity is determined to be lawful without an investigation.

In considering whether a complaint will warrant enquiry or investigation the Council will consider a range of factors.

These include:

- (1) Is the matter within the jurisdiction of the Council?
- (2) Is the complaint premature e.g. does it relate to some unfinished aspect of work that is still in progress?
- (3) Is the activity or work permissible with or without consent?
- (4) If the activity is permissible with consent, is there a consent in place?
- (5) Is it possible to determine from the information available to the Council whether the activity or work is permissible without consent and/or whether all conditions of consent are being complied with?
- (6) Is the complaint trivial, frivolous or vexatious?
- (7) Has too much time elapsed since the events the subject of the complaint took place?
- (8) Is there another body that is a more appropriate agency to investigate and deal with the matter?
- (9) Is the activity having a significant detrimental effect on the environment, or does it constitute a risk to public safety?
- (10) Does the complaint indicate the existence of a systemic problem e.g. if the complaint is one of a series, could there be a pattern of conduct or a more widespread problem?
- (11) Is there a history of related complaints against this person or organisation?
- (12) Does the complaint have special significance in terms of the priorities of the Council?
- (13) Are there significant resource implications in relation to an investigation and any subsequent enforcement action?
- (14) Is it in the public interest to investigate the complaint?
- (15) The effective use of resources having regard to the circumstances of the case.

If a decision is made not to investigate a complaint, this decision must be recorded with the reasons for that decision and the complainant so advised.

10. RESPONDING TO COMPLAINTS

Every effort will be made to ensure that all Customer Service Requests or complaints about alleged unlawful activity are actioned within the 'service standard' time allowed for resolving the category of complaint as indicated in the Customer Service Request system.

Priority for action will be based on the following priorities:

- (1) Urgent and life threatening matters should be actioned as soon as possible following receipt of the complaint. Examples include unsafe building works, dangerous awnings, collapsed building/wall, serious pollution, food safety issues and public health and safety matters, etc.

- (2) General compliance matters will be dealt with on a priority basis having regard to the relative seriousness of the matter. These examples include works not in accordance with consent or construction without consent, illegal use, noise and food complaints.
- (3) Nuisance matters- examples include domestic noise matters, minor non-compliance such as overgrown land or other matters in which there are no likely immediate health or safety implications.

Note that response times may vary depending on staff and other resources.

CONFIDENTIALITY OF COMPLAINANTS

The Council will respect the privacy and confidentiality of information received. However due to its statutory obligations and other requirements, confidentiality cannot always be guaranteed. In cases where the release of information is considered to be necessary the person who made the complaint will be consulted before such a decision is made. The complainant's identity may be disclosed where:

- (1) the person consents in writing to the disclosure of that information; or
- (2) the principles of natural justice dictate that information be disclosed to the person who is the subject of the complaint, which may enable the complainant to be identified; or
- (3) the Council is of the opinion that disclosure of the identifying information is necessary to investigate the matter effectively.

ANONYMOUS COMPLAINTS

Council will not accept anonymous complaints from the public (unless there is an immediate risk to public health and safety) for the following reasons:

- (1) Additional information may be necessary in relation to the nature and extent of the complaint.
- (2) It protects against frivolous and vexatious complaints.
- (3) Council may need to support any action through legal proceedings which may need to be supported by witnesses.

11. OPTIONS FOR DEALING WITH CONFIRMED CASES OF UNLAWFUL ACTIVITIES

The Council will try to use the quickest and most informal option to deal with unlawful activity wherever possible unless there is little likelihood of compliance with such options.

Approaches to be considered will include:

- (1) Referring the complaint to an external agency for further investigation or prosecution.
- (2) Taking no action on the basis of a lack of evidence or for some other appropriate reason.
- (3) Counselling the subject of the investigation to educate them on the relevant Council requirements.

- (4) Negotiating with the subject of the investigation and obtaining some undertakings to address the issues of concern arising from the investigation e.g. an application for modification of development consent.
- (5) Referring the parties for mediation with the Community Justice Centre or alternatively for private mediation.
- (6) Issuing a letter requiring work to be done or activity to cease in lieu of more formal action.
- (7) Issuing a notice of intention to serve an order or notice under relevant legislation, followed by service of an appropriate order or notice (Local Government Act (LG Act) ss. 124-128, Environmental Planning & Assessment Act (EP&A Act) s. 121B, and the Protection of the Environment Operations Act (POEO Act) Pts 4.2-4.4 and 8.6).
- (8) Issuing a notice requiring work to be done under various legislation.
- (9) Starting proceedings in the Land & Environment Court for an order to remedy or restrain a breach of the relevant Act or Regulation (s.673 LG Act; s.123 EP&A Act).
- (10) Seeking injunctions from the Land & Environment Court or the Supreme Court.
- (11) Issuing a Court Attendance Notice in the local court.
- (12) Issuing a penalty infringement notice.
- (13) Taking proceedings for an offence against the relevant Act or Regulation (s. 691 LG Act, s.125 EP&A Act, Chapter 5 POEO Act).
- (14) Carrying out the works specified in an order under the LG Act at the cost of the person served with the order (s.678 LG Act).

12. TAKING ENFORCEMENT ACTION

From an operational perspective the Council has a range of enforcement options including, but not limited to the following:

- (1) The issuing of a verbal warning;
- (2) The issuing of a written warning;
- (3) The service of a Notice of Intention to issue an Order;
- (4) The service of written or oral Notices/Orders/Directions;
- (5) The issuing of a penalty infringement notice/s;
- (6) The recommendation to instigate legal action;
- (7) The waiving of certain fees and the granting of an extension of time for compliance;
- (8) The revocation of an approval;

- (9) The removal/ impounding of goods or items;
- (10) The refusal of an application.

When deciding whether to take enforcement action, the Council will consider the circumstances of the case. These include:

- (1) Has the Council created an estoppel* situation? * A bar preventing one from making an allegation or a denial that contradicts what one has previously stated as the truth.
- (2) Is the breach a technical breach only?
- (3) When was the unlawful activity carried out and for how long?
- (4) How has the unlawful activity affected the natural or built environment and the health, safety and amenity of the area?
- (5) Would consent have been given if it had been sought?
- (6) Can the breach be easily remedied?
- (7) Does the person in breach show contrition?
- (8) Are there any particular circumstances of hardship affecting the complainant or the person the subject of the complaint?
- (9) Has the person the subject of the complaint received a previous warning or other non-coercive approach or has formal legal action been taken?
- (10) Would an educative approach be more appropriate than a coercive approach?
- (11) What are the costs and benefits of taking formal enforcement action as opposed to taking informal or no action?
- (12) Is there sufficient evidence to establish a prima facie case? Is there some doubt over the evidence or offence/s?
- (13) Has Council staff acted appropriately in investigating the matter and were standard procedures followed including officers having appropriate authorisation and delegation?
- (14) What are the chances of success if the proposed enforcement action was challenged in court?
- (15) Is there a draft planning instrument on exhibition that would make the unauthorised use legal?
- (16) What action would be reasonable and proportionate in this case?
- (17) Is it in the public interest including there being a reasonable prospect of success?
- (18) Has the alleged offender been given an opportunity, if appropriate, to provide information as to why enforcement action should not be instituted?

- (19) Has the alleged offender been advised, if appropriate, that no response to a show cause letter will result in the commencement of enforcement action?
- (20) What is the likely length and net expense of the legal action.

The Council will ensure that the principles of natural justice are adhered to prior to a decision being made. The following principles will be addressed and implemented by the Council:

- (1) Whoever is the subject of concern must know all the allegations in relation to their action;
- (2) All parties to the complaint must have the right to be heard;
- (3) All relevant submissions and evidence must be considered;
- (4) Matters which are not relevant must not be taken into account;
- (5) The person who makes the complaint must not determine the matter;
- (6) The decision-maker must be fair and just.

The Council will ensure that it gives due consideration to the NSW Attorney General's "Caution Guidelines under the *Fines Act 1996*" when deciding whether or not to take enforcement action which involves the issuing of a Penalty Infringement Notice. The matters that should be taken into account when deciding whether it is appropriate to give a person a caution instead of a Penalty Infringement Notice include:

- (1) The offending behaviour did not involve risks to public safety, damage to property or financial loss, or have a significant impact on other members of the public;
- (2) The person is homeless;
- (3) The person has a mental illness or intellectual disability;
- (4) The person is a child (under 18);
- (5) The person has a special infirmity or is in very poor physical health;
- (6) The offending behaviour is at the lower end of the seriousness scale for that offence;
- (7) The person did not knowingly or deliberately commit the offence;
- (8) The person is cooperative and/or complies with a request to stop the offending conduct;
- (9) It is otherwise reasonable, in all the circumstances of the case, to give the person a caution.

13. DELEGATIONS FOR ENFORCEMENT ACTION

Council staff delegated to initiate various levels of enforcement action is set out in the Council Delegation Manual. The legislation applicable to the delegations is as follows:

- (1) The Australian Road Rules
- (2) Roads Act 1993
- (3) Impounding Act 1993
- (4) Companion Animals Act 1998
- (5) Food Act 2003 (see Compliance and Enforcement: Food Safety Policy)
- (6) Public Health Act 1991
- (7) Swimming Pools Act 1992
- (8) Noxious Weeds Act 1993
- (9) Rural Fires Act 1997
- (10) Contaminated Land Management Act 1997
- (11) Environmental Planning and Assessment Act 1979
- (12) Local Government Act 1993
- (13) Protection of the Environment Operations Act 1997 and the various Regulations made there under.

14. ENFORCEMENT ACTIONS DURING WATER RESTRICTIONS

During times of water restrictions, at level 4, 5 or 6, Council may adopt various enforcement options including but not limited to the following;

(1) Verbal warning

A verbal warning may be issued by an authorized Council officer to a person for a minor breach incident arising from genuine ignorance of the water restrictions. The authorized officer will provide information to the resident and later record the incident as a verbal warning for the premises.

(2) Warning letter

In cases where a minor but deliberate breach of restrictions has occurred Council may issue a formal warning letter to the resident responsible. A second warning letter may be issued subject to circumstances.

(3) Penalty notice

Where a warning has been previously given or in cases of more significant and deliberate breaches of water restrictions, a penalty notice may be issued.

(4) Court Attendance Notice

In serious breaches of water restrictions or in the case of repeated deliberate offending, Council may initiate legal action against the person responsible through issuing a Court Attendance Notice.

In addition to other enforcement actions Council may also;

(5) Install an electronic meter on a property

Installing an electronic water meter on a property allows for more accurate monitoring of water use. The data gathered may be used as evidence to support further enforcement action.

(6) Install a flow restriction device on a property

A flow restriction device may be installed on the premises of minor recidivist offenders or where previous enforcement action has failed to achieve compliance with water restrictions.

(7) Disconnect Councils water supply to a property

In the most serious cases of breach of water restrictions or where other enforcement action has failed to achieve compliance with water restrictions, the General Manager may approve the disconnection of supply of water from Council.

Additionally, all fees for the installation and later removal of any meter and/or flow restriction devices as well as the disconnection and reconnection of a water supply service, shall be met by the owner of the property.

APPENDIX A

As a guide the following offences may result in a prior warning being given before any enforcement action in the form of the service of an order or notice or penalty infringement notice or court action is undertaken.

- Annual Fire Safety Statement - non submission by owner
- Advertising signs without approval or unsightly
- Air pollution – smoky chimney
- Barking / Roaming dog, unregistered dog
- Commercial swimming pool not properly maintained
- Development / Activity without consent or not in accordance with a condition/s of consent
 - Minor development or old unauthorised development
 - Minor breach of consent condition/s
- Erosion & sediment control matters (owner builder/no prior warning) involving no imminent risk of pollution.
- Fire hazard of a less serious nature.
- Noise pollution
 - Air conditioner*
 - Intruder alarm*
 - Musical instrument and sound equipment*
 - Power tools*
 - Motor vehicle on residential premises*
 - Use of refrigeration equipment fitted to motor vehicle*
- Non compliance with an Order/Notice/Direction- work partly done or other mitigating circumstances
- Obstruction of Public Place / Road – (minor matters)
- Revocation of an approval (eg footpath dining/ place of public entertainment).

* Mandatory warning required by legislation

Note that the above list of offences is an indication only and any offences not listed will be considered on their individual merits.

APPENDIX B

As a guide the following offences may result in NO prior warning being given before any enforcement action in the form of the service of an order or notice or penalty infringement notice or court action is undertaken.

- Dangerous Dog Order/Attacking Dog/Restricted Dog
- Dangerous building/awning
- Dangerous waterhole
- Deposit litter from vehicle
- Development not in accordance with consent/risk to health & safety/bush fire protection/notice of Intention issued by PCA
- Deposit litter/Dumped Rubbish
- Development without consent – unsatisfactory explanation/no explanation/repeat offender/prohibited development/risk to health & safety or environment
- Dilapidated building
- *Environmental damage of a significant nature*
- Erosion & sediment control matters
- Fire hazard threatening an asset.
- Failure to pay Clean Up/Prevention Notice fee
- Failure to comply with order/notice/cease use of premises/failure to comply with order regarding development consent/demolish remove unlawful building/threatening life/public safety/environment/amenity protection/fence land/keeping of birds and animals/remove object from public place/contravene noise control notice/noise pollution.
- *Land clearing of a significant nature*
- Littering
- Noise abatement direction
- Noise pollution generally after prescribed mandatory warning
- Not comply with condition of development consent/approval to operate
- Nuisance Dog Order
- Obstruction of road/public place involving safety.
- Obstruction/intimidation/assault of a Council officer
- Open burning without approval *or not in accordance with an approval or cause excessive smoke.*
- Pollute Waters
- Parking offences
- Pollution Incident – Failure to notify
- Remove and/or damage tree/s
- Swimming Pool fencing/gates/open
- Street Trading without consent/approval

Note that the above list of offences is an indication only and any offences not listed will be considered on their individual merits.

POLICY:	FOOD PREMISES INSPECTION
DATE ADOPTED:	Director Environmental, Planning & Building Services Report #8.2.9 Council 20 September 2023 Minute Book No. ORD2023-264
ORIGINAL ADOPTION:	Director Environmental, Planning & Building Services Report #8.2.9 Council 20 September 2023 Minute Book No. ORD2023-264
FILE REFERENCE:	03.00142 & 41.00088
OBJECTIVE:	Promote compliance with the legislative provisions of NSW food regulation consistent with the objects of the Act; and have a risk-based approach to compliance and enforcement activities through adoption of a graduated and proportionate response to legislative non-compliance.

PART 1 – INTRODUCTION

1. BACKGROUND

1.1 This Program has been developed to formalise Council's food inspection program.

2. OBJECTIVES

2.1 The objectives of this Program are to:

- Minimise the food safety risks associated with the consumption of food for sale within the Bathurst Local Government Area (LGA) by undertaking a Food Inspection Program that includes an integrated education and regulatory approach.
- Inform the community of Council's food premises inspection program.
- Outline the foundations of the risk-based approach to food premises inspections.
- Define risk ratings and inspection requirements for food businesses.

3. SCOPE

3.1 This Program applies to every premises (or activity) within the Bathurst LGA involved in the handling and/or sale of food for retail purposes. This includes, but is not limited to, fixed food premises, canteens, mobile food vending vehicles / temporary food stalls and home-based food businesses.

3.2 This Program does not apply to the operation of premises licensed and/or regulated by the NSW Food Authority.

3.3 This Program outlines the framework for Council's food premises inspection program. It does not provide a comprehensive list of all legislation, requirements, or protocols.

4. DEFINITIONS

- 4.1** AS means Australian Standard. Copies of 'AS 4674-2004 Design, construction and fit-out of food premises' are available from Standards Australia at www.standards.org.au.
- 4.2** Authorised Officer means an Officer appointed and delegated by Council to exercise functions under the provisions of the Food Act 2003 (the Food Act). At Bathurst Regional Council Authorised Officers include Environmental Health Officers the Manager Environment and the Director of Environmental, Planning and Building Services as having specific delegations for the purposes of enforcement of this Act.
- 4.3** Code means Food Standards Code (Australia and New Zealand). The Code is available from www.foodstandards.gov.au/code.
- 4.4** Fixed food premises means any food business retailing direct to the public from a fixed commercial premises (e.g., service station, shop, café, restaurant, school canteen).
- 4.5** Food Business means a business, enterprise or activity that involves the handling of food intended for sale, or the sale of food, regardless of whether the business, enterprise, or activity concerned is of a commercial, charitable or community nature or whether it involves the handling or sale of food on one occasion only.
- 4.6** Handling of food means the making, manufacturing, producing, collecting, extracting, processing, storing, transporting, delivering, preparing, treating, preserving, packing, cooking, thawing, serving, or displaying of food.
- 4.7** Potentially Hazardous Food means food that has to be kept at certain temperatures to minimise the growth of any pathogenic micro-organisms that may be present in the food or to prevent the formation of toxins in the food.
- 4.8** Sell (or sale of food) means the definition as described in the Food Act.

PART 2 – POLICY STATEMENT

5. OVERVIEW OF THE INSPECTION PROGRAM

- 5.1** Bathurst Regional Council will provide support to the NSW Food Authority as an appointed Category B Enforcement Agency within the Food Regulation Partnership with the following responsibilities for retail food businesses:
- Inspection of retail food businesses (selling food products direct to the public) for compliance with the Food Act, Food Regulation 2015 (the Regulation) and the Code.
 - Inspection of home-based food businesses.
 - Inspection of mobile food vending vehicles and temporary food stalls.
 - Investigation of complaints.
 - Referral to the NSW Food Authority, and providing assistance where required, for food borne illness complaints relating to two or more cases from unrelated individuals, households, or groups.
 - Provide assistance to the NSW Food Authority where there is an imminent threat to public health and safety or the health of any individual in connection with food.
- 5.2** Council's Authorised Officers will:

- Undertake inspection and enforcement activities relating to the handling and/or sale of food within the Bathurst LGA.
- Assist in the assessment of planning and development applications incorporating food activities.
- Coordinate and present food training seminars and other education for retail food businesses (including community groups) involved in the food industry.
- Provide advice to the community on safe food handling practices and where to find further resources.

6. RISK CLASSIFICATION OF A FOOD BUSINESS

6.1 The NSW Food Authority recommends that councils implement a risk-based inspection regime (high, medium, or low) consistent with the national framework and NSW Food Authority Guidelines. The food policy framework for Australia is set by the Australian and New Zealand Ministerial Forum on Food Regulation which consists of health and agricultural ministers from the states and territories, and the Australian and New Zealand governments. Food standards are developed to reflect this national framework.

6.2 The risk classification is assigned to a food business based on the type of activity conducted, the types of food handled/produced at the premises and/or the types of consumers.

6.3 LOW RISK. Some food businesses are unlikely to cause a food borne illness outbreak and are considered low risk. Examples include:

- Businesses that only handle pre-packaged or non-potentially hazardous foods (e.g., some service stations, newsagents, confectionery stores, bars and liquor stores).
- Childcare (including home-based childcare) not preparing potentially hazardous food (e.g., children bring food from home).

6.4 Home-based food businesses that prepare food for sale directly to the public (e.g., preparing and storing food for sale at local markets) in a residential premises are considered low risk if they are handling packaged food or not handling potentially hazardous food, or if the business meets all the following criteria:

- It does not produce food that has a very high level of inherent risk and a potentially unreliable critical control point (e.g., raw egg foods such as aioli and mayonnaise).
- It does not supply food to vulnerable populations or businesses that service vulnerable populations (e.g., childcare facility, care home).
- It has at least one certified Food Safety Supervisor appointed by the business (if required).

6.5 Once a low-risk rating is assigned (and the food business meets planning and construction requirements), Council will only inspect the food business on a reactive basis (no routine inspection) i.e., in response to a food safety complaint or foodborne illness investigation or where it comes to an Authorised Officer's attention that circumstances may have changed.

- 6.6** The NSW Food Authority may periodically review the low-risk home-based food businesses criteria in consultation with enforcement agencies to ensure it remains fit for purpose. Council will implement any review recommendations made by the NSW Food Authority.
- 6.7 MEDIUM RISK.** The risk classification for most retail food businesses is medium and includes cafes, restaurants, school canteens, takeaways, freshly prepared drink premises and supermarkets that prepare and sell potentially hazardous food.
- 6.8** A home-based food business is considered at least medium risk if it does not meet the low-risk home-based businesses criteria, or if a significant non-compliance with the Code is identified at an inspection following a food safety complaint or foodborne illness investigation (e.g., resulting in enforcement action).
- 6.9 HIGH RISK.** The risk classification for some retail food businesses is 'high' where the business:
- Prepares or supplies to vulnerable populations (e.g., childcare facility that prepares food on site for children including home-based childcare preparing potentially hazardous food), or
 - Undertakes high risk processes/activities (e.g., raw egg products, smoking meats, sous vide), or
 - Conducts large scale operations (e.g., function centre/large restaurant that employs more than 10 full time equivalent food handlers).
- 6.10** The NSW Food Authority advise that some medium and high-risk food businesses handling potentially hazardous foods do not require regular inspections. These premises are not associated with foodborne outbreaks or are regulated by other means. Examples include vending machines, boarding houses and group homes (low volumes of food prepared).

7. DEVELOPMENT APPROVAL

- 7.1** Prior to commencement, customers should contact Council's Environmental, Planning and Building Services department regarding the requirements for development approval for different types of food premises.
- 7.2** Customers should also contact an Authorised Officer to ascertain food safety and construction requirements, prior to the commencement of building works or the sale of any food.
- 7.3** Development approval is required to be obtained prior to the:
- Establishment of a food business.
 - Use of a premises.
 - Commencement of construction.
 - Upgrading or modifying a food business.
 - Sale of food.
- 7.4** Development approval can be in the form of development consent from Council or a Complying Development Certificate (CDC) from either Council or a private certifier.

- 7.5** Home-Based Food Business - A dwelling may be used as a home business for the purpose of the manufacture of food for sale (subject to conditions). Prior approval is required via an exempt notification application form and must comply with the statutory definition of a home business, all applicable statutory planning controls and comply with AS 4674-2004 Design, construction and fit out of food premises. If the development does not comply with these requirements, it may be prohibited and may not be able to be carried out.

8. CONSTRUCTION

- 8.1** A food business is required to handle and sell safe and suitable food from a suitably constructed premises in accordance with the provisions of:

- AS 4674-2004 Design, construction and fit out of food premises.
- Food Standards Code (Australia and New Zealand), particularly 3.2.2 Food Safety Practices and General Requirements and 3.2.3. Food Premises and Equipment.
- Food Act and Food Regulation.
- National Construction Code - incorporating the Building Code of Australia (BCA) and the Plumbing Code of Australia (PCA).

- 8.2** Food Standards Australia New Zealand and the NSW Food Authority have developed guidance for home-based businesses and enforcement agencies on how home-based food businesses can demonstrate compliance with parts of the Code.

9. FOOD BUSINESS NOTIFICATION

- 9.1** Council must be notified of any retail food business, regardless of the risk classification or type of business (excluding some low-risk activities carried out by not-for-profit or charitable organisations), prior to commencement of operation of that business. The requirement to notify is legislated and penalties may apply for failure to notify. Notifications may be made in writing or electronically using the designated form available on Council's website at www.council@bathurst.nsw.gov.au

- 9.2** No fees are applicable for lodging a food business notification form for a fixed food business.

- 9.3** It is the responsibility of the food business proprietor to ensure that Council is advised of any change to the original notification (including business ownership details, postal address etc).

- 9.4** Council is required to keep a list of all food business notifications and to review the list annually. The list is used as the basis for risk assessment and inspection.

10. INSPECTION PROGRAM

- 10.1** The majority of fixed food premises in the Bathurst LGA fall within the high or medium risk rating requiring routine inspection by Council at least once per year.

- 10.2** Inspections will be conducted by Authorised Officers without prior notice.

- 10.3** Authorised Officers may enter and inspect any premises that the officer reasonably believes is used in connection with the handling of food intended for sale, the sale of food or any food transport vehicle.
- 10.4** Re-inspections may occur if a breach of the Code is identified and cannot be immediately rectified, or serious non-compliances are observed and where necessary regulatory action is taken to ensure compliance with the relevant standards.
- 10.5** Additional inspections may be undertaken and/or the risk classification may be escalated if:
- A routine inspection identifies a breach or a non-compliance that requires further attention.
 - Council receives credible complaints which identify any significant non-compliance resulting in enforcement action.
 - There is an ongoing history of poor performance at previous inspections.
 - There are significant changes to the food business activities.
- 10.6** A medium- or high-risk premises will be inspected within six weeks of notification of a new business or where the ownership changes, after which it may be inspected on a performance-based frequency if any of the following apply:
- The business is the subject of a foodborne illness investigation or complaint investigation where a significant non-compliance is identified.
 - There is history of poor performance at previous inspections.
- 10.7** Low- risk food businesses will be inspected in response to complaints or food borne illness investigations.
- 10.8** Inspections may also be carried out at the request of the food business owner or where written consent is provided from the owner (e.g., pre-purchase inspection), or when a new food business is being constructed prior to commencement of trade, or during fit-out, renovations and extensions.

11 FEES AND CHARGES

- 11.1** Council's adopted Fees and Charges are available on Council's website for the relevant year.
- 11.2** An annual administration fee will be applied to each food premises that has been inspected during the financial year to recover costs associated with administration of the inspection program.
- 11.3** The annual administration fee does not apply to food businesses operating for the sole purpose of raising funds for not-for-profit community or charitable cause (e.g., not-for-profit school canteen).
- 11.4** An inspection fee can be charged for every visit by an Authorised Officer to a food business this includes primary, routine inspections or re-inspection.
- 11.5** A fee may be charged for an inspection carried out as a result of a complaint or incident investigation where non-compliances are observed. This is separate to any routine inspection fee that may be charged in that financial year.

- 11.6** Not-for-profit school canteens and not-for-profit charities will not be charged for primary inspections. Demonstration of not-for-profit status may be requested.
- 11.7** A reinspection fee may be charged for reinspection of all food business types (including not-for-profit school canteens and not-for-profit charities).
- 11.8** Council will issue each person who is liable to pay a fee with an invoice.
- 11.9** Fees apply under legislation to cover the cost of preparing and serving an Improvement Notice. Improvement Notice fees will apply to not-for-profit school canteens and not-for-profit organisations/charities.
- 11.10** Council may extend the time given for payment of the Improvement Notice fee or reduce or waive the payment of the fee. Requests for reduction or waiver of the fee must be in writing and will be considered by an independent panel (not the issuing officer). Extenuating circumstances would need to be demonstrated for the fee to be reduced or waived.

12 INVESTIGATIONS OF REQUESTS RELATING TO FOOD COMPLAINTS

12.1 Council will investigate complaints relating to:

- Single incidence foodborne illness.
- Foreign matter found in food.
- Unhygienic practices observed (e.g., foods not handled, stored, or processed in accordance with legislation).
- Labelling breaches.
- A business trading without the appropriate approvals, licence(s), or notification.

12.2 Role of responsible enforcement agencies:

- Council is the responsible agency for investigating foodborne illness complaint(s) about a retail business that relate to one individual or household/family.
- The NSW Food Authority is the responsible agency where complaints relate to two or more cases from unrelated individuals, households, or groups. The NSW Food Authority may seek assistance from Council as needed.

12.3 When investigating complaints, the following will be considered:

- Effects on consumer health.
- Exposure of vulnerable persons (e.g., the elderly, children).
- How widely the product is distributed.
- Timeframe over which the problem has occurred.
- Compliance history of the food business, both in general and with respect to the complaint.

12.4 Any allegation regarding multiple-incident foodborne illness or any matter presenting a 'clear and present danger' will be redirected to the NSW Food Authority along with a copy of the most recent business inspection report.

12.5 Any allegation of food borne illness should also be directed to the NSW Food Authority to aid in identifying instances of multiple-incident food borne illness.

12.6 The following table is a guide used by Authorised Officers when assessing requests for investigation of food related complaints (Timeframes are approximate only):

Risk	Type of incident	Timeframe
Urgent	Has caused, or has potential to cause, serious harm or injury to the consumer e.g. pest infestation, unsanitary premises, interrupted water supply	Investigate as soon as possible (most likely within 24 hours/1 Business Day)
High	Will not cause serious physical harm to a consumer e.g., foreign matter detected in food that could result in minor injury	Investigate within 5 Business Days
Medium	More than one complaint about a food business regarding poor hygiene, poor handling practices, unsound structures of premises or incorrect labelling	Investigate within 10 Business Days
Low	Single report of poor hygiene, poor handling or food quality related issues e.g., handling money and food using the same hand, untidy waste area	Inspect at a convenient time, or at next routine inspection

13 COMPLIANCE AND ENFORCEMENT

13.1 Instances of non-compliance with the Code can range from minor issues with very small food safety risks through to serious issues that represent a significant threat to public health and safety. It is important that compliance interventions properly reflect these differing levels of risk.

13.2 The NSW Food Authority advocates the use of an escalating enforcement model consistent with the national framework. Under this approach, compliance action escalates based on severity of the issue and response to any previous warnings.

13.3 Compliance tools available for enforcement include:

- **Verbal Warning** – Authorised Officers may issue verbal warnings for noncompliance with food standards where the risk of the non-compliance is considered low or can be immediately rectified.
- **Written Warning** – Authorised Officers may issue a written warning via a letter or on the Inspection Form to the owner/proprietor where the risk of the non-compliance is considered low or is the first offence and not an immediate risk to public health.
- **Improvement Notice** – Authorised Officers may issue a written improvement notice where previous warnings have been ignored or insufficiently executed, previous breaches reoccur and/or the risk of noncompliance with relevant standards is medium to high.
- **Fines** – Authorised Officers may issue fines (penalty notices) under the provisions of the Food Act and Food Regulation when escalating a breach that

has not been rectified in accordance with a graduated enforcement approach or for a serious food safety breach.

- **Prohibition Order** – Authorised Officers may recommend to the appropriately delegated Council Officer the issue of a prohibition order where previous warnings/improvement notice have been ignored and/or the risk of non-compliance with standards has escalated and/or there is a serious threat to public health.
- **Prosecution** – Council may elect to proceed with prosecution under the provisions of the Food Act and Food Regulation in a court of law.
- **Power of Seizure** – Authorised Officers have the authority to seize any food, equipment, advertising material or any other thing that the officer believes contributes to a non-compliance or offence.

13.4 This escalating enforcement approach does not negate the immediate use of notices/orders and/or penalty notices and/or other more severe interventions where required to effectively mitigate serious risks.

13.5 Food business owners should be aware that the NSW Food Authority has the legislated power to publicly name businesses issued with a penalty notice or prosecuted by Council. The public register is intended to provide an open and transparent system which allows the community to make an informed decision about where they choose to eat. The register is available on the NSW Food Authority website.

14 ADVICE, SERVICES AND TRAINING

14.1 Education forms an integral part of this Program and is delivered through a diverse range of strategies.

14.2 Open and honest communication with local food businesses is vital in maintaining food safety. Council's Authorised Officers are available to discuss any issues with food business operators during inspections or can be contacted by phone or email.

14.3 Inspections of food businesses aim to not only provide regulation of food standards, but also an opportunity to increase the knowledge of food handlers.

14.4 Council will endeavour to provide information to food businesses as the need arises on a range of topics and issues including food safety, food handling and legislative changes.

14.5 Advice and revision of plans by Authorised Officers, prior to commencement of construction, is available on request. Food proprietors proposing changes to existing food businesses and construction of new premises are strongly encouraged to seek a review of their plans prior to starting work (in addition to any approvals issued by certifiers). Potential food proprietors are encouraged to contact Council prior to the lodgement of a Complying Development Certificate or Development Application. Non-compliances with the Food Act, Australian Standards and associated Codes may be required to be rectified prior to opening for business or notices may be issued requiring rectification works.

- 14.6** Council produces and distributes various educational tools and resources which may include:
- Food Safety newsletters, information on Council's website, an annual calendar, handwash stickers and temperature control stickers/magnets.
 - NSW Food Authority free Food Handler Basics Training - <https://www.foodauthority.nsw.gov.au/training/food-handler-basics-training>
 - Factsheets and other educational materials, available in both printed format and as downloadable documents, are accessible from the NSW Food Authority's website.
- 14.7** Council may provide workshops for food handlers to update their knowledge and skills in the food industry, discuss relevant food safety issues, changes to legislation, practical solutions and requirements for food safety supervisors.
- 14.8** The Food Act requires certain food businesses in the NSW hospitality and retail food service sector to have at least one trained Food Safety Supervisor (FSS). Information about what businesses are required to have a FSS is available on the NSW Food Authority website.
- 14.9** Food safety campaigns are generally implemented in conjunction with the NSW Food Authority targeting specific food safety issues such as personal hygiene, cross contamination, temperature control etc.

15 GUIDELINES, FACT SHEETS AND OTHER COUNCIL POLICIES

- 15.1** Guidelines and factsheets relating to food safety are available on the NSW Food Authority website at www.foodauthority.nsw.gov.au.
- 15.2** Council has separate policies/guidelines for mobile food vehicles, temporary food businesses and temporary events.
- 15.3** Further guidance and resources may be developed by Council and the NSW Food Authority in the future and should be utilised in conjunction with this Program.

RELEVANT LEGISLATIVE INSTRUMENTS:

- Bathurst Local Environmental Plan (LEP) Environmental Planning and Assessment Act 1979
- Food Act 2003
- Food Regulation 2015
- Local Government Act 1993
- State Environment Planning Policy (Exempt and Complying Development) 2008

RELATED POLICIES, PLANS AND PROCEDURES:

- AS 4674-2004 – Design, Construction and Fit-out of Food Premises
- Compliance and Enforcement Policy Food Standards Code
- Temporary Food Stall and Mobile Food Vehicle Policy
- National Construction Code – Building Code of Australia 2019
- National Construction Code – Plumbing Code of Australia 2019

POLICY:	FOOTPATH RESTAURANTS
DATE ADOPTED:	Director Environmental, Planning & Building Services Report #9.2.8 Council 13 December 2023 Resolution Number: ORD2023-375
ORIGINAL ADOPTION:	Director Environmental, Planning & Building Services Report #7 Council 31 January 2007 Minute Book No. 10040
FILE REFERENCE:	20.00035
OBJECTIVE:	To establish guidelines for the commercial use of public footpaths for outdoor dining.

1. INTRODUCTION

Bathurst Regional Council recognises the benefits of commercial use of public areas and its contribution towards the overall streetscape atmosphere. Outdoor eating gives people the opportunity to enjoy the outdoor urban environment.

This policy has been formulated by Bathurst Regional Council under the powers contained within Part 9 Division 1 sections 125 and 126 of the Roads Act 1993 as amended.

Division 1 Use of roads for food or drink premises

125 Approval to use road for food or drink premises

- (1) A roads authority may grant an approval that allows a person who operates food or drink premises adjacent to a public road to use part of the public road for the purposes of the food or drink premises.
- (2) However, a roads authority may not grant an approval in relation to the use of a classified road without the agreement of Transport for NSW.
- (3) A roads authority may grant an approval on the conditions, including conditions about payments in the nature of rent, decided by the roads authority.
- (4) A roads authority may grant an approval for the term decided by the roads authority, but not more than—
 - (a) for an approval for the use of a footway of a public road—7 years, or
 - (b) for an approval for the use of any other part of a public road—12 months.
- (5) A roads authority may terminate, or temporarily suspend, an approval granted by the roads authority under this section—
 - (a) immediately, if in the roads authority's opinion, it is necessary for safety reasons, or
 - (b) otherwise—if the roads authority has given the holder of the approval at least 7 days written notice.
- (6) Unless sooner terminated, an approval lapses on the earlier of the following—
 - (a) the end of its term,

- (b) if the part of the public road the subject of the approval ceases to be used for the purposes of food or drink premises, when the use for that purpose ceases.

126 Authority to erect structures

- (1) A roads authority that grants an approval under section 125 may—
 - (a) authorise the holder of the approval to erect, place or maintain structures, furniture or other things in, on or over any part of the road the subject of the approval, or
 - (b) at the request and cost of the holder of the approval, erect, place or maintain structures, furniture or other things in, on or over any part of the road the subject of the approval.
- (2) The roads authority may erect and maintain structures in, on or over any part of the public road the subject of an approval for the protection of public health and safety.

127 Effect of approval

While an approval is in force—

- (a) the use of the public road for the purposes of food or drink premises, and
 - (b) the erection, placement or maintenance of structures, furniture or other things on the public road authorised by the roads authority under section 126(1),
- are taken not to constitute a public nuisance and do not give rise to an offence against this or any other Act.

2. AIM

- 2.1 The aim of this policy is to provide a consistent policy that ensures quality aesthetically pleasing, safe and practical footpath restaurant, within the Bathurst Local Government Area.
- 2.2 The policy also provides a clear procedure on how to apply for footpath restaurant approval and comply with the appropriate standards.

3. BENEFITS

- 3.1 The provision of outdoor living opportunities like footpath restaurants encourages urban regeneration, boosts trade for retailers and enriches the city's image and lifestyle.
- 3.2 The Footpath Restaurants Policy applies to all outdoor seating areas on public footpaths within the Bathurst Local Government Area.

4. APPROVALS FOR FOOTPATH RESTAURANTS

- 4.1 An approval of Council is required prior to the operation of any footpath restaurant.
- 4.2 An application is to be accompanied by the following:
 - (a) Council's application form, ensuring that plans showing proposed area are included.
 - (b) Photograph and/or specifications of proposed furniture.
 - (c) Clear scaled plan of the proposed layout of the furniture including the location of existing fixed street structures such as bins, lighting poles, fixed road signs and posts supporting an overhead awning.

- (d) Details of the proposed hours of operation.
- (e) Written evidence of appropriate public liability insurance.
- (f) Where the serving of liquor is involved, a copy of the Liquor Licence.
- (g) A declaration in relation to safety incidents or complaints
- (h) Fees in accordance with Council's current Revenue Policy.

Council will consider each application on its merits and as per guidelines set out in this document.

If the Application is Approved

- (a) Applicant will be advised of approval.
- (b) Council's approval will be limited to the commencement of the next financial year.
- (c) The annual approval fee is to be paid prior to commencement of operations.
- (d) Permits are issued on a financial yearly basis, i.e. 1 July to 30 June.
- (e) Permits may be issued for 12 months or 24 months, and all fees must be paid on application.
- (f) If an applicant ceases trade or chooses to relinquish the permit prior to its expiry, no refunds will be granted.

If the Application is Refused

- (a) Council will advise the applicant, in writing, that the application is refused.
- (b) Application fee will not be refunded.
- (c) Private use of footpath will not be permitted.

5. INFORMATION FOR FOOTPATH RESTAURANT/OUTDOOR SEATING PERMIT APPLICATION

5.1 Urban Design Guidelines

- 5.1.1 The aim of the urban design guidelines is to enhance the character and vitality of the area and prevent safety hazards and access problems.
- 5.1.2 A footpath restaurant may be approved in any public area where the local conditions are favorable for it to operate.
- 5.1.3 Footpath restaurants are not permitted in potentially hazardous areas such as corners of street intersections (refer Figure 1 in Attachment 1), however some areas may be considered on merit if safety issues are adequately addressed.
- 5.1.4 The following design considerations are taken in to account when an application for a footpath restaurant is assessed:
 - (a) Pedestrian and Vehicular circulation.
 - (b) Safety and convenience of patrons and public.
 - (c) Existing streetscape elements.

5.2 Circulation

- 5.2.1 An unobstructed passage for pedestrian movement of at least 2.0 metres wide shall be maintained at all times.
- 5.2.2 The width of the pedestrian movement area is measured as follows:

- (a) where parallel parking occurs on the road adjacent to the footpath – 600 mm from the edge of the kerb
- (b) where reverse angle parking occurs on the road adjacent to the footpath – 900 mm from the edge of the kerb
- (c) where there are posts supporting an overhead awning – from the footpath side of the post
- (d) other location may be considered where there is no parking or moving vehicles adjoining the footpath

5.2.3 Street furniture, plants, advertisement boards etc, are not permitted at any time into the pedestrian movement area.

5.2.4 The location of a footpath restaurant is to be directly adjacent to the respective indoor facility and not encroach into the frontage of adjoining premises.

5.2.5 If required by Council, the approved area shall be delineated on the footpath by a method approved by Council

5.3 Safety and Convenience

5.3.1 All footpath restaurants must take patron safety into account. Council may require confirmation of safe work methods as part of the application and renewal process.

5.3.2 The approval for footpath dining does not permit the venue to prepare food or drinks in the permit area. Food preparation must be undertaken in accordance with the *Food Act 2003* Food Regulation 2015 and Food Standards Code.

5.4 Existing Streetscape Elements

5.4.1 Where possible, the footpath restaurant should visually relate and be visually aligned to the existing features and elements of the street, such as trees, lighting elements, bollards, etc.

5.5 Permanent Structures

5.5.1 A footpath restaurant approval does not give approval to permanent structures on, adjoining or above the footpath. An application for development consent must be made to seek approval for permanent structures.

6. FURNITURE GUIDELINES

6.1 Layout

6.1.1 The layout of the furniture should provide enough space and practicality to ensure patrons comfort and deter patrons from moving furniture outside the approved area.

6.1.2 The furniture layout must conform to the approved layout at all times to ensure good circulation and safety in accordance with the abovementioned.

6.1.4 Umbrellas or other shade structures may be provided for shade and shelter and must be well secured in place to prevent them from being blown by wind.

- 6.1.5 Other items such as pot plants must be contained in the approved area and be included in the application for approval.

6.2 Furniture Style

- 6.2.1 Tables, chairs and other furniture should be strong durable waterproof and weather resistant, designed for commercial outdoor use and serviceable.
- 6.2.2 Furniture must be stackable or foldable for storage purposes.

7. GENERAL MANAGEMENT ISSUES

7.1 Maintenance

- 7.1.1 All furniture of footpath restaurant must be physically and aesthetically maintained to Council's satisfaction.

7.2 Storage

- 7.2.1 Outdoor furniture including shade umbrellas, pot plants and rigid dividers must be stored away from the public area outside hours of operation.

7.3 Hours of Service

- 7.3.1 The hours which the applicant intends to place tables and chairs on the public area need to be stated in the application and approved by Council and not be greater than any hours of operation set by conditions of development consent,

7.4 Rubbish and Cleaning

- 7.4.1 The site and furniture must be kept free from discarded rubbish and dirt at all times.
- 7.4.2 Regular cleaning of the area including furniture is required.
- 7.4.3 As with any restaurant, the outdoor eating area is subject to the N.S.W. Food Act 2003, Food Regulation 2015 and Food Standards Code.

7.5 Advertising and Signage

- 7.5.1 Only the name or logo of the restaurant may be placed on the outdoor furniture and may only appear as a minor element on the furniture.
- 7.5.2 Photographs of wind breaks or other furniture items which display brands or logos must be included in an application for footpath dining. Approval for use of such items is at the discretion of Council which will consider the impact on visual amenity of the items.

7.6 Smoking prohibited

- 7.6.1 Smoking is prohibited at footpath restaurants and within 4 m of the entrance or exit of a hospitality venue, in accordance with the following NSW Government regulation.

<https://www.health.nsw.gov.au/tobacco/Pages/commercial-outdoor-dining-laws.aspx>

- 7.6.2 Council requires that venues include "no smoking" signage in the approved dining area in accordance with the Smoke-free Environment Act 2000 and the Smoke-free Environment Regulation 2016.

8. APPROVAL CONDITIONS

Outlined below are some of the principle conditions that one would find in any Footpath Restaurant Licence. It should be noted that this list is not exhaustive, and Council reserves the right to add, remove or amend these conditions.

8.1 Term

- 8.1.1 The length of approval will be to the commencement of the next financial year. A letter will be issued to the applicant, advising of renewal, the renewal process and the fees for the financial year.

8.2 Maintenance

- 8.2.1 The grantee of Approval will be responsible for all maintenance and replacement of outdoor furniture and must keep the outdoor furniture in a physically sound, clean and aesthetically suitable condition to Council's satisfaction.
- 8.2.2 Any damage caused to Council's footway by outdoor furniture and facilities will be the responsibility of the grantee of Approval. Such damage will be repaired by Council at cost to the grantee of Approval.

8.3 Site

- 8.3.1 The grantee of approval must keep all outdoor furniture and associated paraphernalia wholly within the approved area

8.4 Indemnity

- 8.4.1 The grantee of approval will be required to indemnify Council against all actions, suits, debts, obligations, claims and other liabilities which may arise during the continuance of the approval.

8.5 Insurance

- 8.5.1 An application for footpath restaurant shall not take effect until the applicant has provided Council with a copy of a public liability insurance policy with a minimum value of \$20 million which contains the following clause:

"It is hereby agreed that the indemnity given by this policy is extended to the Bathurst Regional Council in respect to the operation of an approved footpath restaurant".

8.6 Serving of alcohol

- 8.6.1 Approval from Council to operate a footpath restaurant does not grant approval to serve alcohol. For the service of alcohol, a Liquor Licence that includes the footpath restaurant area must be obtained from Liquor and Gaming NSW. Any conditions applying to the Liquor Licence must be consistent with conditions imposed by Council for operation of the footpath

restaurant. A copy of the Liquor Licence is to be provided to Council and, if proposed for a new footpath restaurant application, attached to the application.

9. FEES

- 9.1 There is an application fee for the use of a public road as a footpath restaurant plus an annual fee charged per square meter per annum published in Council's Revenue Policy and set out in the approval conditions.
- 9.2 Permits issued after 31 December of each financial year will be charged the annual fee on a monthly pro rata basis.
- 9.3 These fees will be determined on an annual basis by Council in accordance with the exhibition and adoption of Council's Revenue Policy.

10. BUSINESS INTERRUPTION

- 10.1 Council will not accept any responsibility or liability for any interruption to business caused by the need for Council or any other authority to carry out any type of maintenance work on the approved area, inclement weather or any other interruption to business whatsoever caused.

11. RENEWAL OF APPROVAL

- 11.1 Renewal of an approval is not automatic and will require an annual fee payment, a copy of the current public liability insurance and either an annual application or written confirmation that the footpath restaurant has not been altered.

If the use of the footpath as an outdoor eating area ceases, the approval will expire.

- 11.2 Renewal of an approval will require previous adherence to all conditions of approval.

12. TRANSITION ARRANGEMENTS

- 12.1 Should this amended Policy result in a reduction in the approved area for a particular premise, this amended Policy will apply at the time of renewal of an approval.

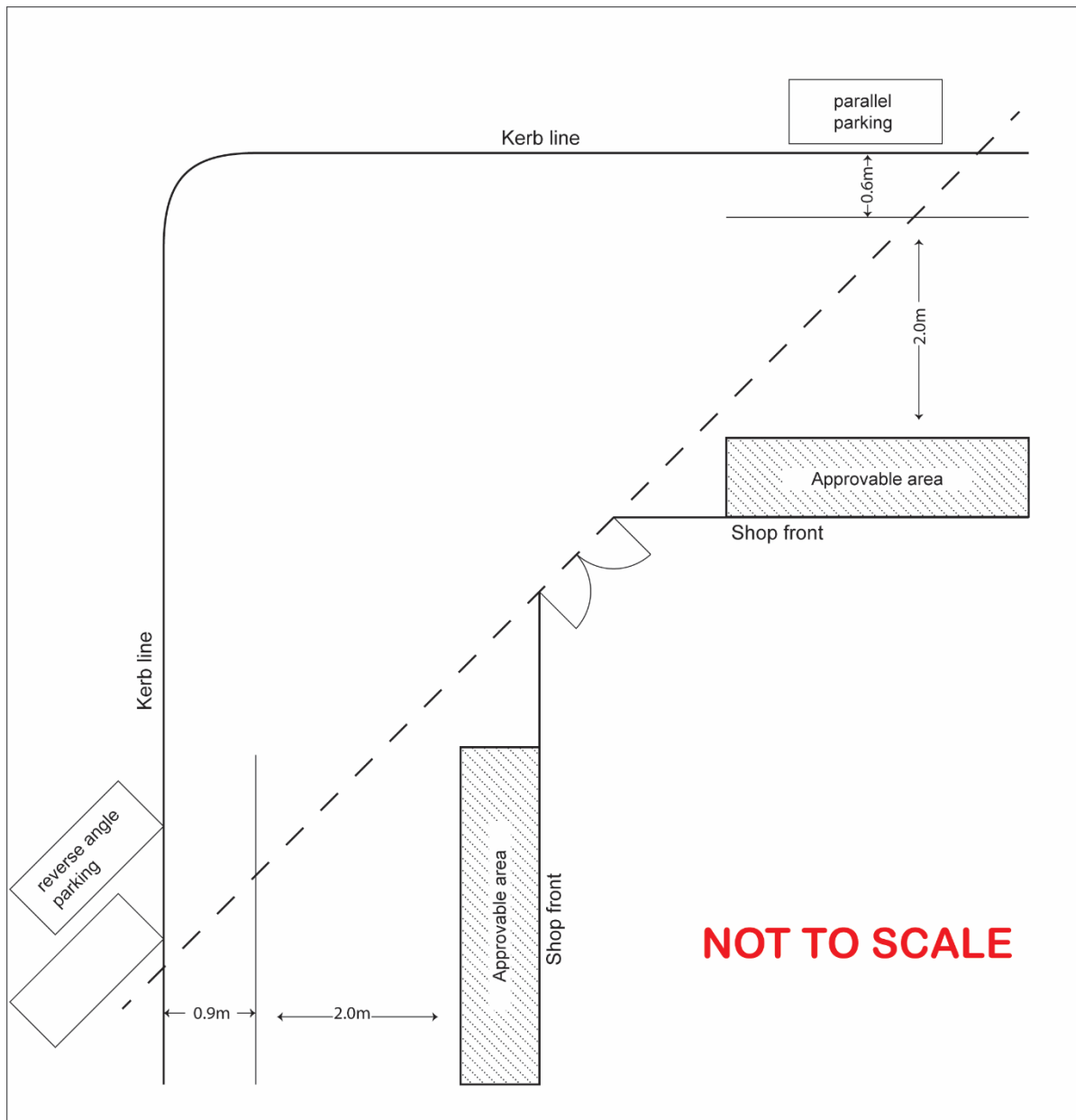


Figure 1. Typical arrangement at intersections

POLICY:	FUTUREPROOFING OUR CBD - 2022 AND BEYOND
DATE ADOPTED:	Director Environmental, Planning & Building Services Report #9.2.5 Council 21 September 2022 Resolution Number: ORD2022-323
ORIGINAL ADOPTION:	Director Environmental, Planning & Building Services Report #9.2.5 Council 21 September 2022 Resolution Number: ORD2022-323
FILE REFERENCE:	20.00340
OBJECTIVE:	To establish the guiding principles to support future decision making in ensuring the public realm of the CBD responds to changing community values and economic and environmental influences over time.

1.0 BACKGROUND:

Bathurst Town Centre Master Plan

The Bathurst Town Centre Master Plan 2021 provides a vision for improving seven city blocks within the Bathurst CBD, an area known as the Bathurst Town Centre.

Allen Jack + Cottier Architects (AJ+C) were invited to prepare the Master Plan for Bathurst Regional Council. The project was co-sponsored by Charles Sturt University (CSU), who were investigating the opportunities for a Bathurst CBD Campus at that time.

The Master Plan outlines AJ+C's analysis of the existing condition of the Town Centre, the outcomes of stakeholder and community engagement undertaken in the development of the draft plan, and then makes several site or area-specific recommendations as well as Centre-wide master plan proposals. As CSU decided not to proceed with an investigation of a CBD Campus, several options explored for campus facilities were identified as open opportunities for other uses.

'**Futureproofing our CBD**', Council's Response to the Bathurst Town Centre Master Plan, summarises the key concepts proposed in the A J + C Master Plan. The '**Futureproofing our CBD**' response did **not** recommend wholesale adoption of the Master Plan but outlined those elements of the Master Plan considered appropriate, at that time, for consideration of their implementation into the future.

The community's response to Council's '**Futureproofing Our CBD**' report was sought through a formal public exhibition process. "**Futureproofing Our CBD**" was exhibited for a one-month period with submissions closing on **24 May 2021**.

A range of voices were heard and messages received during the public exhibition period. These were collated in the report: Futureproofing our CBD (Council's Response to the Bathurst Town Centre Master Plan) – "What Bathurst Said".

Relevant documents are available at:

<https://yoursay.bathurst.nsw.gov.au/bathursttowncentre/widgets/278695/documents>

Street as Shared Spaces

At about the time Council placed its proposed response to the Master Plan on public exhibition Council was successful in attracting a substantial grant (\$767,884) under the NSW Government's Streets as Shared Spaces (SaSS) program round 1.

The NSW Government's Streets as Shared Spaces program provided one-off grant funding to support local councils to test and pilot new and innovative ideas for streets as safe, shared public spaces.

The Pilot project and the additional grant received under round 2 of the program enabled Council to trial a number of the suggestions outlined in the Bathurst Town Centre Master Plan.

The SaSS projects have highlighted the value in trialing change in stages rather than seeking wide ranging irreversible change. This has proved a very effective method of engaging with the community as to how that change is best managed and achieved.

This Policy

This policy seeks to respond to the Bathurst Town Centre Master Plan and the community's response to it and the lessons learnt from the Streets as Shared Spaces Pilot projects. It sets the guiding principles for future change within the CBD to ensure impacts on the public realm respond to changing community values and economic and environmental influences. Decisions involving future changes will need to assess their consistency against these Principles. Those decisions can reference the Master Plan report for possible solutions or adapt solutions to suit the circumstances of the case or develop new solutions, provided they respond to the principles of the Policy. Other strategies and plans will also inform those decisions including for example the future Active Transport Strategy and a revised Retail Strategy. Importantly, community engagement can continue as each new decision is made.

2.0 AIM OF THIS POLICY:

The policy aims to guide change in the public realm of the Bathurst CBD, whether owned publicly or privately.

3.0 OBJECTIVE OF THIS POLICY:

The objective of this policy is to establish the guiding principles to support future decision making to ensure the public realm of the CBD responds to changing community values and economic and environmental influences over time.

This policy seeks to ensure that change within the public realm of the Bathurst CBD is positive and negative impacts are minimised and mitigated.

4.0 LAND TO WHICH THIS POLICY APPLIES:

This policy applies to lands located within the Central Business District (CBD) of the City of Bathurst, generally being those lands located within the extent of lands zoned B3 Commercial Core under Bathurst Regional Local Environmental Plan 2014.

The public realm is those spaces around, between and within buildings that are publicly accessible and visible including streets, plazas, parks, footpaths, laneways, parks and open spaces.

This policy applies to changes that may be made to land, buildings, streets, lanes, footpaths, parks, spaces, views and vistas that may impact or change the public realm of the Bathurst CBD.

This policy applies to privately owned land to the extent to which new development on private land impacts on the public realm.

5.0 GUIDING PRINCIPLES TO SUPPORT FUTURE DECISION MAKING TO ENSURE THE PUBLIC REALM OF THE CBD MEETS COMMUNITY EXPECTATIONS:

The Council will consider the following guiding principles (as applicable) when making decisions that impact on the public realm (private or public) of the Bathurst CBD.

5.1 Sense of Place - How does change engage the Bathurst Town Centre.

Considerations include:

- the geographical grid layout of the Bathurst Town Centre, inclusive of the meridian ridge line and the respective falls to the northwest and southeast.
- the role of the Bathurst Town Square as the centre of the Bathurst Town Centre.
- the role of the Carillon, located on the meridian ridge and as the high point of the city,
- Bathurst's two- and three-storey street frontage rhythm and character.
- significant stories and memories of place recognising cultural longevity and promoting its greater visibility (including relating to Aboriginal culture and heritage).
- the extent the community and visitors enjoy being in and take pride in the Bathurst Town Centre.

5.2 Heritage and Streetscape - How does change integrate with the Bathurst Town Centre and its heritage streetscapes and parklands.

Considerations include:

- scale, bulk, massing, form, and siting of new development to complement and improve the quality and amenity of the public domain.
- the external appearance of new development (building design, character, materials, colours, and detailing) and how it might improve the quality and amenity of the public realm.
- the design of new development and how it responds to and mitigates its potential to impact other property and the public realm in terms of, overshadowing and solar access, visual and acoustic privacy, noise, wind and reflectivity.
- protecting heritage assets and encouraging adaptive reuse of heritage building stock.

5.3 Landscape and environment - How does change respond to and integrate with the environment and landscape of the Bathurst Town Centre.

Considerations include opportunities to improve:

- amenity by connecting to networks of open space.
- the quality and the value of the public realm.
- the amenity of streets and public spaces through landscaping and vegetation, using plant species which are particular to the Bathurst Town Centre.
- water and air quality by utilising sustainable and resilient infrastructure.

5.4 Economic vitality - How does change revitalise the Bathurst Town Centre and particularly activate the streets of the Bathurst Town Centre.

Considerations include:

- encouraging economic activity that creates a distinct and attractive place for business to trade and invest, and for people to visit.
- creating new or improved places for people and communities to gather, meet and interact that are safe enjoyable and equitable, inclusive of the provision of street furniture.
- encouraging opportunities for events.
- encouraging night-time activation.

5.5 Connection - How does change prioritise connectivity and walkability.

Considerations include:

- contributing to walkable blocks, particularly at mid-block locations.
- increasing pedestrian traffic and contributing to business exposure in the public realm.
- encouraging people to walk around the Bathurst Town Centre by integrating pedestrian paths with vehicle access and designated parking areas.
- connecting significant natural features, buildings, views and cultural assets to make the Bathurst Town Centre more navigable, accessible, engaging and attractive and to reinforce local character, including new places to sit, rest and socialise.
- slowing traffic and minimising unnecessary truck movements.
- increasing pedestrian safety by designing for a balance of all users (pedestrian, cyclist or vehicular) with differing abilities.
- encouraging temporary road closures and events spaces.

5.6 Traffic and Parking - How does change manage disruptions to traffic and parking and enhance opportunities for public and active transport.

Considerations include:

- offsetting on-street car parking losses with new off street parking opportunities.
- providing drop off and pick up kerb side spaces.
- signalisation of intersections and the prioritisation of traffic and off street car parking locations away from the CBD high streets.
- encouraging opportunities for new forms of travel into, through and out of the Bathurst Town Centre including cycling, park and ride, shuttle services and EV infrastructure.

5.7 Climate and Resilience - How does change respond to climate conditions and their impacts on the Bathurst Town Centre.

Considerations include:

- new water conservation infrastructure.
- mitigating the effect of summers with increasing temperatures and declining rainfall, particularly through appropriate landscaping and greenery.
- mitigating the predominant winter winds and their impact in the public realm.

5.8 Liveability - How does change encourage new employees to work and new residents to live in the Bathurst Town Centre.

Considerations include:

- adaptive reuse of heritage assets for commercial and residential opportunities.
- redevelopment of centre block locations and mid-block laneway improvements to open the centre of blocks and vacant lands.
- identification of opportunities to appropriately increase living and built form density (e.g. building height, floor space ratio, better utilisation of on ground car parking air space, alterations to residential density standards) in ways that mitigate impacts to street frontage rhythm and character.
- enhancing public safety particularly at night-time.

6.0 COMMITMENT TO COMMUNITY ENGAGEMENT

In guiding change under the principles of this Policy, Council commits to ongoing engagement with the community including the business community.

Where appropriate, Council will seek to trial change in stages rather than seeking wide ranging irreversible change as an effective method of engaging with the community as to how that change is best managed and achieved.

7.0 MODELLING CHANGE

3D modelling can provide an invaluable tool in simulating change within the CBD to aid decision making under this Policy.

In guiding change under the principles of this Policy, Council may require the submission of digital data in a format prescribed by Council for the purpose of 3D modelling. This data may be used by Council for community consultation/engagement purposes.

POLICY:	GREYWATER REUSE (RESIDENTIAL HOUSEHOLDS)
DATE ADOPTED:	Director Environmental, Planning & Building Services Report #8.2.9 Council 20 September 2023 Resolution No: ORD2023-264
ORIGINAL ADOPTION:	Director Environmental, Planning & Building Services Report #2 Policy 4 April 2007 Council 18 April 2007 Minute Book No. 10111
FILE REFERENCE:	14.00394
OBJECTIVE:	To establish guidelines for the greywater reuse for residential households

Everyday activities in a domestic household generate wastewater, which is diverted to a centralised sewerage system or onsite sewage management system (eg. septic system) for treatment and disposal. Wastewater is categorised as either greywater or black water.

Greywater is defined as the wastewater from the bath, shower, laundry and hand basins, whereas black water is defined as the wastewater from the toilet, urinals, bidets and kitchen sinks. It is important to note that the two wastewater streams are quite distinct in their chemical, biological and physical properties. Black water is grossly contaminated with faeces and a range of chemicals which are toxic to human health and the environment if released untreated. Once greywater and black water have been combined (as happens in the normal plumbing arrangement in domestic premises) the entire volume is considered black water.

Further, it is important to note the difference between greywater reuse and treated effluent reuse (or effluent reclamation/effluent recycling/recycled water as it is also known). Greywater reuse refers to the generation and reuse within a single residential property. Treated effluent reuse utilises effluent from a Wastewater Treatment Plant (WWTP). The effluent is highly treated through a sophisticated, centralised system and its end use is dependent on the level of treatment. This may include a reticulated system (such as the Rouse Hill dual reticulation system), an irrigation system (as used by many golf courses) or even for drinking water (of which there are many international examples). The treated effluent would otherwise be disposed of in a waterway, such as the Macquarie River in the case of Bathurst. This policy in no way deals with treated effluent reuse.

Greywater reuse represents one of the many opportunities that an individual or household can take to reduce their “Ecological Footprint”. In combination with a reduction in energy use, waste produced, etc a household may move towards a more sustainable lifestyle and lessen the impact of their daily activities on the local (and global) environment.

AIM

The principal aim of this policy is to ensure the protection of public health and the environment.

Further, this policy aims to promote the conservation of drinking water by facilitating the installation and operation of greywater reuse systems.

BENEFITS

Greywater reuse has a number of benefits for both the individual household and the environment. Greywater diversion has the potential to considerably reduce the volume of drinking water consumed by an individual household. Most Australian households use more than 30% of their total water consumption on maintaining their garden and lawns. Greywater reuse can provide a sustainable alternative to using drinking water for this purpose. Treated greywater also has uses inside the home, for toilet flushing and/or clothes washing. This may save between 10 and 20% of the total drinking water use within the household.

Greywater reuse has the potential to reduce the load on the sewerage system, as a large portion of the greywater produced by a household has the potential for reuse.

RISKS

There are a wide range of factors to be considered when installing a greywater reuse system. It is very important to determine the average volume of greywater that will be generated by the household, and the average volume that can be utilised.

Greywater must be reused in an appropriate way to ensure public health and environmental risks are managed to prevent illness and environmental degradation. It is the responsibility of the individual who undertakes these activities to obtain appropriate approvals where necessary and to ensure that their system is maintained and operated in a safe and sustainable way.

The contaminants in greywater are derived from household cleaning and personal hygiene activities. Nine hazards have been identified with the reuse of greywater (by the National Water Quality Management Strategy “Australian Guidelines for Water Recycling: Managing Health and Environmental Risks [Phase 1]”) on residential properties – boron, cadmium, chlorine disinfection residuals, hydraulic loading, nitrogen, phosphorus, salinity, chloride and sodium.

However, the hazards can be minimised by carefully adhering to the “*Do’s and Don’ts*” of Greywater reuse which are detailed in the “General Management Issues”

LAND TO WHICH THIS POLICY APPLIES

This policy shall apply to all residential properties in the Bathurst Regional Council Local Government Area. This policy does not apply to Commercial or Industrial properties.

PERMISSIBLE TYPES OF GREYWATER REUSE SYSTEMS

Council can only approve greywater reuse systems which comply with the requirements of NSW Health and the Department of Energy, Utilities and Sustainability (DEUS). Further, this policy takes into consideration the guidelines developed by the National Water Quality Management Strategy “Australian Guidelines for Water Recycling: Managing Health and Environmental Risks (Phase 1)”.

DEUS has developed a policy known as “NSW Guideline for Sewered Residential Premises (Single households) Grey water Reuse”. The guidelines categorise permissible grey water reuse into three different areas:

- Manual bucketing
- Greywater diversion
- Greywater treatment

The approval conditions for each type of reuse are detailed in the next section.

APPROVAL CONDITIONS

Each of the three systems (manual bucketing, greywater diversion, greywater treatment) is subject to different requirements for approval and installation.

Manual Bucketing

Manual bucketing does not require Council approval. It is considered to be a low risk activity. Please refer to the next section for further guidance on manual irrigation.

Greywater Diversion Systems

Greywater diversion is considered to be a low to medium risk operation under the DEUS guidelines. Section 68 of the *Local Government Act 1993* (the Act) provides that the operation of a “system of sewage management” requires the approval of Council. Under the Act a system of sewage management means “hold, or process or reuse or discharge sewage or by-products of sewage”.

Greywater diversion and greywater treatment are therefore prescribed activities requiring Council approval under the Act unless there is an exemption provided.

Clause 75A of the *Local Government (General) Regulation 2021* provides an exemption from approval under the following circumstances:

75A Approval required for domestic greywater diversion

- (1) *For the purposes of item 10 of Part F of the Table to section 68 of the Act, domestic greywater diversion is prescribed as an activity that requires the prior approval of the council.*
- (2) *However, domestic greywater diversion may be carried out without the prior approval of the council if—*
 - (a) *it is carried out in accordance with the Plumbing Code of Australia, and*
 - (b) *a sewage management facility is not installed on the premises concerned, and*
 - (c) *the following performance standards are achieved—*
 - (i) *the prevention of the spread of disease by micro-organisms,*
 - (ii) *the prevention of the spread of foul odours,*
 - (iii) *the prevention of contamination of water,*
 - (iv) *the prevention of degradation of soil and vegetation,*
 - (v) *the discouragement of insects and vermin,*
 - (vi) *ensuring that persons do not come into contact with untreated sewage or effluent (whether treated or not) in their ordinary activities on the premises concerned,*
 - (vii) *the minimisation of any adverse impacts on the amenity of the premises concerned and surrounding lands.*
- (3) *Failure to comply with subsection (2)(c) is not a breach of that performance standard if the failure was due to circumstances beyond the control of the person carrying out the domestic greywater diversion.*

(4) In this section—

domestic greywater diversion means the installation and operation of a system for diverting greywater generated on residential premises to a garden or lawn on those premises, but does not include the manual collection and re-use of greywater (for example, by means of a bucket or similar receptacle).

greywater means waste water from washing machines, laundry tubs, showers, hand basins and baths, but does not include waste water from a kitchen, toilet, urinal or bidet.

residential premises does not include premises comprising more than one dwelling.

Compliance with the following conditions is necessary to ensure that these requirements are satisfied.

- Wastewater is not diverted from kitchen or toilet plumbing
- An on-site sewage management facility is not in place (eg. septic system, aerated wastewater treatment system)
- Greywater is not stored in any way, or treated other than primary screening or filtration
- A washing machine standpipe, or licensed diversion device delivers the greywater to a sub-surface irrigation system
- The standpipe or diversion device has a manual switching or selection facility so that greywater can be easily diverted back to sewer
- Any diversion device connected to, or modifying the existing plumbing system is a WaterMark licensed device, and must be installed by a licensed plumber
- Any diversion other than by gravity is only via a licensed non-storage surge tank and pump system installed by a licensed plumber
- Some form of non-storage surge attenuation is installed as a part of the diversion device
- Council must be notified by the installing plumber that a greywater diversion device is in place
- Diversion devices must not be installed below the fixture trap on any plumbing fitting

If a greywater diversion device does not meet all of the criteria listed above, a “Section 68 approval” will be required under Section 68 of the Local Government Act.. Greywater diversion systems will also be subject to inspections by Council staff. A fee is associated with the application to install, and the approval to operate a system of sewage management (which includes greywater treatment).

Greywater diversion is only permissible where a system of subsurface irrigation is installed, regardless of whether or not it meets the other exemption requirements under Clause 75A. The irrigation system must be at least 100mm below the surface. The manual switching/selection facility must be clearly marked and should be diverted to the sewer as a default.

Further, greywater diversion devices are not suitable in multi-unit dwellings, as the volume of greywater generated is large and there is a considerable risk of hydraulic overloading of the soil.

Greywater Treatment Systems

The installation of a greywater treatment system requires Council approval without exception. Greywater treatment is considered to be a high risk activity. Council can only

approve systems which are accredited by NSW Health. A list of accredited systems is maintained on NSW Health's website at www.health.nsw.gov.au.

A "Section 68 approval" will be required for a greywater treatment system. Greywater treatment systems will also be subject to inspections by Council staff. A fee is associated with the application to install, and the approval to operate a system of sewage management (which includes greywater treatment).

The approval to operate will be subject to a risk assessment of each system and an "approval to operate" will be granted for a period of one, three or five years depending on the risk rating of the system and its use. The resident will be required to renew the approval to operate by arranging an inspection by Council prior to its expiry. The risk assessment process takes into account the topography, distance to boundaries and dwellings, soil types, location of water courses and lot size among other issues. The higher the risk rating, the shorter the approval period.

Treated greywater may be used for surface irrigation, toilet flushing and clothes washing. Greywater treatment systems must be installed by a licensed plumber.

If the greywater treatment system is used for toilet flushing and/or clothes washing, separate and distinct plumbing structures (from the other household plumbing) must be installed. Greywater treatment systems must be recorded on the drainage diagram for a lot.

APPROVAL AND INSPECTION OF PLUMBING WORKS

Where installation of greywater diversion or greywater treatment systems require plumbing works it will be subject to the requirements of the NSW Plumbing and Drainage Act.

The Plumbing and Drainage Act requires that:

- Plumbing and drainage is to be undertaken by a licenced contractor.
- The licenced contractor is to provide notice of commencement prior to commencement of works.
- At the completion of works the licenced contractor is to provide a Certificate of Compliance and a Plumbing Services Diagram (Drainage Diagram).

Council would typically undertake inspections of all internal and external plumbing works and all irrigation areas.

GENERAL MANAGEMENT ISSUES

Reducing the total water usage within the residence should always be the highest priority.

The first step when considering a greywater reuse option is to undertake a water balance to calculate the amount of greywater generated and the water which can be reused on the premises.

Sydney Water estimates that the average single dwelling residential premise (based on 3 persons per premises) uses 825L of water each per day. This equates to 113L of greywater generated per person per day. Of this roughly 66L is for baths/showers and 47L used in the laundry.

The volume of greywater that can be reused must then be calculated. If irrigation is used (either surface or subsurface) DEUS recommends the following volumes per irrigation event:

Volume of Greywater Reused per Irrigation Event					
Surface area	1 m ²	5 m ²	10 m ²	25 m ²	50 m ²
Volume	20L	100L	200L	500L	1000L

DEUS also recommends a maximum irrigation frequency dependent on the season:

- Summer – every 4 days
- Autumn – every 10 days
- Winter – every 14 days
- Spring – every 6 days

These recommendations take into account not only the volume of water required but also the nutrient loads present in the greywater. If rainfall has occurred then the time between irrigation events will need to be extended.

If a greywater treatment system is installed and connected to the toilet for flushing on average ~300L per week can be reused per full flush toilet and ~100L per week can be reused per half flush toilet.

If a greywater treatment system is installed and connected to the washing machine on average ~65L per load can be reused for front loading machines and ~330L per load can be reused for top loading machines [Front loading machines use considerably less water per load which accounts for the difference].

The estimates above serve as a guideline only. However it is expected that most households will not be able to reuse all greywater generated, regardless of the type of reuse undertaken.

It is strongly recommended that all greywater reuse is undertaken in a manner consistent with best practise management control measures (Do's and Don'ts from DEUS guidelines) as detailed below:

DO –

- Install a greywater diversion device (GDD) that has a WaterMark Licence and is registered by NSW Health or a greywater treatment system (GTS) that has been accredited by NSW Health
- Reuse treated greywater from a GTS for irrigation, toilet flushing and washing machines only
- Reuse diverted untreated greywater from a GDD for sub-surface irrigation only
- Install a GDD that incorporates some form of non-storage surge attenuation
- Select garden friendly detergents that are biodegradable and low in phosphorus, sodium, boron, chloride and borax
- Select liquid washing detergents, as they are comparatively low in salts
- Reuse greywater in the garden on several locations rather than one single point (for manual bucketing).
- Monitor plant and soil response to greywater irrigation
- Occasionally irrigate with drinking water to flush salts from the soil
- Wash your hands after reusing greywater

DON'T –

- Leave a diversion device on all the time. Treat it like a garden tap and only reuse greywater when the garden needs watering

- Reuse toilet or kitchen wastewater
- Reuse greywater for irrigation during rain
- Reuse greywater from the washing of nappies or soiled clothing
- Apply greywater in areas that are readily accessible to children and pets
- Reuse greywater when a resident has diarrhoea or is sick
- Reuse greywater generated by cleaning in the laundry or bathroom, or when using hair dye or other chemicals
- Reuse greywater to top up rainwater tanks or swimming pools
- Store untreated greywater
- Reuse greywater so that it flows into the streets, down stormwater drains or onto neighbouring properties
- Reuse greywater on plants that will be eaten raw
- Reuse greywater to wash driveways, paths or cars

FEES

There is no fee associated with the submission of a Notice of Exempt Development.

Section 68 approvals are subject to submission fees as outlined in Council's Revenue Policy.

These fees will be determined on an annual basis by Council in association with Council's annual review of its fees and charges schedule.

IMPROVEMENT POLICY

Council seeks feed back from the public on ways to improve the policy and make it easier to understand. Please address your comments in writing to:

The General Manager
Bathurst Regional Council
Private Mail Bag 17
BATHURST NSW 2795

GLOSSARY

Domestic greywater treatment system: a system or device that collects, treats and disinfects greywater arising from an individual single domestic premises for reuse for toilet and urinal flushing or laundry use, and/or for use in surface and sub-surface irrigation in dedicated non-trafficable areas.

Greywater: domestic greywater from hand basin, kitchen*, bath, shower, and laundry, but excluding toilet and urinal wastewater

*Please note: while the NSW Health definition includes water from the kitchen, Council policy excludes the use of kitchen water from Greywater reuse systems, due to the potentially high concentrations of chemical and biological contamination. The exclusion of kitchen wastewater is consistent with DEUS guidelines.

Greywater diversion device: a device that collects and directs untreated greywater to a sub-surface irrigation area or to the sewer. This system does not allow storage or treatment, apart from a course screen filter, which may remove lint, hair and coarse particles.

Manual bucketing: manually irrigating with greywater using a bucket, such as collecting bath water to irrigate the garden.

Nutrients: chemical elements essential for sustained plant or animal growth. The major nutrients essential for plant growth are nitrogen, phosphorus and potassium.

Operate a system of sewage management: hold or process, or re-use or discharge, sewage or by-products of sewage (whether or not the sewage is generated on the premises on which the system of sewage management is operated) [from *Local Government Act 1993*].

Risk management approach: involves identifying and managing risks in a proactive way, rather than reacting when problems occur. It involves three stages – identifying hazards, assessing the risk and implementing controls.

Stormwater: refers to the water resulting from rain draining into the stormwater system from roofs (rainwater), roads, footpaths and other ground surfaces.

Sub-surface irrigation: irrigation at a depth of at least 100mm below surface level.

Surface irrigation: water applied to the ground surface from above surface level

The domestic greywater treatment system, greywater, greywater diversion device and stormwater definitions are taken from NSW Health guidelines.

POLICY:	INDUSTRIES – ESTABLISHMENT OF NEW INDUSTRIES IN BATHURST
DATE ADOPTED:	Director Corporate Services Report #8.3.5 Council 17 November 2021 Resolution No: ORD2021-407
ORIGINAL ADOPTION:	Director Corporate Services Report #1 Policy 1 December 2004 Council 8 December 2004 Minute Book No. 9416 (former BCC Policy)
FILE REFERENCE:	20.00003
OBJECTIVE:	To assist in the processing of Development Applications involving job creation within the City

That Council adhere to its policy in dealing with development applications wherein priority is given to any development application involving any industry or development which will result in the creation of jobs within the area.

POLICY: KEEPING OF ROOSTERS

DATE ADOPTED: Director Environmental, Planning & Building Services
Report #8.1.1
Policy 1 May 2024
Council 21 August 2024
Resolution Number: ORD2024-246

ORIGINAL ADOPTION: Director Environmental, Planning & Building Services
Report #8.1.1
Policy 1 May 2024
Council 21 August 2024
Resolution Number: ORD2024-246

FILE REFERENCE: 13.00021

OBJECTIVE: To provide clarification on the keeping of roosters in the Bathurst LGA.

The keeping of roosters in the Bathurst Local Government Area (LGA) within zones R1, R2, R3 is prohibited. This is in response to a steady increasing rise in the number of complaints to Bathurst Regional Council and the increasing outlay of resources involved in the investigation into these complaints by Council's Authorised Officers.

The prohibiting of roosters within zones R1, R2, and R3 will bring Council into alignment with other NSW LGAs regarding the keeping of roosters in urban areas. Complaints received regarding noisy roosters within all other zones within the Bathurst LGA, will continue to be managed as "Offensive Noise" under the Protection of the Environment Operations Act 1997 by Council's Authorised Officers.

POLICY:	LAND – SUBDIVISIONS (DEVELOPERS)
DATE ADOPTED:	Director Environmental, Planning & Building Services Report #8.2.9 Council 20 September 2023 Resolution No: ORD2023-264
ORIGINAL ADOPTION:	Director Corporate Services Report #1 Policy 1 December 2004 Council 8 December 2004 Minute Book No. 9416 (former BCC Policy)
FILE REFERENCE:	20.00036
OBJECTIVE:	To establish guidelines to be fulfilled prior to the release of subdivision certificates

That where the applicant for development consent requests release of a subdivision certificate prior to completion of works, the following conditions apply:

- (a) Council will not accept a bond in respect of water and sewerage reticulation construction.
- (b) Council will not accept a bond for roadworks and drainage other than for minor works.
- (c) The amount of bond payable to Council as guarantee to be double the estimates prepared by a suitably qualified consultant or contractor.

POLICY: LEP'S & DCP'S & LOCAL APPROVAL POLICY

DATE ADOPTED: Director Environmental, Planning & Building Services Report
#8.1.8
Council 17 August 2022
Resolution No: ORD2022-292

ORIGINAL ADOPTION:

FILE REFERENCE: 20.00001

OBJECTIVE: N/A

Local Approvals Policy (LAP)

Bathurst Region Local Approvals Policy 2022

Local Environmental Plan (LEP)

Bathurst Regional Local Environmental Plan 2014 (as amended)

Development Control Plan (DCP)

Bathurst Regional Development Control Plan 2014 (as amended)

POLICY: MOUNT PANORAMA – NOISE REFERENCE LINE

DATE ADOPTED: Director Corporate Services & Finance Report # 8.2.1
Policy 5 June 2024
Council 19 June 2024
Resolution Number: ORD2024-170

ORIGINAL ADOPTION: Director Environmental Planning & Building Services Report
#10
Council 30 March 2005
Minute Book No. 9495

FILE REFERENCE: 10.00004

OBJECTIVE: To outline noise and access restrictions that apply to Mt
Panorama.

50dba – The subject land may be affected by noise from the Mt Panorama Racing Circuit. Council will have regard to this factor in considering any application for building on this land. No further lands which are located within the 50dba noise contour be rezoned for either residential or rural residential purposes.

65dba – The subject land may be affected by noise from the Mt Panorama Racing Circuit. Council will have regard to this factor in considering any application for building on this land. Access to the Mt Panorama racing circuit will be interrupted on those occasions when the circuit is in use. No further lands which are located within the 50dba noise contour be rezoned for either residential or rural residential purposes.

POLICY:	OPERATION OF TOURIST AND VISITOR ACCOMMODATION ESTABLISHMENTS
DATE ADOPTED:	Director environmental, Planning & Building Services Report #8.2.7 Council 22 September 2021 Resolution Number: ORD2021-321
ORIGINAL ADOPTION:	Director environmental, Planning & Building Services Report #1 Policy 6 November 2013 Council 19 February 2014 Minute Book No. 11660
FILE REFERENCE:	11.00003
OBJECTIVE:	To facilitate the development of tourist and visitor accommodation as a sustainable, low impact activity which maintains the amenity of both the property and locality; maintains a satisfactory standard of management and service; and to ensure the premises meet acceptable planning, community health and fire safety standards

1. OBJECTIVES

The objectives of the policy are:

- 1.1 To maintain the existing amenity of both the property, and where relevant, the locality where a tourist and visitor accommodation establishment is located. In order to do so Council will consider the following:
 - (a) the location of any other tourist and visitor accommodation establishments in the neighborhood; and
 - (b) the potential noise generating ability of the tourist and visitor establishments and its effect on neighbouring dwellings; and
 - (c) where reticulated sewerage is not available (onsite wastewater management system area) the capacity and efficiency of any proposed effluent disposal system and its potential to create a nuisance for the adjoining properties.
- 1.2 To maintain a satisfactory standard of management and service.
- 1.3 To ensure that the premises meet acceptable planning, community health and fire safety standards.

2. DEFINITIONS

NOTE: The definitions used in this Policy reflect the definitions of the standard instrument Local Environmental Plan.

"bed and breakfast accommodation" means an existing dwelling in which temporary or short-term accommodation is provided on a commercial basis by the permanent residents of the dwelling and where:

- (a) meals are provided for guests only, and
- (b) cooking facilities for the preparation of meals are not provided within guests' rooms, and
- (c) dormitory-style accommodation is not provided.

“backpackers’ accommodation” means a building or place that:

- (a) provides temporary or short-term accommodation on a commercial basis, and
- (b) has shared facilities, such as a communal bathroom, kitchen or laundry, and
- (c) provides accommodation on a bed or dormitory-style basis (rather than by room).

“eco-tourist facility” means a building or place that:

- (a) provides temporary or short-term accommodation to visitors on a commercial basis, and
- (b) is located in or adjacent to an area with special ecological or cultural features, and
- (c) is sensitively designed and located so as to minimise bulk, scale and overall physical footprint and any ecological or visual impact.

It may include facilities that are used to provide information or education to visitors and to exhibit or display items.

“farm stay accommodation” means a building or place that provides temporary or short-term accommodation to paying guests on a working farm as a secondary business to primary production.

“floor area” is deemed to include the area of any storey of the floor of the dwelling measured from the outer extremity of the enclosing walls.

“serviced apartment” means a building (or part of a building) providing self-contained accommodation to tourists or visitors on a commercial basis and that is regularly serviced or cleaned by the owner or manager of the building or part of the building or the owner's or manager's agents.

“tourist and visitor accommodation” means a building or place that provides temporary or short-term accommodation on a commercial basis, and includes any of the following:

- (a) backpackers' accommodation,
- (b) bed and breakfast accommodation,
- (c) eco-tourist facilities
- (d) farm stay accommodation,
- (e) serviced apartments,

NSW GOVERNMENT POLICY ON SHORT TERM RENTAL ACCOMMODATION (STRA)

The NSW Government has undertaken a review of the regulatory framework governing for short-term rental accommodation (STRA).

Short-term Rental Accommodation (STRA) refers to a dwelling used by the 'host' to provide accommodation in the dwelling on a commercial basis for a temporary or short-term period. STRA is often facilitated through online booking platforms such as Stayz, Airbnb and Booking.com.

The provisions relating to STRA take effect on 1 November 2021.

The new STRA planning policy framework comprises new standard provisions and introduces:

- a new definition for STRA, hosted STRA and non-hosted STRA;
- an exempt development pathway for:
 - hosted STRA in a dwelling, 365 days per year;
 - non-hosted STRA in a dwelling, 180 days per year in Greater Sydney and nominated regional NSW LGAs and 365 days per year in all other locations; and
- an exemption of bookings of 21 consecutive days or more from day limits for non-hosted STRA.

The STRA policy is supported by:

- amendments to the EP&A Regulation to introduce minimum fire safety standards for dwellings used for STRA and associated penalty notice offences for non-compliance; and
- the implementation of a new Government-run STRA register that will ensure compliance with the new fire safety standards, as well as tracking day limits of each STRA dwelling and provide details to assist local councils with monitoring STRA in their local government areas (LGA).

3. COUNCIL APPROVALS

The NSW Government framework will impact on the approval pathways, including provisions for short term rental accommodation as either “exempt” or “complying” development. To the extent that there is any inconsistency between the STRA framework and Council’s Policy the STRA framework will prevail.

Notwithstanding that the development may be considered as exempt development it may nonetheless be subject to the requirements of the Swimming Pools Act, the Food Act, the Local Government Act and the Public Health Act as detailed in this Policy.

There are two pathways that a tourist and visitor accommodation establishment can follow when seeking approval:

- 3.1 Conversion of a dwelling to tourist and visitor accommodation may be considered “Complying Development” where it complies with the criteria contained in Schedule 3 of the Bathurst Regional Local Environmental Plan 2014. A Complying Development Certificate application form and appropriate fees and plans are to be submitted to Council or an appropriately qualified private certifier for determination; or
- 3.2 Where the development cannot be considered as “exempt development” under the STRA framework or Complying Development, a Development Application must be submitted for determination under the Environmental Planning and Assessment Act 1979. A Development Application form, appropriate fee and plans are to be submitted to Council for determination.
- 3.3 In non-reticulated sewerage areas a current ‘approval to operate’ for the onsite waste water system must be maintained at all times. This may require further approval(s) under Section 68 of the Local Government Act 1993. A fee will be charged in accordance with Council’s Revenue Policy for each application.

4. STANDARDS FOR CONSIDERATION

Development Standards:

- 4.1 Off-street car parking be made available in accordance with Bathurst Regional Development Control Plan 2014. The parking space should be appropriately provided, behind the front building line.
- 4.2 Off-street car parking provided should be constructed so as to reduce as far as possible the noise of vehicles entering and leaving the property.
- 4.3 Council may permit one sign on the property to indicate the house is a tourist and visitor accommodation establishment and the name of the proprietor. The sign shall not exceed 0.5 square metres in area.
- 4.4 The tourist and visitor accommodation establishment shall be operated in a manner which has regard to the health and residential amenity of the surrounding neighbourhood. It is important in residential areas that noise levels are in keeping with those which are normally experienced in the locality.

Public Health Standards:

- 4.5 Premises and furnishings are to be kept clean and free from vermin.
- 4.6 No animals are allowed in a guest room, dining room or kitchen. However, guide dogs for the visually impaired, companion dogs and hearing dogs are acceptable within a dining room or guest room only.
- 4.7 Unless otherwise approved by the Council, toilet and bathroom facilities are required for guests separate from those used by the permanent residents of the house, and without the need to enter another separate bedroom. One bathroom per 3 bedrooms will be required. Bathroom carpet is not permitted unless it is laid on an approved, impervious floor surface.
- 4.8 For guest bedrooms, a minimum of 5.5 m² of bedroom floor area per person is required for long term (> 28 days); otherwise 2m² per person is required. Children under 5 years old are not included in the calculation (Clause 46 of the Public Health Regulation 2012).
- 4.9 In areas which do not have a reticulated town water supply, a potable water supply must be provided

The Public Health Act 2010 Part 3 Environmental Health Division 1 Safety measures outlines the requirements for a private water supply

The Public Health Regulation 2012 Part 5 Safety measures for drinking water, requires a Quality Assurance Program must be prepared and submitted to the local Public Health unit

(More information can be obtained from the NSW Public Health webpages for Quality Assurance Programs for private water supplies and the NSW Private Water Supply Guidelines)

- 4.10 A room used for the preparation or storage of guests' food shall comply with the following acceptable standards and solutions:
 - All premises offering food as part of the accommodation package or providing

- any food for sale is required to complete and submit to Council a Food Business Registration Form. A copy is available from Councils website
- Premises offering food as part of the accommodation package or separate to any package may be subject to regular inspections to ensure ongoing compliance with the Food Standards. Any inspection is subject to an inspection fee in accordance with Councils Review Policy.
- Notify the NSW Food Authority of the food business. This can be done by logging into the NSW Food Authority website.
- No live animals allowed in food preparation areas.
- Those preparing meals should have demonstrated skills and competencies in food hygiene. A Food Safety Supervisor's Certificate will be required if the premises are offering meals for sale.
- Benches used for food preparation should be finished in a material that is smooth and durable, impervious to moisture and easily cleaned and maintained in good condition.
- Provide hygienic cleaning of utensils, a double bowl sink with dishwasher preferred.
- Provide hand washing facility – a designated hand wash basin either as third bowl of sink, or separate facility in or near kitchen.
- Provide liquid soap dispenser, nail brush and single use hand towels to ensure regular hand washing and hand drying by food handlers.
- Refrigerators are to maintain food at below 5 degrees celsius and hot food storage equipment to maintain hot food above 60 degrees celsius.
- Provide a thermometer to allow for systematic checking of temperatures accurate to $\pm 1^{\circ}\text{C}$.
- Clearly document and display management arrangements outlining particulars on daily cleaning and hygiene standards, equipment maintenance, check systems for food storage and a program for approved pest control treatment.
- A small kitchen sink, fridge, toaster, microwave are permitted in guest rooms.
- All food contact surfaces are to be cleaned and sanitised after each use.

Fire Safety Standards:

- 4.11 **Kitchen:** A 1.2 m² **fire blanket** and a 3.5 kg **portable fire extinguisher** suitable to fight Class A, B & E fires, are to be suitably wall mounted within the kitchen area with clear instructions for use.
- 4.12 **Locks:** Doors must be able to be opened from inside the room without a key or special knowledge. Deadlocks requiring an internal key release are not to be provided on doors to guests' rooms or exit doors.
- 4.13 **Smoke Alarms:** Approved (compliant with AS3786 Smoke Alarms) single-station smoke detector alarms (connected to a permanent 240 volt electricity supply with a battery operated backup device) are to be installed in locations in accordance with the National Construction Code requirements.
- 4.14 **Fire Prevention and Management Plan – Mandatory:** A Fire Prevention and Management Plan shall be prepared and displayed within a common area of the building. Instructions for action in the event of a fire shall be placed in each guest room eg an evacuation plan affixed to the bedroom door.
- 4.15 **Provision for Escape – Mandatory:** There must be adequate provision for escape in the event of fire or other emergency from the building to a place of safety.

Stairways, ramps and balconies shall be designed so as to provide a safe passage in relation to the nature, volume and frequency of the likely usage. All paths of travel are to be maintained free of obstruction at all times.

Swimming and Spa Pools:

- 1.16 Where a swimming or spa pool is installed at the establishment, or at any premises used for tourist and visitor accommodation, it must comply with the requirements of the Swimming Pools Act 1992. The Swimming Pools Act 1992 (<https://legislation.nsw.gov.au/view/html/inforce/current/act-1992-049>) requires the following:

- The swimming pool must be surrounded at all times by a child resistant barrier (refer Section 12 and 13 for further details)
- The swimming pool is to be registered on the NSW Swimming Pool register (refer Section 30B for further details)
- The swimming pool is to have a valid certificate of compliance issued (refer to Section 22B for further details).
- The swimming pool is to be inspected at least once every three years. A fee will be charged in accordance with Council's Revenue Policy.

Pools at a Tourist and Visitor Accommodation establishment are a public swimming or spa pool pursuant to the Public Health Regulation 2012 - Schedule 2. Pool water is to be disinfected including the pool surrounds and toilets associated with the pool or spa to prevent the transmission of disease. The legislation permits the inspection of the pool and the sampling of water. If a pool is a risk to public health, the legislation allows for the closure of the pool.

The NSW Health Department's *Guidelines for Disinfecting Public Swimming Pools and Spa Pools*, includes daily recording of disinfectant levels when the pool is available for patrons.

Compliance the NSW Health Department's guidelines will be inspected as part of Council's annual inspection of the premises. A fee will be charged in accordance with Councils Revenue Policy.

- 1.17 **Noise Control:** The Protection of the Environment Operations Act 1997 (POEO Act) and POEO (Noise Control) Regulation 2000 include means to address neighbourhood noise.

The Regulation restricts times during which articles and vehicles cannot be heard in a neighbouring residence. The following is a summary of the restrictions.

Domestic Noise Sources	Times during which special restrictions apply
Power tools and equipment Swimming & spa pool pumps Motor vehicles – except when entering and leaving premises	8pm to 7am on weekday and Saturdays 8pm to 8am on Sundays and Public Holidays
Domestic air conditioner	10pm to 7am on weekdays 10pm to 8am on Weekends and Public holidays
Musical instruments and sound equipment, eg TV's	10pm to 8am weekday 12 midnight to 8am Friday and Saturday nights or before Public Holidays

Outside of these hours, restrictions can be imposed if they cause “offensive noise”.

5. BUSH FIRE

- (a) BRLEP identifies certain land as being “bushfire prone” land.
- (b) An application for Tourist and Visitor Accommodation on bushfire prone land will be considered as a ‘special fire protection purpose’ and will require referral to the Rural Fire Service for a bush fire safety authority. The development should be considered with the Rural Fire Services Planning for Bushfire Protection Guidelines.
- (c) An application for a Tourist and Visitor Accommodation establishment will require a bush fire report lodged with the Development Application.
- (d) A bush fire evacuation plan must form part of the bush fire report lodged with the Development Application.

6. ADMINISTRATION

- 6.1 If any alterations or additions to the building are proposed and these building works are not Exempt Development under Council’s Local Environmental Plan, a Development Application/Construction Certificate application is required to be submitted to Council for determination.
- 6.2 An inspection of the premises and surrounds of a tourist and visitor accommodation establishment is required annually, and a fee is payable in accordance Council’s Management Plan and Revenue Policy.
- 6.3 A Fire Safety Certificate is to be provided to Council annually.
- 6.4 The Environmental Planning and Assessment Act requires the consent authority to consider the public interest in considering and determining any Development Application. In this regard the public interest is taken to include the provision of access for persons with a disability. This is consistent with an accommodation providers obligation under the Disability Discrimination Act.

POLICY:	PLANNING AGREEMENTS
DATE ADOPTED:	Director Environmental, Planning & Building Services Report # 8.2.10 Council 19 July 2023 Resolution Number: ORD2023-190
ORIGINAL ADOPTION:	Director Environmental, Planning & Building Services Report # 9.1.5 Council 17 March 2021 Resolution Number: ORD2021-66
FILE REFERENCE:	11.00006 and 11.00049
OBJECTIVE:	To establish a framework to guide how Council enters into Planning Agreements under the Environmental Planning and Assessment Act 1979 and the Environmental Planning and Assessment Regulation 2000 in connection with the development of land in the Bathurst Region.

Scope

This Policy applies to all requests made by Developers to enter into a Planning Agreement under the Environmental Planning and Assessment Act 1979 and the Environmental Planning and Assessment Regulation 2021 with Council in conjunction with a Planning Proposal or Development Application, and to all Planning Agreements entered into in the Bathurst Region.

What is a Planning Agreement?

A planning agreement is a voluntary agreement between a developer and Council, made in conjunction with a planning proposal or development application, where the developer is required to dedicate land free of cost, make monetary contributions, or provide any other material public benefit, to be used for or applied toward a public purpose.

Circumstances in which Council will consider negotiating a planning agreement

Council, at its discretion, may negotiate a planning agreement with a developer in connection with any application by the developer for an amendment to an environmental planning instrument (EPI) or for development consent relating to any land in the Bathurst Regional Local Government Area.

Council may consider entering into a Planning Agreement in the following circumstances:

- In major development sites or precincts that are owned by a single landowner or a consortium of landowners.
- Where the developer has a direct incentive, such as bringing forward potential development, to be involved in the delivery of community infrastructure.
- Where the developer wants to provide community infrastructure in addition to, or at a higher standard than, what has been specified under the contributions plan.
- Where Council and the developer negotiate a different and better or more innovative outcome than can be achieved through imposing direct or indirect contributions.

- Where a proposed development has not been anticipated by Council and thus works and facilities to cater for this development have not been identified. A planning agreement can be prepared to specifically target the needs of the development.

Principles governing Council's use of Planning Agreements

Where a Planning Agreement under the Environmental Planning and Assessment Act 1979 and the Environmental Planning and Assessment Regulation 2021 is proposed by a developer, Council will follow the principles established in the NSW Department of Planning, and Environment's Planning Circular "Improving Planning Agreements" (PS21-001), 12 February 2021, to negotiate, enter into and administer.

POLICY:	PLANNING INSTRUMENT AMENDMENTS AND REFUND OF FEES
DATE ADOPTED:	Director Environmental, Planning & Building Services Report #8.1.1 Policy 3 April 2024 Council 17 April 2024 Resolution Number: ORD2024-101
ORIGINAL ADOPTION:	Director Environmental, Planning & Building Services Report #1 Policy 7 June 2017 Council 21 June 2017 Minute Book No. 12531
FILE REFERENCE:	20.00143
OBJECTIVE:	To establish the criteria upon which planning instrument amendments will be classified in regards to the application fees payable and a method of calculation for fee refunds where amendments do not proceed.

1. BACKGROUND

Council has in place a range of planning instruments that from time to time require major review or amendment, instigated either by Council or by private property owners. These include:

- Local Environmental Plans (LEP)
- Development Control Plans (DCP)

The *Environmental Planning and Assessment Act 1979* establishes the way in which each planning instrument can be made and amended.

In relation to the preparation of a Local Environmental Plan or an amendment to an LEP, the Department of Planning's *Local Environmental Plan Making Guideline* provides further guidance on the Planning Proposal process, being the process required to prepare or amend the LEP.

Applications to amend the LEP are lodged through the NSW Planning Portal.

Applications to amend the DCP are made directly to Council.

Fees and charges for applications to amend (or create new) Planning Instruments are payable in accordance with the rates specified in Council's annual Revenue Policy. These rates are subject to annual review.

2. OBJECTIVES OF THIS POLICY

This policy applies to applications to prepare new or amend existing Planning Instruments for the Bathurst Regional Local Government Area including:

1. Local Environmental Plans, and

2. Development Control plans.

The objectives of this Policy are to:

1. Establish the criteria by which Council will classify an application to prepare a new or amend an existing planning instrument for the purposes of determining the application fee payable.
2. Establish the timing of when payment of fees is to be made.
3. Establish the method of calculation for fee refunds where applications for amendments are either withdrawn by the applicant or not supported by Council.

3. CLASSIFICATION OF AMENDMENTS TO COUNCIL'S PLANNING INSTRUMENTS

Amendments to Council's Planning Instruments will be classified into one of three categories (see table below).

The Director Environmental, Planning & Building Services will determine which classification category will apply to a proposed amendment. The matters that the Director will consider are outlined in the table below and include (but are not limited to):

1. The level of assessment, consultation and coordination that is likely to be required.
2. The level of additional studies and supporting documentation required to support the application for the amendment.
3. The size and scale of the proposal.
4. The level of community interest in the proposal (or expected level of interest).
5. The extent to which the proposal might impact the wider community.
6. The extent to which the proposal might represent a change in the Council's current policy/planning controls.
7. The extent to which Council may need to engage the work of other professionals to assist in the preparation and/or assessment of the proposal.

CLASSIFICATION OF AMENDMENTS TO COUNCILS PLANNING INSTRUMENTS AND DEVELOPER CONTRIBUTION PLANS		
Minor Amendment (Requires a low level of assessment, consultation, and coordination)	Standard Amendment (Requires a standard level of assessment, consultation, and coordination)	Major / Complex Amendment (Requires a high level of assessment, consultation, and coordination)
No detailed studies or supporting documentation is required to support the proposal.	One or two detailed studies or supporting documentation is required to support the proposal.	Will require justification through multiple technical studies and detailed supporting documentation.
Will have nil to minimal impact on the immediate neighbourhood area and will not be locally or regionally significant.	Will have a low to moderate impact only on the immediate neighbourhood area.	Will be locally, and possibly regionally, significant. (Will increase the developable capacity of land).
Involves an amendment to only one planning instrument.	May involve minor amendments to more than one planning instrument.	May involve amendments to other planning instruments including the preparation of major amendments or the preparation of new planning instruments.
Amendments are consistent with Council's strategic documents and the Local	Amendments are consistent with Council's strategic documents and the Local	Amendments may seek a variation to Council's strategic documents and the Local

CLASSIFICATION OF AMENDMENTS TO COUNCILS PLANNING INSTRUMENTS AND DEVELOPER CONTRIBUTION PLANS		
Minor Amendment (Requires a low level of assessment, consultation, and coordination)	Standard Amendment (Requires a standard level of assessment, consultation, and coordination)	Major / Complex Amendment (Requires a high level of assessment, consultation, and coordination)
Strategic Planning Statement, Ministerial Directions and State Government Policies, Plans and Strategies.	Strategic Planning Statement, Ministerial Directions and State Government Policies, Plans and Strategies.	Strategic Planning Statement, Ministerial Directions and State Government Policies, Plans and Strategies.
Council does not need to engage the work of other professionals.	Council may need to engage the work of one or two other professionals.	Council may need to engage the work of many other professionals.
<u>Amendment Examples:</u> <ul style="list-style-type: none"> • Correction of administrative errors. • Minor housekeeping amendment. • LEP Amendments consistent with section 3.22 "Expedited amendments of environmental planning instruments" of the EP&A Act. • Consequential, transitional or other minor DCP, amendments. 	<u>Amendment Examples:</u> <ul style="list-style-type: none"> • Adjusting zone, heritage item, land use management area boundaries. • Minor updated mapping – 1 or 2 LEP mapping layers, or an amendment to existing DCP map. • New heritage item/s. • Changes to zoning, land use permissibility, or altering development standards for lands in the immediate neighbourhood area. • Creating an additional permitted use. • Classification or reclassification of public land. • Multiple housekeeping amendments. • Changes to zoning, development standards that do not increase demand for local, regional or state infrastructure and do not require new infrastructure funding. 	<u>Amendment Examples:</u> <ul style="list-style-type: none"> • Rezoning for new urban release areas involving LEP and DCP amendments. • Major updated mapping – multiple LEP maps, and new DCP map. • Creation/removal of heritage conservation area and/or multiple heritage items. • Changes to zoning, land use permissibility, or altering development standards, for lands that will be locally or regionally significant. • Creating multiple additional permitted uses. • Changes to zoning, development standards that would increase demand for local, regional or state infrastructure and may require new infrastructure funding.

4. TIMING OF PAYMENTS

The relevant application fee will generally be payable at two stages throughout the process.

Stage 1 Pre-Lodgement Fee

The Pre-lodgement Fee is to be paid at one of the following points (whichever occurs sooner):

- a. Upon receipt of a Proposal Brief/letter to Council, or
- b. Upon arrangement of a pre-lodgement meeting, or
- c. Prior to the commencement of any investigative work by Council (e.g. any research and investigations), or
- d. Prior to the preparation/issue of any significant pre-lodgement advice/work by Council, or
- e. Upon submission of any draft studies, strategies, reports, assessments, masterplan, plans, Development Contributions Plan amendment, servicing strategies, models, demographic analysis, population projections and associated documentation, or
- f. Any other circumstance as deemed appropriate by Council's Director Environmental, Planning and Building Services.

The pre-lodgement fee shall be payable regardless of the outcomes of any advice provided by Council, including advice that indicates that the application to amend the planning instrument might not be supported.

Transitional Arrangements

Where Council has been in pre-lodgement with an applicant prior to the adoption of this Policy (21 May 2024), the pre-lodgement fee will be payable upon lodgement of the relevant amendment application where Council's revenue policy, at that time, includes a pre-lodgement fee.

Stage 2 – Amendment Application Assessment and GIS Fees

The amendment application assessment fee is to be paid upon receipt of the application with Council or, in the case of an LEP amendment, upon lodgement of a Planning Proposal in the NSW Planning Portal.

The Geographical Information System (GIS) fee is payable upon receipt of the application with Council or, in the case of an LEP amendment, upon lodgement of a Planning Proposal in the NSW Planning Portal. The GIS fee is payable for:

1. In the case of an LEP amendment, each layer of mapping and for each mapping grid that is proposed to be created or amended.
2. In the case of a DCP amendment, for each DCP map that is proposed to be created or amended.

In addition to the GIS fee, the applicant will pay the full costs of any external GIS fees that may be incurred by Council, for example where Council is unable to provide internal GIS services for mapping.

In addition to the Amendment Application Assessment and GIS Fees payable, the applicant will pay the full cost for any required studies, specialist advice and consultant studies as deemed appropriate. This may also involve verification of technical studies provided by the applicant if they are deficient and/or require, in the opinion of Council, a peer review.

Total Fees payable

In all instances the total fees payable for each new plan/amendment to a plan include the pre-lodgement fee + the assessment application fee + the GIS fee (where applicable) regardless of the timing of payment as outlined above.

All fees are cumulative for all amendments to planning instruments. For example where an LEP and a DCP amendment are required the pre-lodgement fee and the application

assessment application and GIS fee (where applicable) are payable for each plan proposed to be amended.

Should the applicant fail to pay the required fees in accordance with this policy, staff will notify the applicant and no further work will be undertaken until the outstanding amount is paid.

5. REFUND OF APPLICATION FEES

If an application is withdrawn or does not meet certain milestones, the applicant may be eligible for a part refund of fees in accordance with this Policy. Applications for a refund of fees must be in writing. Upon receipt of such an application, Council will determine the refund in accordance with the criteria shown in the table below.

REFUND OF APPLICATION FEES		
Fee	Milestone	Percentage Refund
Pre-lodgement Fee	Pre-lodgement work/investigations have commenced by Council.	Non-refundable.
Application Assessment Fee	Lodgement and assessment have commenced. Application has been withdrawn by the applicant or rejected by Council <u>prior</u> to public exhibition.	40%
	Application has been withdrawn by the applicant or rejected by Council <u>post</u> public exhibition.	10%
	The application has been adopted by Council.	Non-refundable.
GIS Fee	Application has been withdrawn by the applicant or rejected by Council prior to the commencement of preparation of draft maps to enable public exhibition.	100%
	Application has been withdrawn by the applicant or rejected by Council <u>prior</u> to public exhibition.	40%
	Application has been withdrawn by the applicant or rejected by Council <u>post</u> public exhibition.	10%.
	The application has been adopted by Council.	Non-refundable.

POLICY:	PROTECTION OF ROADSIDE VEGETATION AND HABITAT
DATE ADOPTED:	Director Environmental, Planning & Building Services Report #3 Policy 9 October 2013 Council 20 November 2013 Minute Book No. 11660
ORIGINAL ADOPTION:	
FILE REFERENCE:	13.00001
OBJECTIVE:	To establish guidelines to protect native vegetation and wildlife habitat on land under Council's care and control

1. BACKGROUND

Council is responsible for the management and protection of public lands that are under the care and control of Council. This may include parks, reserves, operational land and road reserves.

Roadside reserves are important in their role as wildlife corridors, improving amenity and landscape value and reducing noise impacts from traffic. Other land, such as public reserves, riparian zones (rivers and creeks) and community land have a greater role in providing habitat and landscape value.

Vegetation communities have their own value as remnant vegetation, as Endangered Ecological Communities or the fact that they may be the only quality native vegetation in the area.

Vegetation on Council land may be threatened by inappropriate activities that reduce the extent and quality of native and other vegetation and wildlife habitats.

Council, as a land manager, has a responsibility to ensure activities do not have a detrimental impact on protected or threatened plants and animals and Endangered Ecological Communities.

Council, in its actions, is guided by the relevant legislation and operational documents adopted by Council such as the Vegetation Management Plan, Biodiversity Management Plan and Roadside Vegetation Management Guidelines.

Council acknowledges that there may be a need to remove vegetation or disturb habitat on Council land as part of an approved activity. Therefore there is a need for a review and approval process for such actions.

2. AIM

The aim of this policy is to improve the protection of native vegetation and the protection of wildlife habitats found on land under the care and control of Bathurst Regional Council.

3. LAND TO WHICH THIS POLICY APPLIES

This policy applies to the Bathurst Regional Council Local Government Area.
It applies to all land under the care and control of Bathurst Regional Council.

Note: The NSW Office of Environment and Heritage is the appropriate regulatory authority under the Native Vegetation Act (2003). The Native Vegetation Act regulates the clearing of native vegetation on all NSW land except that managed by the NSW National Parks and Wildlife Service, NSW Forestry Corporation and urban areas.

The Central West Catchment Authority (Central Tablelands Local Land Service from 1 January 2014) is the local approval authority for clearing of vegetation on private land.

4. BENEFITS

Vegetation on Council land forms an important part of the landscape. They may retain remnants of the pre-European vegetation community. They provide linkages for wildlife between areas of suitable habitat, as well as providing habitat for a range of species. Habitat may be trees both living and dead, shrubs, grasses, hollows, fallen timber and debris, rocks and soil. There is well documented evidence to show that local threatened species use or exist in roadside and public reserves of various shapes and sizes.

The nature of vegetated roadside reserves means that they also improve the look of landscapes as well as provide a buffer for noise and light from vehicular traffic. Similar values are placed upon river and creek reserves as they form important linkages across the landscape, improve amenity and help to maintain water quality, provide native fish habitat and well as stabilising banks and flood zones. Other reserves also have public amenity and recreation values and link to other habitat.

Protecting vegetation and habitat within Council controlled land will therefore:

- Maintain and increase habitat linkages for wildlife
- Enhance the quality of wildlife habitat
- Maintain the visual amenity of local roads
- Reduce the impact from vehicular traffic noise and light on nearby lands
- Help to maintain water quality and native fish habitat
- Help to stabilise banks and flood plains and reduce erosion
- Maintain community recreation values
- Protect high quality vegetation remnants that may be uncommon in the wider environment.
- Maintain the landscape values of the Bathurst Region as identified in the Bathurst 2036 Community Strategic Plan.

5. ACTIVITIES THAT REQUIRE COUNCIL APPROVAL

- (a) Boundary fence buffer maintenance in accordance with a Routine Agricultural Management Activity as defined under the Native Vegetation Act (1993), whereby the maintenance activity is to occur on a road reserve or public land.
- (b) Disposal or provision of timber to third parties, created as part of activities that do not require approval under this policy (i.e. road works, electricity infrastructure installation, flood mitigation works).
- (c) Collection of wildflowers and seeds in accordance with National Florabank National Code of Practice (1998) and Guidelines.
- (d) Creation of firebreaks or bush fire hazard reduction in association with private land or private property protection whereby the maintenance activity is to occur on the roadside reserve or public land.

- (e) Grazing and travelling stock in or through areas of High Conservation Value as per the Bathurst Regional Council Roadside Vegetation Management Guidelines .

6. ACTIVITIES THAT DO NOT REQUIRE COUNCIL APPROVAL

- (a) As part of an approved development under Part 4 of the Environmental Planning & Assessment Act (1979).
- (b) As part of Council activities in accordance with an approved Review of Environmental Factors under Part 5 of the Environmental Planning & Assessment Act (1979).
- (c) As part of normal Council maintenance actions that do not require a Review of Environmental Factors under Part 5 of the Environmental Planning & Assessment Act (1979).
- (d) As part of state electrical infrastructure works under Section 41 of the State Environmental Planning Policy (Infrastructure) (2007).
- (e) As part of flood mitigation work under Section 49 of the State Environmental Planning Policy (Infrastructure) (2007) and in accordance with an approved Review of Environmental Factors and / or a Part 7 Fisheries Permit.
- (f) As part of state road works under Section 93 of the State Environmental Planning Policy (Infrastructure) (2007) that are conducted in accordance with an approved environmental assessment.
- (g) Pruning of limbs which project over private property boundary in areas outside the Bathurst Tree Preservation Order area.
- (h) Noxious weed control in accordance with Section 13 of the Noxious Weeds Act (1993).
- (i) Bush fire hazard reduction carried out in accordance with an approved Bush Fire Hazard Reduction Certificate Rural Fires Act (1997).
- (j) As part of rail infrastructure works under section 79 of the State Environmental Planning Policy (Infrastructure) (2007) and in accordance with an approved Review of Environmental Factors.

7. PROHIBITED ACTIVITIES

- (a) Collection of firewood.
- (b) Clearing of vegetation that may be classed as threatened species habitat unless in accordance with Section 6 of this Policy.
- (c) Clearing, damaging or picking a listed protected native vegetation species as per Schedule 13 of the National Parks and Wildlife Act (1974). unless in accordance with Section 6 of this Policy.
- (d) Picking and pruning plants or collecting seed from a listed threatened species or endangered ecological community under the NSW Threatened Species Conservation Act (1995) or the Federal Environmental Protection and Biodiversity Conservation Act (1999) unless in accordance with Section 6 of this Policy.
- (e) Removal or moving of any rock, soil and sand, unless in accordance with Section 6 of this Policy.
- (f) Disposal of litter or waste.
- (g) Other activities that are prohibited under NSW Acts or Regulations.

8. GAINING APPROVAL FROM COUNCIL

A person wishing to undertake an activity as per Section 5 of this Policy may request an approval from:

Manager Environment
Environmental, Planning & Building Services
Bathurst Regional Council
158 Russell Street

An inspection of the proposed activity's location and an assessment of the impacts will be undertaken. If approval is granted, a written approval will be provided allowing twenty-eight (28) days to undertake the activity.

Approval may be refused for the following reasons:

- The proposed activity is a prohibited activity as per Section 7 of this policy.
- The proposed activity will result in a negative impact on threatened species or threatened species habitat.
- The proposed activity is likely to have a significant impact upon the native vegetation, protected species, wildlife habitat, public amenity or landscape value.

9. OFFENCES

An Authorised Officer may impose a penalty for each individual action.

- (a) It is an offence to undertake an activity listed in section 5 of this policy without written approval from Council.
 - (a) Maximum Penalty: 20 penalty units as per Section 629 of the Local Government Act (1993).
- (b) It is an offence to undertake an activity listed in Section 7 of this policy.
 - (a) Maximum Penalty: 20 penalty units as per Section 629 of the Local Government Act (1993) or as otherwise listed by NSW Legislation.
- (c) It is an offence to undertake an activity if acting contrary to a notice erected by Council at that place.
 - (a) Maximum Penalty: 10 penalty units as per Section 632 of the Local Government Act (1993).

10. ORDERS AND NOTICES

Persons found to conduct an activity without approval or outside the conditions of an approval from Council may, by an Authorised Officer, be ordered to:

- (a) Replace vegetation or other material lost, damaged or removed as part of an activity and stabilise the site to prevent erosion, sediment migration and pollution of waterways and land under Section 96 of the Protection of the Environment Operations Act (1997).
- (b) Repay costs to Council associated with the remedy of damages associated with an unapproved activity or activity outside the conditions of an approval, under Section 690 of the Local Government Act (1993).

11. UNDERLYING LEGISLATION

The Native Vegetation Act (2003) has objectives to protect native vegetation of high conservation value and to improve the condition of existing native vegetation. The Native Vegetation Regulation (2005) (the Regulation) makes provision for the approved clearing of native vegetation in association with certain activities.

The meaning of native vegetation is defined under Section 6 of the Native Vegetation Act and includes trees, shrubs, understorey, groundcover, wetland plants whether living or dead and that existed in the State before European settlement.

The meaning of clearing native vegetation is defined under Section 7 of the Native Vegetation Act and includes cutting down, felling, thinning, logging or removing native vegetation by any particular means.

The Local Government Act (1993) makes provision for Local Government (Councils) to manage public land and to ensure the protection of public places.

Section 629 of the Local Government Act states that a person who, without lawful excuse, injures or wilfully damages or unnecessarily disturbs plants, animals, rocks and soil that exist in a public place may be guilty of an offence.

Section 630 of the Local Government Act states that a person who fails to comply with the terms of a notice (sign) erected by the Council is guilty of an offence.

Section 690 of the Local Government Act states that Council may recover costs from a person or corporation to undertake remedial actions in association with damage caused by that party, or costs associated in remedying that damage.

The Protection of the Environment Operations Act (1997) has objectives that include to protect, restore and enhance the quality of the environment in New South Wales, and to prevent the degradation of the environment through pollution.

Where activities have been undertaken in a public place which results in pollution of land or waterways, under Section 120 and Section 142A of the Protection of the Environment Operations Act, the person or corporation responsible may be guilty of an offence.

Section 96 of the Protection of the Environment Operations Act states that an appropriate regulatory authority, such as Council, may direct an occupier or the person carrying out an activity to take such action to ensure that the activity is carried out in an environmentally satisfactory manner.

12. OTHER RELEVANT LEGISLATION

This policy does not preclude the provisions of other State or Federal legislation including, but not limited to:

- NSW National Parks and Wildlife Act (1974) and Regulation/s.
- NSW Threatened Species and Conservation Act (1995) and Regulation/s.
- NSW Fisheries Management Act (1994) and Regulation/s.
- NSW Environmental Planning and Assessment Act (1979) and Regulation/s.
- NSW Forestry Act (2012) and Regulation/s.
- NSW Rural Fires Act (1997)
- Federal Environment Protection and Biodiversity Conservation Act (1999) and Regulation/s.
- NSW State Environmental Planning Policies

13. IMPROVEMENT OF POLICY

Council seeks feedback from the public on ways to improve the policy and make it easier to understand. Please address your comments in writing to:

The General Manager
Bathurst Regional Council

14. GLOSSARY

Clearing: The cutting down, felling, thinning, logging, removing, killing, destroying, poisoning, ringbarking, uprooting or burning of native vegetation.

Flood mitigation: Is work designed and constructed for the express purpose of mitigating flood impacts and as defined under the State Environmental Planning Policy (Infrastructure) (2007).

Habitat: An area or areas occupied, whether periodically, occasionally or permanently by a species, population or ecological community as defined under the Threatened Species Conservation Act (1995) and includes living and non-living attributes.

Native Vegetation: A species of tree, shrub, scrub, understorey plant, groundcover, grass, herb or wetland plant that existed in the state before European settlement and includes living or non-living vegetation.

Normal Council Maintenance Action: Actions undertaken as part of Council operations to maintain infrastructure such as roads and water lines that are not listed as an 'Activity' as per the Activity Checklist or do not require development consent, and therefore do not require additional consent or environmental review.

Noxious Weed: A species of plant declared as 'noxious' by an order under Section 7 of the Noxious Weeds Act (1993).

Pollution: Placing or otherwise introducing into or onto land or water, whether through act or omission, any matter that causes or is likely to cause degradation or harm, or change the condition or be detrimental to the environment, as defined under the Protection of the Environment Operations Act (1997).

Private Land: Land that is not vested in the Crown or owned by a local authority and is owned by a private individual or corporation.

Public Place or Land: A public reserve, road, Crown reserve or land vested in the Council as public land and as defined under the Local Government Act (1993).

Protected Native Plant: A species of native plant (flora) as listed under Schedule 13 of the National Parks and Wildlife Act (1974).

Protected Fauna: All species of native Australian animals.

Pruning: The trimming, lopping or removal of individual or multiple limbs of a tree or shrub.

Riparian Zone: For the purposes of this policy, the riparian zone includes a watercourse and adjacent land managed to protect or maintain a watercourse (river, creek, wetland, flood plain, dam, drainage reserve etcetera) and may include surrounding park or public land.

Roadside Reserve: The land that exists outside the formed road way, whether sealed or unsealed, and extends to each opposite boundary whether marked or unmarked by fence or other permanent feature.

Routine Agricultural Management Activity (RAMA): An activity as defined under Section 11 of the Native Vegetation Act (1993) and includes the maintenance of infrastructure including fencing and control of weeds on private land.

Threatened Species: A native animal or plant species listed as threatened under the NSW Threatened Species Conservation Act (1995) or the Federal Environmental Protection and Biodiversity Conservation Act (1999).

Threatened Species Habitat: Habitat, as defined under this Policy, that is known to be or likely to be habitat for a threatened species.

Timber: Part of a tree or shrub such as logs, branches and stumps that could be used for firewood or construction.

POLICY:	RAINWATER TANKS – RETICULATED WATER SUPPLY AREAS
DATE ADOPTED:	Director Environmental, Planning & Building Services Report #8.2.9 Council 20 September 2023 Resolution Number: ORD2023-264
	REPLACES THE FOLLOWING POLICIES
	1. Rainwater Tank – Domestic Purposes 2. Rainwater Tank – Garden Watering Purposes only
ORIGINAL ADOPTION:	Policy 7 February 2007 Council 21 February 2007 Minute Book No. 10065
FILE REFERENCE:	14.00017
OBJECTIVE:	To establish guidelines for the use of rainwater tanks in reticulated water supply areas

1. AIM

The aim of this policy is to promote the conservation of water and facilitate the installation and use of rainwater tanks on existing residential properties.

The policy also provides clear guidelines for the use of rainwater tanks in order to protect public health and the quality of the Bathurst reticulated water supply.

2. BENEFITS

The collection of rainwater for non-potable purposes has both environmental and economic benefits, not only for residents but also for Council. Rainwater tanks assist in reducing the demand on the reticulated drinking water supply, however residents should still be mindful of using their water wisely.

The policy provides guidance for the use of rainwater for two different applications:

- a) Garden irrigation and private car washing (which should be carried out on the lawn as opposed to the driveway or street),
- b) Supply of toilet and/or washing machine in addition to garden irrigation.

NSW Health does not recommend the use of rainwater for drinking, cooking or bathing where a reticulated water supply is available. Thus, this policy reflects NSW Health's recommendations.

3. LAND TO WHICH THIS POLICY APPLIES

This policy shall apply to all existing residential properties in the Bathurst Regional Council Local Government Area which are connected to the reticulated supply, with the exception of industrial and commercial properties.

Requirements associated with rainwater tanks for proposed dwellings are addressed through existing BASIX Certificate and Development Application processes.

This policy supersedes all previous Council policies relating to rainwater tanks.

4. APPROVAL CONDITIONS FOR RAINWATER TANK INSTALLATION

4.1 Exempt Development

An approval of Council may be required prior to the commencement of any works, unless the works are:

- exempt development under Schedule 2 of the Bathurst Regional Local Environmental Plan 2014, or
- exempt under the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 or other relevant State environmental Planning Policy, or
- installation is required as a result of BASIX commitments as part of an approval.

4.2 Development Application Criteria

Any rainwater tank installation which is not able to meet all of the exempt development criteria or is required to satisfy BASIX commitments, will be required to submit a DA for approval. Council will assess each application on its merits.

Fees payable for the submission of a DA will be determined by Council in association with Council's annual review of its fees and charges schedule.

4.3 General Conditions

- The tank may be connected to individual pipework to supply the toilet and/or washing machine and outside taps for garden irrigation.
- Any plumbing works must be undertaken by a licensed plumber in accordance with AS/NZS3500.
- All plumbing works connected to internal systems are subject to inspection by a Council Officer.
- All external taps supplied by the rainwater tank must be clearly labelled "not for drinking".
- Top-up from the reticulated supply will be limited to a trickle top up system which has a maximum flow rate of 2 litres per minute.

5. GENERAL MANAGEMENT ISSUES

5.1 Maintenance

In all cases where the installation of a rainwater tank has been approved by Council (or in the case of an exempt development where Council has been notified), the owner/occupier is solely responsible to ensure the water quality is appropriate for the intended use.

Council **strongly recommends** regular maintenance of the tank and associated fixtures.

Maintenance should include, but is not exclusive to:

- Regular (at least once every 3 to 4 months) cleaning of gutters and removal of leaf litter and other debris.
- Checking any access points to ensure that they are secure to prevent access by children or small animals.
- Cleaning of screens and checking for the presence of mosquitos or larvae.
- Siphoning off of any sludge build up every 2 to 3 years.
- AS/NZ3500 suggests that all tanks should be cleaned and disinfected prior to initial use and whenever the tank is taken out of service for inspection, repairs, painting or other activity that might lead to contamination of water.
- Council strongly recommends that individuals do not enter a rainwater tank, even for maintenance purposes. A tank is a confined space which may pose risks such as drowning or being overcome due to a lack of oxygen. Professional tank cleaners can be employed for such purposes.

5.2 Pollution Control Devices

It is recommended that a first flush device be installed to divert the first few litres of roof runoff during a rain event to the stormwater system, which may reduce contamination of the rainwater by sediment or other potential pollutants.

Gutter guards may also reduce the volume of vegetative debris allowed to accumulate in the guttering.

5.3 Trickle Top-Up

The system is recommended to “top-up” from the reticulated supply to a maximum of 30% of tank capacity to ensure an adequate storage volume is available during a rain event.

A visible air gap should be maintained between the “top-up” system and the stored water inside the tank.

6. FEES

There is no fee associated with the submission of a Notice of Exempt Development.

DA's and Plumbing inspections are subject to submission fees as outlined in Council's Management Plan.

These fees will be determined on an annual basis by Council in association with Council's annual review of its fees and charges schedule.

7. IMPROVEMENT OF POLICY

Council is aware that the business environment can change and that more efficient processes may become available. It is therefore important for the business community and public to advise the Council on ways to improve the policy and to make it easier to understand. Please address your comments in writing to:

The General Manager
Bathurst Regional Council
Private Mail bag 17
Bathurst NSW 2795

POLICY: ROADSIDE HERITAGE ITEMS

DATE ADOPTED: Director Corporate Services & Finance Report # 8.2.1
Policy 5 June 2024
Council 19 June 2024
Resolution Number: ORD2024-170

ORIGINAL ADOPTION: Director Environmental Planning & Building Services Report
#10
Council 30 March 2005
Minute Book No. 9495

FILE REFERENCE: 10.00004

OBJECTIVE: To identify and protect roadside heritage items.

Council's work crews are encouraged to notify the Environmental, Planning & Building Section of any items of significance within the road reserve. If an item is proven to be of heritage significance signage or a marker is to be placed at each site identifying its heritage significance.

POLICY:	ROADSIDE STALLS AND STREET VENDING
DATE ADOPTED:	Director Environmental, Planning & Building Services Report No 8.1.2 Policy 1 May 2024 Council 15 May 2024 Resolution Number: ORD2024-127
ORIGINAL ADOPTION:	Director Environmental, Planning & Building Services Report No 8.1.2 Policy 1 May 2024 Council 15 May 2024 Resolution Number: ORD2024-127
FILE REFERENCE:	30.00004
OBJECTIVE:	To provide guidelines for Council, producers and sellers for the sale of locally grown produce and other products from the roadside, from a public place or from a farm gate premises.

DEFINITIONS

The Bathurst Regional Local Environmental Plan 2014 provides the following relevant definitions:

Farm gate premises—

- (a) *means a building or place—*
 - (i) *on a commercial farm, and*
 - (ii) *ancillary to the farm, and*
 - (iii) *used to provide visitors to the farm, on a commercial basis, with agricultural products predominantly from the farm, supplemented by products from other farms in the region, or with services or activities related to the products, including the following—*
 - (A) *processing, packaging and sale of the products, but not the processing of animals,*
 - (B) *the preparation and serving, on a retail basis, of food and drink to people for consumption on the premises, whether or not liquor, take away meals and drinks or entertainment are also provided,*
 - (C) *tastings or workshops,*
 - (D) *the provision of information or education related to the products, and*
- (b) *includes cellar door premises.*

Roadside stall means a place or temporary structure used for the retail sale of agricultural produce or hand crafted goods (or both) produced from the property on which the stall is situated or from an adjacent property.

While street vending is not defined in the Bathurst Regional Local Environmental Plan 2014, the following definition is adopted:

Street vending means the selling of articles either directly or from a stall or standing vehicle in a public street or a public place.

WHAT IS THE DIFFERENCE BETWEEN FARM GATE PREMISES, ROADSIDE STALLS AND STREET VEDNING?

Farm Gate Premises	Roadside Stall	Street Vending
<ul style="list-style-type: none"> • Medium to large scale (e.g. commercially run farm). • Year-round production and retailing. • Undertaken within property boundary. • Undertaken within permanent farm building. • Items for sale are grown/produced on subject property or nearby property. 	<ul style="list-style-type: none"> • Small scale (e.g. hobby farm). • Seasonal production and retailing. • Undertaken within property boundary. • Undertaken in light-weight, temporary or semi-permanent structures. • Items for sale are grown/produced on subject property or nearby property. 	<ul style="list-style-type: none"> • Retailing undertaken from a stall or standing vehicle. • Undertaken within a road reserve or public place. • Items for sale are not necessarily locally grown/produced.

FARM GATE PREMISES

Permissibility

Permissibility of farm gate premises varies depending on zone. Refer to the applicable zone control table in the Bathurst Regional Local Environmental Plan 2014 to determine permissibility or contact Council's Environmental Planning and Building Services Department for advice.

Approval Pathways

- *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* provides exempt development criteria for farm gate premises – see Subdivision 16D of Division 1 *General Exempt Development Code*.
- *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* provides complying development criteria for farm gate premises – see Division 3 of Part 9 *Agritourism and Farm Stay Accommodation Code*.
- Development Application – where abovementioned exempt or complying development criteria cannot be met.

Area Limitation

- Exempt & Complying Development – **maximum 200m²** of the gross floor area of an existing building and **maximum 500m²** gross floor area for the total of all buildings used for farm experience premises or farm gate premises on the landholding (*State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*).
- Development Application – no prescribed area limit.

Development Standards (where consent is required)

1. The operation must comply with the above definition for farm gate premises at all times.
2. Any associated signage must be included in the Development Application and must demonstrate compliance with the applicable standards in the Bathurst Regional Local Environmental Plan 2014.

3. Clearly identified car parking must be provided wholly within the property boundary and be suitably located so that it does not impeded vehicles entering or leaving the site.
4. The property entrance must meet the minimum rural entrance requirements in Council's Guidelines for Engineering Works.
5. The property entrance must achieve minimum site distances relative to the applicable speed limit.
6. Buildings must comply with the applicable construction, access and fire safety requirements for commercial buildings.

ROADSIDE STALL

Permissibility

Permissibility of roadside stalls varies depending on zone. Refer to the applicable zone control table in the Bathurst Regional Local Environmental Plan 2014 to determine permissibility or contact Council's Environmental Planning and Building Services Department for advice.

Approval Pathways

- *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* provides exempt development criteria for roadside stalls – see Subdivision 33AA of Division 1 *General Exempt Development Code*.
- Development Application – where abovementioned exempt development criteria cannot be met.

Area Limitation

Exempt Development – **maximum 9m²** (*State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*).

With development consent – **maximum 20m²** (Clause 5.4 *Bathurst Regional Local Environmental Plan 2014*).

Development Standards (where consent is required)

1. The operation must comply with the above definition for roadside stalls at all times.
2. Any associated signage must be included in the Development Application and must demonstrate compliance with the applicable standards in the Bathurst Regional Local Environmental Plan 2014.
3. Clearly identified car parking must be provided wholly within the property boundary and be suitably located so that it does not impeded vehicles entering or leaving the site.
4. The property entrance must meet the minimum rural entrance requirements in Council's Guidelines for Engineering Works.
5. The property entrance must achieve minimum site distances relative to the applicable speed limit.

STREET VENDING

Council adopts the Office of Local Government Street Vending Guidelines (2017).

Approval Pathways

- **Local Government Act 1993 – Section 68 Part E, 2**

Approval is required to “expose or allow to be exposed (whether for sale or otherwise) any article in or on or so as to overhang any part of the road or outside a shop window or doorway abutting the road, or hang an article beneath an awning over the road.”

- **Roads Act 1993 – Section 138 (1)(a)**

Approval is required to “erect a structure or carry out a work in, on or over a public road.”

Development Standards

See “Criteria for Approvals” in the Office of Local Government Street Vending Guidelines (2017).

Note: Street vending excludes footpath dining. See separate policy “Footpath Restaurants” for criteria and approval pathways.

VENDING AT AN EXISTING APPROVED COMMERCIAL PREMISES

If the selling is to be done from an existing Council approved commercial premises (for example a service station), no approval is required from Council providing a number of exemption criteria are met. This includes:

1. The proposal must not take up any carparking within the site.
2. The proposal must not impact upon any vehicular manoeuvring areas or hinder vehicular ingress or egress to the site.
3. The site must be able to accommodate all traffic utilising the vending facility.
4. Only one advertising sign is permitted per vending facility and it must be placed wholly within the site upon which the activity is being carried out. The sign must not be placed in the road reserve or in a place that will affect sight distances of vehicles using the site.

MOUNT PANORAMA

In order to protect the commercial integrity of the Mount Panorama Racing Circuit, Street Vending will not be permitted in the two (2) week period leading up to and during race events, where it conflicts with the commercial operation of the circuit or is likely to impede the free flow of traffic to and from the circuit.

POLICY:	SECTION 68 FEES – ERECTION OF SCAFFOLDING FOR BUILDING IMPROVEMENTS B3 COMMERCIAL CORE ZONE
DATE ADOPTED:	Director Environmental Planning & Building Services Report #8.2.9 Council 20 September 2023 Resolution No: ORD2023-264
ORIGINAL ADOPTION:	Director Environmental Planning & Building Services Report #10, Council 14 December 2016 Minute Book No. 12406
FILE REFERENCE:	20.00123
OBJECTIVE:	To grant a fee exemption for the erection of scaffolding and parking permits associated with building improvement works in the CBD.

That any Section 68 Application fees and Parking Permits related to the erection of scaffolding associated with building improvement works in the E2 Commercial Centre Zone be waived.

POLICY: SEWERAGE TREATMENT WORKS

DATE ADOPTED: Director Corporate Services & Finance Report # 8.2.1
Policy 5 June 2024
Council 19 June 2024
Resolution Number: ORD2024-170

ORIGINAL ADOPTION: Director Environmental Planning & Building Services Report
#10
Council 30 March 2005
Minute Book No. 9495

FILE REFERENCE: 10.00004

OBJECTIVE: To provide an adequate buffer around the Bathurst
Sewerage Treatment Works.

No further lands which are located within 400 metres of the boundaries of the Bathurst Sewerage Treatment Works be rezoned for residential or rural residential purposes.

POLICY:	SWIMMING POOL INSPECTIONS
DATE ADOPTED:	Director Environmental, Planning & Building Services Report #9.1.10 Council 21 June 2023 Resolution Number: ORD2013-149
ORIGINAL ADOPTION:	Director Environmental, Planning & Building Services Report #2 Policy 9 October 2013 Council 20 November 2013 Minute Book No. 11660
FILE REFERENCE:	11.00006 & 02.00009
OBJECTIVE:	To take such steps as are appropriate to ensure that Council is notified of the existence of all swimming pools to which the Act applies that are within its area. To promote awareness within its area of the requirements of the Act in relation to swimming pools, and To investigate complaints about breaches of the Act.

1. COUNCIL'S OBLIGATIONS UNDER THE SWIMMING POOLS ACT

The Swimming Pools Act provides an obligation upon all Councils to ensure that all swimming pools comply with minimum safety standards for pool safety.

5 *General duties of local authorities regarding swimming pools*

Each local authority is required:

- (a) *to take such steps as are appropriate to ensure that it is notified of the existence of all swimming pools to which this Act applies that are within its area, and*
- (b) *to promote awareness within its area of the requirements of this Act in relation to swimming pools, and*
- (c) *to investigate complaints about breaches of this Act in accordance with section 29A.*

Council is generally notified of the existence of swimming pools through the approval processes provided for under the Environmental Planning and Assessment Act.

For the most part compliance is initially achieved through the approval process (either as a Development Application or Complying Development Certificate). As part of the process Council and private certifiers have an obligation to assess the swimming pool against the applicable standards during the approval process, during construction and at the completion of the project.

Beyond the completion of the swimming pool there is an ongoing obligation on owners and occupiers to:

1. maintain the swimming pool barrier in existence and in a good state of repair (section 15).
2. ensure that all doors and gates providing access to the swimming pool are kept securely closed at all times when they are not in actual use (section 16).
3. ensure that a warning notice is all times maintained, in a prominent position in the immediate vicinity of the swimming pool (section 17).

2. PORTABLE SWIMMING POOLS AND SPAS AND CHILD RESISTANT BARRIERS

It is worth noting that many portable swimming pools are still covered by the Swimming Pools Act and are still bound by the underlying obligations provided in the Act.

swimming pool means an excavation, structure or vessel:

- (a) *that is capable of being filled with water to a depth greater than 300 millimetres, and*
- (b) *that is solely or principally used, or that is designed, manufactured or adapted to be solely or principally used, for the purpose of swimming, wading, paddling or any other human aquatic activity,*

and includes a spa pool, but does not include a spa bath, anything that is situated within a bathroom or anything declared by the regulations not to be a swimming pool for the purposes of this Act.

It is noted that State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 currently provides an exemption from the need to obtain formal consent where it complies with pre set criteria.

These criteria are as follows:

Subdivision 30 Portable swimming pools and spas and child-resistant barriers

2.59 Specified development

The construction or installation of a portable swimming pool or spa or a child-resistant barrier that is required under the Swimming Pools Act 1992 is development specified for this code if it is not constructed or installed on or in a heritage item or a draft heritage item or on land in a foreshore area.

2.60 Development standards

- (1) *The standards specified for that development, if it is the construction or installation of a portable swimming pool or spa, are that the development must:*
 - (a) *be for residential purposes only, and*
 - (a) *be located in the rear yard, and*
 - (b) *be located at least 1m from each lot boundary, and*
 - (c) *not exceed 2,000 L in capacity, and*
 - (d) *not require structural work for installation, and*
 - (e) *not impact on the structural stability of any building.*
- (2) *A child-resistant barrier must be constructed or installed in accordance with the requirements of the Swimming Pools Act 1992.*

**NOTE THAT THE EXEMPTION IS FROM THE NEED TO OBTAIN CONSENT
NOT FROM THE NEED TO PROVIDE A CHILD RESISTANT BARRIER IN
ACCORDANCE WITH THE STANDARDS.**

3. INVESTIGATION OF COMPLAINTS

Council has an obligation to investigate complaints received under the Swimming Pools Act.

29A Investigation of complaint

- (1) This section applies to a complaint made to a local authority in writing that alleges a contravention of this Act.*
- (2) The local authority must, as far as is practicable, commence investigation of the complaint within 72 hours (or such other period as may be prescribed by the regulations) after it is received.*
- (3) The local authority may investigate the complaint as it thinks fit.*
- (4) An authorised officer may, in accordance with this Part, enter and examine premises for the purposes of investigating the complaint.*
- (5) Before premises are entered under subsection (4), the local authority is to take such steps as are reasonable:*
 - (a) to notify the owner or occupier of the premises about the complaint, and*
 - (b) to arrange to carry out the examination at a time that is convenient to the owner or occupier.*
- (6) The local authority may decline to investigate a complaint that it considers to be vexatious, misconceived, frivolous or lacking in substance.*
- (7) The local authority is to notify the complainant in writing if it declines to investigate the complaint.*

Where Council receives a complaint it will investigate it in accordance with its obligations under the Swimming Pools Act.

4. REVIEW OF SWIMMING POOLS ACT

In 2012 the NSW Government embarked on a major review of the Swimming Pools Act 1992 resulting in the introduction of the Swimming Pools Amendment Act 2012.

The Amendments introduced obligations upon both pool owners and Councils to improve swimming pool safety.

The obligations upon pool owners are to:

1. Register their swimming pools on an online register provided by the NSW State Government (www.swimmingpoolregister.nsw.gov.au);
2. Self assess their pools against the applicable standards when registering their pools; and
3. Provide a valid swimming pool compliance certificate before selling or leasing a property.

All existing swimming pools were to be registered by 29 October 2013. New swimming pools are registered upon construction.

The obligation to provide a valid swimming pool compliance certificate at the point of sale/lease commenced on 29 March 2016.

The obligations upon Council are to:

1. Develop and implement a swimming pool barrier inspection program in consultation with the community;
2. Include within in the Annual Report such information (if any) as prescribed by the Regulations;
3. Inspect pools associated with tourist and visitor accommodation and multi occupancy developments at 3 year intervals; and
4. Issue swimming pool compliance certificates.

5. WHAT IS A SWIMMING POOL CERTIFICATE OF COMPLIANCE?

The amendments to the Swimming Pools Act introduced a system relating to the issue of certificates of compliance.

22D Certificates of compliance

- (1) *The requirements for the issue of a certificate of compliance in respect of a swimming pool are that:*
 - (a) *the swimming pool is registered under Part 3A, and*
 - (b) *the swimming pool complies with the requirements of this Part.*
- (2) *A local authority or an accredited certifier must issue a certificate of compliance in respect of a swimming pool if the local authority or accredited certifier:*
 - (a) *has inspected the swimming pool under this Division, and*
 - (b) *is satisfied that the requirements for the issue of a certificate of compliance have been met.*
- (3) *A local authority or an accredited certifier must not issue a certificate of compliance except as provided by subsection (2).*
- (4) *A local authority or an accredited certifier may refuse to issue a certificate of compliance until any fee payable for the inspection has been paid.*
- (5) *A certificate of compliance in respect of a swimming pool is to be issued to the owner of the premises on which the pool is situated in a form approved by the Director-General.*
- (6) *A certificate of compliance remains valid for a period of 3 years from the date on which it is issued but ceases to be valid if a direction is issued under section 23 in respect of the swimming pool to which the certificate relates.*
- (7) *A local authority or accredited certifier that issues a certificate of compliance in respect of a swimming pool must ensure that details of the certificate are entered on the Register, by providing the details to the Director-General in a form approved by the Director-General.*

- (8) *The regulations may make provision for or with respect to the time and manner in which any such information is to be entered on the Register.*

A swimming pool compliance certificate is a certificate that certifies that a swimming pool is registered on the Statewide database and complies with the applicable standards.

A swimming pool compliance certificate may be issued by either Council or a private certifier accredited by the Building Professionals Board.

A swimming pool certificate is valid for a period of 3 years from issue unless there is a direction issued to undertake rectification works.

Occupation Certificate issued at the completion of installation of the swimming pool also operates for a period of 3 years.

6. MANDATORY INSPECTION PROGRAM

The obligation upon Council to develop a swimming pool barrier inspection program stems from Section 22B of the Swimming Pools Act

22B Mandatory pool inspection program by local authority

- (1) *A local authority must, within 6 months after the commencement of this section, develop and adopt a program for the inspection of swimming pools in its area to ensure compliance with the requirements of this Part.*
- (2) *Within 12 months after the commencement of this section, the program must make provision for the inspection, at least once every 3 years, of any swimming pool situated on premises on which there is tourist and visitor accommodation or more than 2 dwellings.*
- (3) *The program is not to require the inspection of a swimming pool in respect of which there is a valid certificate of compliance or a relevant occupation certificate.*
- (4) *A local authority must inspect swimming pools in its area in accordance with its program.*
- (5) *The regulations may make provision for or with respect to the development and adoption of programs for the inspection of swimming pools including:*
 - (a) *the form and content of programs, and*
 - (b) *the manner in which the public is to be consulted during the development of any such program, and*
 - (c) *the carrying out of inspections under the program.*
- (6) *In this section:*
dwelling *has the same meaning as in the Standard Instrument.*

The Act is silent on the frequency of these inspections beyond those where it provides a statutory obligation ie point of sale/lease and triennial inspections of tourist/visitor accommodation and multi occupancy developments.

In order to formulate the program Council is required to undertake a community engagement strategy in accordance with Clause 16 of the Swimming Pools Regulation 2008.

16 Community engagement

- (1) *A local authority must establish and implement a strategy for engagement with the local community when developing a program for the inspection of swimming pools in its area.*
- (2) *The strategy must be based on social justice principles of equity, access, participation and rights.*
- (3) *The local community is to be consulted in accordance with the strategy in relation to the development of the inspection program (including in relation to any review of such a program).*

7. COMMUNITY ENGAGEMENT STRATEGY

Council has previously developed a Community Engagement Strategy to guide the community consultation process across the community.

The Strategy aims at ensuring that consultation occurs in an appropriate format and with the appropriate parties.

The approach adopted as part of the Strategy was to directly consult with known pool owners within the Bathurst Region.

In the formulation of this Policy in 2013 Council undertook a broader public consultation process including surveying of 732 properties to:

1. Determine community expectations in relation to the frequency of swimming pool inspections
2. Determine the community response to the inspection fees associated with implementation of the program.

Council ultimately received 250 responses to its survey.**8. OPTIONS FOR FREQUENCY OF INSPECTIONS**

The survey offered a number of different inspection regimes from ranging from never to annually and limited to point of sale/lease.

In response to the question of “how often do you think that swimming pools should be inspected” the responses were as follows:

Option	Response Count	Response %
Never	9	3.6
Annually	24	9.6
Every 3 years	65	26.0
Every 5 years or more	68	27.2
Only when the property is sold or leased	92	36.8

It is clear that there is general support for an inspection regime of sorts with only 3.6% opting for the “never” option.

There was limited support for an annual inspection with 9.6% support.

Most support was provided for an inspection regime of 5 years or greater (27.2%) or at point of sale/lease (36.8%).

9. WHO SHOULD PAY?

Under the Swimming Pool Regulations Council is able to charge a fee for the carrying out an inspection of a swimming pool.

19 Fee for inspection

For the purposes of section 22F (1) of the Act, the maximum fee that a local authority may charge the owner of premises in or on which a swimming pool is situated for carrying out an inspection of the swimming pool is—

- (a) *if it is the first inspection since the person became the owner—\$150, or*
- (b) *any or all subsequent inspections after the first inspection since the person became the owner—\$100, or*
- (c) *if it is the first inspection since a certificate of compliance in relation to the premises ceased to be valid—\$150, or*
- (d) *any or all subsequent inspections after the first inspection since a certificate of compliance in relation to the premises ceased to be valid—\$100.*

Based on this fee structure there is a financial incentive in ensuring that the swimming pool complies with the applicable standards.

It is noted however that due to the highly technical nature of standards that there is an expectation that there will be high levels of non-compliance at the initial inspection.

Not surprisingly 73.6% of survey respondents were of the opinion that the owner should not bear the cost of any inspection regime. The vast majority of respondents (87.2%) considered the cost of between \$150 and \$250 to be too high.

The reality is that whilst there is limited support from pool owners to the charging of any fee it should not be up to the general ratepayer to fund the cost of implementation of the program. It is therefore appropriate that the fees for inspections should be borne by the pool owners as opposed to the general ratepayer.

10. THE ADOPTED POLICY APPROACH

Council and the public needs to be mindful that the adoption of any policy has implications in terms of staffing and the capacity to undertake inspections and costs to both Council and pool owners.

There is currently no reliable data available that can accurately predict the number of inspections that may result of point of sale point or lease.

Likewise there is no accurate way to determine what impact on the number of inspections the use of private certifiers may have.

The adopted approach of this Policy, therefore, is to:

1. Limit the inspections to those where there is a statutory obligation to do so, that is:

- (a) Commencing 29 March 2016 (or such other time that may be specified by the Department of Local Government, Council will undertake inspections (where requested to do so) at the point of sale/point of lease.
 - (b) Commencing 29 March 2014, Council will undertake inspections (where requested to do so) of all tourist and visitor accommodation or more than 2 dwellings
- 2. Continue to investigate swimming pools that do not comply with the applicable standards. Where swimming pools do not comply, rectification will be required and a swimming pool compliance certificate issued.
- 3. Periodically review the inspection regime to determine the number of inspections being undertaken on an annual basis.
- 4. Charge the full fee as allowed for under the Swimming Pools Regulation for the carrying out of inspections.

POLICY:	TRANSITION AWAY FROM GAS USE AT COUNCIL FACILITIES
DATE ADOPTED:	Director Environmental, Planning & Building Services Report #9.1.1 Policy 6 March 2024 Council 19 June 2024 Resolution Number: ORD2024-170
ORIGINAL ADOPTION:	Director Environmental, Planning & Building Services Report #9.1.1 Policy 6 March 2024 Council 19 June 2024 Resolution Number: ORD2024-170
FILE REFERENCE:	18.00034
OBJECTIVE:	To support Council's transition to Net Zero Emissions by phasing out the use of fossil gas at Council buildings and facilities. To ensure that no new gas connections are made at Council facilities.

Fossil gas is not to be used in any new Council facilities for water heating, space heating, or cooking.

Existing gas equipment will be removed from Council buildings and facilities as soon as practical. Gas boilers will be replaced with heat pumps when they reach the end of their serviceable life.

POLICY:	TREE PRESERVATION AND MANAGEMENT POLICY
DATE ADOPTED:	Director Environmental Planning & Building Services Meeting Report #8.2.9 Council 17 November 2021 Resolution Number: ORD2021-399
ORIGINAL ADOPTION:	Director Environmental Planning & Building Services Meeting Report #1 Council 16 December 2013 Minute Book No. 11690-11691
FILE REFERENCE:	20.00143
OBJECTIVE:	To protect, preserve, manage and enhance the environmental amenity, special landscape characteristics and the ecological values of trees within Heritage Conservation areas of the Bathurst Regional Local Government Area (LGA).

1. OBJECTIVES OF THE POLICY

The objectives of this Policy are to:

- To define Council's responsibilities and requirements with respect to the protection, retention and enhancement of trees covered by this Policy.
- Protect trees within Heritage Conservation areas of the Bathurst Regional Local Government Area as identified in Schedule 5 of the Bathurst Regional Local Environmental Plan (LEP) 2014.
- Identify trees that may be pruned or removed without a Tree Permit.
- Protect and enhance native vegetation, habitat for native fauna and biodiversity within the Bathurst region.
- Conserve trees of ecological, heritage, aesthetic, cultural and local significance.
- Detail requirements for the submission of sufficient and relevant information by applicants, and rights of appeal against Council's decisions.

2. DEFINITIONS

The following definitions apply to the Tree Preservation and Management Policy:

Arboriculture means cultivating and managing trees as individuals and in small groups for amenity purposes.

Arborist means a qualified person who has attained a minimum of a Certificate (**Level 3**) of Arboriculture or equivalent qualification, based upon the Australian Qualification Framework, and is specifically employed to prune and remove trees.

Authorised Officer means a Council Officer responsible for assessing and administering Tree Preservation Permits, or the Manager Recreation.

Bushfire hazard reduction work has the same meaning as in the Rural Fires Act 1997.

Consulting Arborist means a qualified Arborist who has attained a Diploma (**Level 5**) of Arboriculture or equivalent qualification, based upon the Australian Qualification Framework.

Crown means that part of any single tree containing the branches, leaves, flowers and fruit that is the entire area of the foliage supported by the branches.

Dead tree means any tree that is no longer capable of performing any one of the following processes:

- a) Photosynthesis;
- b) Take up of water through the root system;
- c) Hold moisture in its cells; or
- d) Produce new shoots.

Destroy means any activity leading to the death, disfigurement or mutilation of a tree.

Dripline means a line formed around the outer perimeter of the crown.

Exempt tree means a tree (excluding a tree within the curtilage of a Heritage Item) which is any of the following:

- a) The following table provides a list of trees which are exempt:

Exempt Tree List	
Botanical name	Common name
Eucalyptus nicholii	Narrow Leaved Black Peppermint
Acacia Spp	Wattles
xCupressocyparis leylandii	Leylandii Pines (all varieties)
Salix Spp	Willow
Ligustrum lucidum	Privet
Robinia pseudoacacia	Robinia
Gleditsia triacanthus	Locust
Populus Spp	Poplars

- b) A noxious weed under the Noxious Weeds Act 1993.
- c) A dead tree.

Habitat tree means any tree which is a nectar feeding tree, roost and nest tree or a hollow-bearing tree which is suitable for nesting birds, arboreal marsupials (possums), micro-bats or which support the growth of locally indigenous epiphytic plants such as orchids.

Height means the distance measured vertically between the horizontal plane of the lowest point of the base of the tree which is immediately above ground and the horizontal plane of the uppermost point of the tree.

Injury means damage to a tree and includes:

- a) lopping and topping;
- b) poisoning, including applying herbicides and other plant toxic chemicals to a tree or spilling of oil, petroleum, paint, cement, mortar etc. onto the root zone or parts of the tree;
- c) cutting, tearing, breaking or snapping of branches and roots that is not carried out in accordance with accepted arboricultural practices or is done for invalid reasons, including vandalism;

- d) ring-barking, scarring the bark when operating machinery, fixing objects by nails, staples or wire or fastening materials that circle and significantly restrict the normal vascular function of the trunks or branches;
- e) damaging a tree's root zone by compaction or excavation, asphyxiation including unauthorised land filling or stockpiling of materials around the tree trunk;
- f) underscrubbing, unless carried out by hand tools such as brushcutters and the like.

Noxious weed means a plant declared noxious under the Noxious Weeds Act 1993.

Prescribed tree means any woody plant which is:

- a) greater than nine (9) metres in height; or
- b) has a stem diameter of one (1) metre or more at a height of one (1) metre from the ground; or
- c) has a branch spread of fifteen (15) metres or more; or
- d) is not an exempt tree.

and to which clause 5.9 of the Bathurst Regional Local Environmental Plan 2014 applies.

Private land means any land in private ownership by individuals or companies but excludes land owned or in the care, control or management of Council, a Crown Authority, government department or statutory authority.

Pruning means the removal of any branch or root, dead or alive, from a tree which conforms to the pruning types defined within the Australian Standard AS4373 Pruning of Amenity Trees. The pruning types are: dead wooding, crown thinning, selective pruning, formative pruning, reduction pruning, crown lifting, remedial pruning and line clearance, but excludes lopping or topping.

Remnant tree or vegetation means a native tree or any stand of native vegetation which remains in the landscape after removal of the majority of the native vegetation in the locality.

Remove means to cut down, take away or transplant a tree from its place of origin.

Tree means a woody perennial plant, typically having a single stem or trunk growing to a considerable height and bearing lateral branches at some distance from the ground.

3. APPROVALS

Section 13.2.3 of the Bathurst Regional Development Control Plan 2014 states that a person must not ringbark, cut down, top, lop, remove, injure or wilfully destroy any tree to which section 13.2 of the Bathurst Regional Development Control Plan 2014 applies, without development consent or a permit being granted by Council.

Any work where root severance or grade changes within the root zone of a prescribed tree is likely, then an application for a Tree Permit must also be submitted.

In accordance with section 13.2 of the Bathurst Regional Development Control Plan 2014, the Tree Preservation and Management Policy covers the following sites/locations:

- a) all heritage items as listed under schedule 5 of the Bathurst Regional Local Environmental Plan 2014, and
- b) all Heritage Conservation areas listed under Schedule 5 of the Bathurst Regional Local Environmental Plan 2014.

-

Outside the identified Heritage Conservation areas, a tree permit is not required to remove, lop or prune a tree.

Three processes have been established to deal with the assessment and determination of applications for the removal, lopping and pruning of trees:

- a) Prescribed Tree Permit Application; or
- b) Exempt Tree Notification Form; or
- c) Development consent as part of a development application.

4. PRESCRIBED TREE PERMIT APPLICATION

A prescribed tree permit application **must** be lodged with Council to ringbark, cut down, top, lop, remove, injure or wilfully destroy any **prescribed tree** located in a heritage conservation area (not a listed Heritage Item).

A Prescribed Tree Permit Application Form, signed by the owner of the land where the tree is located and any other relevant property owner(s), is to be lodged with Council prior to the removal of the prescribed tree.

Note 1: A copy of your drainage diagram may be obtained from Council and used as the site plan for your prescribed tree permit application.

Note 2: Where a property forms part of a Strata Plan under the Strata Schemes (Freehold Development) Act 1973, or the Strata Schemes (Leasehold Development) Act 1986, or a Community Title Scheme (under the Community Land Development Act 1989), the written consent of the Body Corporate and their common seal is required. This authorises the lodgement of the application for the specific type of works to be undertaken.

Note 3: Where a tree is growing on a common property boundary the ownership will need to be determined by the relevant parties, for example by survey.

Note 4: Removal of the tree is not permitted until a permit or Development Application has been issued by Council.

5. EXEMPT TREE NOTIFICATION FORM

An exempt tree notification form is to be lodged with Council to remove, lop, top or cut down an **exempt tree** that:

- a) is greater than nine (9) metres in height; or
- b) has a stem circumference of one (1) metre or more at a height of one (1) metre from the ground; or
- c) has a branch spread of fifteen (15) metres or more.

Note 1: A copy of your drainage diagram may be obtained from Council and used as the site plan for your prescribed tree permit application or exempt tree notification form.

Note 2: Where a property forms part of a Strata Plan under the Strata Schemes (Freehold Development) Act 1973, or the Strata Schemes (Leasehold Development) Act 1986, or a Community Title Scheme (under the Community Land Development Act 1989), the written consent of the Body Corporate and

their common seal is required. This authorises the lodgement of the application for the specific type of works to be undertaken.

Note 3: Where a tree is growing on a common property boundary the ownership will need to be determined by the relevant parties, for example by survey.

Note 4: Removal of the tree is permitted upon lodgement of the Exempt Tree Notification Form with Council. A permit is not issued by Council for exempt trees.

Note 5: It is the property owners' responsibility to:

- a) ensure that the species of tree that is to be removed is the species identified in the definition of an exempt tree.
- b) seek the advice of a qualified arborist or horticulturalist to confirm the species, and
- c) provide evidence of the species by photograph attached to the document; "Exempt Tree Notification Application" form, prior to the removal of the tree.

6. DEVELOPMENT CONSENT

An application for the removal of a **prescribed tree** may be lodged concurrently with a development application. A Development Application is also required for the removal of **any tree (prescribed or exempt)** within the curtilage of a Heritage Item listed on either Schedule 5 of the Bathurst Regional LEP 2014 or the State Heritage Register.

Accompanying a Development Application, the following information is required:

- a) A site plan of the site showing the location of the tree(s) to be removed or pruned, include location of any building(s).
- b) An Arborist's report, where in the opinion of Council, such a report is warranted.
- c) A Statement of Heritage Impact, where in the opinion of Council, the tree's removal is likely to have a significant impact on the Heritage Item or the Heritage Conservation Area.

NOTE: Removal of the tree is not permitted until the Notice of Determination for the Development Application has been issued by Council.

7. EXCLUSIONS

The following list defines works that do not require a Prescribed Tree Permit, an Exempt Tree Notification or development consent for their removal, lopping or pruning:

- a) Tree(s) that are less than nine (9) metres in height, have a trunk circumference of less than one (1) metre when measured at a height of one (1) metre from the ground and has a branch spread of fifteen (15) metres or less.
- b) Any works to a Prescribed Tree carried out by, or on behalf of, Bathurst Regional Council.
- c) Prescribed Tree(s) that require pruning in accordance with the provisions of Section 48 of the Electricity Supply Act 1995 and the Electricity Supply (General) Regulation 2001. This exclusion does not apply to tree trunks, only to branches up to 50mm in diameter and within 1 metre of private service lines.
- d) Where bushfire hazard reduction work is undertaken as authorised by the NSW Rural Fire Service under the Rural Fires Act 1997.
- e) Any works to make safe a Prescribed Tree where there is an immediate threat of injury to persons or damage to property provided that contact has been made with Council's

Authorised Officer and verbal approval has been provided, or to comply with a direction from an Emergency Service directive. Evidence must be provided by an Arborist at the earliest possible time following the elimination of the threat.

Note: This does not negate the need for an application to be submitted at the earliest opportunity upon the elimination of the threat of injury or damage.

- f) The pruning and deadwood removal of a prescribed tree that is undertaken in accordance with AS4373 Pruning of Amenity Trees, and undertaken for the purpose of preserving the tree structure, health and amenity.

8. ADDITIONAL INFORMATION REQUIREMENTS

Council may require additional supporting information (at the applicant's cost) for a Prescribed Tree Permit Application or for a Development Application, which may include, but not be limited to, the following:

- (a) Arborist's report;
- (b) Tree survey;
- (c) Flora and fauna impact assessment;
- (d) Geotechnical or structural engineer's report;
- (e) Plumber's report;
- (f) Details of proposed root barriers;
- (g) Medical certificate from a clinical immunologist/allergy specialist in cases where the removal or pruning of a tree is requested due to quality of life health issues (e.g. allergies);
- (h) Survey of property boundary to determine ownership of the tree(s);
- (i) Statement of Heritage Impact.

Sewerage pipe damage - Any roots causing damage to a pipe must be retrieved and identified, and documented evidence offered relative to the specific identification of the culprit tree from where the roots originated. In cases where a tree has caused damage to a sewer, the application must include written evidence from a licensed plumber stating the extent of the problem. This is necessary given that damage to a sewer is often unidentifiable from the natural ground surface level.

Structural damage by roots (heave, matrix suction) – any roots causing structural damage to a driveway, foundation, slab etc. must have supporting evidence provided relative to the identification of the culprit tree responsible for the damage. Evidence may include, but not be limited to, root mapping (ground penetrating radar, air spade), or laboratory root identification (microscopy, DNA).

9. INSTALLATION OF SOLAR PHOTO VOLTAIC PANELS & HOT WATER SYSTEMS

Where a Prescribed Tree Permit Application or Development Application is lodged requesting removal or pruning of tree(s) for the installation of solar PV panels or solar hot water systems, Council will require a preliminary assessment from the installers outlining the extent that the tree(s) will impact upon the PV panels, taking into account summer and winter sun elevations.

Further evidence in the form of shadow diagrams prepared by an architect/draftsman who is unrelated to the installation process may be required.

Council will then make an assessment of the tree(s) taking into consideration the health, structure, and significance of the tree(s) e.g. outstanding specimen tree, locally significant species.

If the tree(s) are considered to be of local or regional significance to the area by Council's arborist, an alternative location for the installation of solar panels may need to be investigated.

If the tree(s) are considered to be healthy and structurally sound but of little significance to the local amenity and environment, Council may allow the removal of the tree(s) upon receipt of documentation that the solar panels have been installed. The significance of a tree should be determined by lodging a Prescribed Tree Permit or Development Application prior to the installation of any solar PV panels or solar hot water system.

10. ARBORIST REPORTS

An arborist report may be required in the following circumstances to support a Prescribed Tree Permit application or Development Application:

- (a) Any proposed removal of trees considered by Council to be locally significant species.
- (b) Any proposed removal of trees or vegetation which constitutes a threatened flora species, endangered population, endangered ecological community under the Threatened Species Conservation Act 1995 or the Environment Protection and Biodiversity Conservation Act 1999; or
- (c) Where, in the opinion of Council, the proposed works may result in adverse impacts upon the scenic environmental quality or amenity of the locality; or
- (d) Where a Development Application under the Environmental Planning and Assessment Act 1979 involves more than five (5) trees and/or other vegetation or where proposed works may impact upon a neighbouring tree or trees located outside of the area proposed for works.

An arborist report is to be prepared by an arborist and contain the following information in accordance with AS 4373 Pruning of trees and AS4970 Protection of trees on development sites:

- a) Name, address, telephone number, qualifications and experience of the arborist carrying out the inspection and reporting.
- b) Who the report was prepared for, the date of the report, property address and the aims of the report.
- c) Methods and/or techniques used in the inspection.
- d) A scaled plan accurately showing:
 - i) Location of trees on the subject site and any adjoining trees which may be affected by the development. Trees identified on this plan should be numbered. Any arborist report provided for the purpose of supporting a development application must include a tree plan (site plan) which has been drawn by a registered surveyor.
 - ii) Lot boundaries, dimensions and north point
 - iii) Proposed development including services, driveways and any alteration to existing levels and drainage.
- e) For each tree to be injured, a table showing:
 - i) The number of the tree as indicated in the plan.
 - ii) Tree name, botanical and common name.
 - iii) Age class.
 - iv) Height.
 - v) Trunk diameter at one (1) metre above ground level.
 - vi) Crown spread.
 - vii) Health and condition, and estimated useful life expectancy.
 - viii) Photograph of the tree.
 - ix) A recognised tree rating system such as SRIV, TREE-AZ or SULE.

- f) A discussion of other relevant information, including details of tree hollows for wildlife, tree structure/weaknesses, root form and distribution, pests and diseases and tree hazard assessment.
- g) Proposed replacement plantings, landscaping and soil remediation.
- h) Tree protection measures and a post-construction tree maintenance program which can be used as conditions, should the application be approved.

A consulting arborist report is required to be provided to Council in the following circumstances:

- (a) To support an appeal of the determination or the conditions imposed on a Prescribed Tree Permit application or
- (b) A request for a review of a determination of a Development Application made in accordance with section 82A of the Environmental Planning and Assessment Act 1979.

A consulting arborist report is to be prepared by a consulting arborist and contain the following information in accordance with AS 4373 Pruning of trees and AS4970 Protection of trees on development sites:

The consulting arborist report is to be in the following format:

- a) Name, address, telephone number, qualifications and experience of the arborist carrying out the inspection and reporting.
- b) Who the report was prepared for, the date of the report, property address and the aims of the report.
- c) Methods and/or techniques used in the inspection.
- d) A scaled plan accurately showing:
 - i) Location of trees on the subject site and any adjoining trees which may be affected by the development. Trees identified on this plan should be numbered. Any consulting arborist report provided for the purpose of supporting a development application must include a tree plan (site plan) which has been drawn by a registered surveyor.
 - ii) Lot boundaries, dimensions and north point.
 - iii) Proposed development including services, driveways and any alteration to existing levels and drainage.
 - iv) The Tree Protection Zone and Structural Root Zone as determined by the consulting arborist.
- e) For each tree to be injured, a table showing:
 - i) The number of the tree as indicated in the plan.
 - ii) Tree name, botanical and common name.
 - iii) Age class.
 - iv) Height.
 - v) Trunk diameter at one (1) metre above ground level.
 - vi) Crown spread.
 - vii) Health and condition, and estimated useful life expectancy.
 - viii) Photograph of the tree.
 - ix) A recognised tree rating system such as SRIV, TREE-AZ or SULE.
- f) A discussion of other relevant information, including details of tree hollows for wildlife, tree structure/weaknesses, root form and distribution, pests and diseases and tree hazard assessment.
- g) Proposed replacement plantings, landscaping and soil remediation.
- h) Tree protection measures and a post-construction tree maintenance program which can be used as conditions, should the application be approved.
- i) Sources of information referred to in the report.

- j) Any other relevant matters.

NOTE:

With respect of either an arborist report or a consulting arborist report, any tree or part of a tree recommended for removal which contains a hollow that is likely to house arboreal wildlife (such as possums, sugar gliders, etc.) or is likely to be a potential nesting site for birds, will require an experienced wildlife handler (for example, a member of the Native Animal Network Association or WIRES) to be present at the time of pruning/removal to re-accommodate any displaced wildlife. Nesting boxes are recommended to be installed within the closest retained trees for any animals removed. At least one nest box is recommended for installation for each hollow removed that has been considered to have accommodated wildlife (irrespective of whether the hollow had an animal in it at the time of removal/assessment).

A letter signed by the wildlife handler is required by Council after the removal/pruning exercise as confirmation that the handler was present at the time of removal/pruning.

11. PROCESSING OF APPLICATIONS

A prescribed tree permit application will generally be processed within twenty-one (21) working days from the date of receipt of the application form together with all supporting documentation, including the application fee. The application fee will be determined in accordance with Council's adopted fees and charges.

A written permit will be provided for all approved prescribed tree permit applications authorising the scope and nature of permitted works. In the case of an application being refused the reasons for refusal will be detailed in a letter to the applicant.

For each tree that is granted approval for removal, a minimum of one (1) replacement tree will be required to be planted within the property, unless Council's authorised officer determines otherwise.

12. ASSESSMENT CRITERIA USED TO DETERMINE APPLICATIONS

Council may take into consideration any or all of the following criteria when assessing an application for the removal of a prescribed tree:

- (a) Potential life of the tree – whether the tree is senescing or declining.
- (b) Whether the tree is causing structural damage to a building, structure, pipe or sewer.
Note: A report may be required by a suitably qualified and experienced consultant where the damage is not visually evident.
- (c) Whether the tree is severely stressed, diseased or is suffering insect damage and without the opportunity for mitigation.
- (d) Whether the growth habit or mature size of a tree is undesirable in a given situation (e.g. power lines, root interference with service, infrastructure or building).
- (e) Whether the tree shows poor form, shape and/or vigour typical to the species.
- (f) Where the branches are dangerous and overhanging a building or an adjoining property. In this case, the assessing Council officer will determine the amount of pruning permitted to address any public nuisance issue.
- (g) Whether the tree species is appropriate in terms of its proximity to dwellings, adjoining dwellings or other buildings.
- (h) Whether the clearing or removal of the tree or other vegetation has the potential to directly or indirectly affect a threatened species, population, ecological community or their habitats (Threatened Species Conservation Act 1995).

- (i) Whether the tree species is of regional significance (i.e. identified regionally as a rare species due to heavily cleared or under-represented vegetation community).
- (j) Whether the tree is of local significance and is considered relatively rare or has limited distribution or is a critical indigenous species.
- (k) Whether the removal of the tree(s) will pose any adverse impact upon the amenity or scenic environmental quality of the locality.
- (l) Whether the removal of the tree(s) is necessary as part of any bushfire hazard reduction work under the Rural Fires Act 1997.
- (m) Whether the removal of the tree(s) involves a habitat tree (e.g. nesting tree or roosting tree) for any threatened fauna species.
- (n) Whether the removal of the tree(s) will cause any potential adverse slope instability or geotechnical impacts upon the site or the locality.
- (o) Whether the removal of the tree (s) is part of an endangered population, endangered ecological community or is critical habitat for any threatened fauna species.
- (p) Whether the applicant has provided a medical certificate from a clinical immunologist/allergy specialist which states that the pruning or removal of a tree is necessary for maintaining quality of life.
- (q) Whether any previous condition of development consent required the retention of the tree(s).

13. REASONS NOT CONSIDERED AS JUSTIFICATION FOR TREE WORK

These are common requests for tree removal/works which generally provide insufficient reason for a permit or approval to be issued:

- (a) Shedding of flowers, leaves, bark, twigs, fruit, and sap causing nuisance.
- (b) Animals (insect, bird, bat, possum etc.) that inhabit trees causing nuisance.
- (c) To enhance amenity views.
- (d) Damage to underground services (such as sewer lines, water services and the like), where there are alternatives to mitigate and retain the tree.
- (e) Construction of fences.
- (f) Minor heave (lifting) of paths, paving, fences and minor structures where mitigation is not appropriate.
- (g) Tree does not suit the existing or proposed landscape.
- (h) Unsubstantiated fear of tree failure.
- (i) Tree removal for fire hazard reduction, where the property is not within a bushfire prone area as defined by the Rural Bush Fire Service.
- (j) Tree is considered to be too large or high.
- (k) Pruning to reduce height.
- (l) To increase solar access unless sufficient evidence is provided.
- (m) To allow for a proposed development.

NOTE:

For trees that would be affected under a Development Application Process, tree removal or other work requests that have been presented and documented as part the development application will be considered within the development assessment process. For trees that require works / removal due to a Development Application approval, but the tree (s) have not been specifically assessed in the DA, the Development approval will not be regarded as a valid reason for removal / works to trees under a prescribed tree permit application.

14. APPROVAL VALIDITY PERIOD

A prescribed tree permit is valid for five (5) years from the issue date.

15. RIGHTS OF APPEAL AGAINST A COUNCIL DECISION

An applicant who is dissatisfied with Council's decision has a right to appeal the decision of the prescribed tree permit or the conditions imposed on the prescribed tree permit.

An application to appeal the decision of Council or the conditions imposed on a permit must be lodged within 3 months of the determination and supported by a consulting arborist's report prepared in accordance with this Policy.

Additional information is to be provided by an expert in the relevant field, for example, a consulting arborist or structural engineer.

An appeal will be reviewed by another qualified Council assessment officer and may be determined either under delegated authority or may be reported to Council for its determination.

16. COMPLIANCE AND MONITORING

A prescribed tree permit or development consent may be monitored by Council for compliance with the tree permit issued.

Any works carried out without approval or not in accordance with a prescribed tree permit or development consent will be dealt with in accordance with relevant legislation. This may result in a Penalty Infringement Notice or legal action through either the Local Court or the Land and Environment Court against all parties involved in any breach of Bathurst Regional Local Environmental Plan 2014 or conditions of approval.

17. REQUESTS FOR WORK / REMOVAL OF TREES ON COUNCIL OWNED OR MANAGED LAND

Correspondence may be sent by adjoining property owners or occupants requesting that Council carry out the pruning or removal of a tree(s) within any public reserve, road reserve (street trees) or other property owned or managed by Council. Verbal requests may also be made directly with Council's Engineering Department for registration in Council's Customer Request Management System.

All requests for pruning or removal of trees or other vegetation within Council owned or managed land will be forwarded to Council's Recreation Section for assessment.

The result of the assessment will determine whether approval will be granted for the pruning or removal of the subject tree(s) and this will be based upon the assessment criteria contained in this Policy. Requests for tree work which are not deemed appropriate for action are outlined within this Plan. All approved works will be carried out as and when resources permit.

18. THREATENED SPECIES CONSERVATION ACT 1995

Any action such as clearing or removal of trees or other vegetation has the potential to directly or indirectly affect a threatened species, population, ecological community or their habitat. Therefore, an assessment may be required pursuant to Part 5A of the Environmental Planning and Assessment Act 1979 or Part 6 of the Threatened Species Conservation Act 1995.

The clearing or removal of any threatened flora species, endangered population, endangered ecological community or critical habitat under the Threatened Species

Conservation Act 1995 requires separate approval from the Office of Environment and Heritage.

19. ENVIRONMENTAL PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

The clearing or removal of remnant trees or other native vegetation which is listed as a “matter of national significance” under the Environment Protection and Biodiversity Conservation Act 1999 requires the separate approval from the Commonwealth Minister for the Environment.

20. TREE DISPUTES ARISING BETWEEN NEIGHBOURS

It is not the role of Council to intervene in neighbourhood disputes regarding trees. Conflicts may be resolved through legal avenues. The Trees (Disputes Between Neighbours) Act 2006 allows tree disputes to be heard by the NSW Land and Environment Court in certain circumstances. You should seek your own independent legal advice in relation to this matter.

POLICY:	URBAN DESIGN EXCELLENCE - R3 MEDIUM DENSITY AND E1 LOCAL CENTRE ZONES
DATE ADOPTED:	Director Environmental Planning & Building Services Report #9.2.5 Council 21 February 2024 Resolution Number: ORD2024-30
ORIGINAL ADOPTION:	Director Environmental Planning & Building Services Report #9.2.5 Council 21 February 2024 Resolution Number: ORD2024-30
FILE REFERENCE:	20.00335 and 20.00123
OBJECTIVE:	To establish the guiding principles to ensure the public realm of lands zoned E1 Local Centre and R3 Medium Density Housing achieves design excellence and responds to changing community values and economic and environmental influences over time.

1.0 BACKGROUND:

Council Policy – Future Proofing our CBD – 2022 and Beyond

In September 2023, Council adopted the Policy: *Future Proofing Our CBD – 2022 and Beyond*. The Policy responded to the recommendations of the Bathurst Town Centre Master Plan 2021 which provides a vision for improving seven city blocks within the Bathurst CBD, an area known as the Bathurst Town Centre.

Relevant documents are available at:

<https://yoursay.bathurst.nsw.gov.au/bathursttowncentre/widgets/278695/documents>

E1 Local Centre Zone and R3 Medium Density Housing Zone

The E1 Local Centres zone applies to existing Neighbourhood Activity Centres at Westpoint, Trinity Heights, Kelso Centrepont and to proposed centres at Laffing Waters, Eglinton and future land release areas.

The R3 Medium Density Housing zone was introduced for the first time in 2023 and applied to lands within the Laffing Waters Master Plan precinct. It is anticipated that other lands within the Bathurst built up areas will also be zoned R3 Medium Density housing into the future.

The Laffing Waters Master Plan established the following vision:

Laffing Waters is defined by its exceptional liveability, beautiful natural setting, green streetscapes and sustainable parklands. Laffing Waters' open vistas will span across the region to Bathurst. High quality neighbourhood parks will form the centre of each distinctive and walkable neighbourhood, which will be connected by pedestrian and cycle paths, as well as green links providing opportunities to enjoy and connect with nature throughout the development.

A Neighbourhood Activity Centre will form the vibrant heart of the Laffing Waters community, providing local convenience and an inclusive place to meet, gather and connect. An accessible destination for residents and the wider community to come together and meet friends, hold events or enjoy a meal. It will offer a diverse range of amenities including a supermarket and specialty shops within a pedestrian-priority environment.

Laffing Waters will be a healthy and thriving community with active transport linking parklands, local amenities and the school through green links, dedicated cycleways and shared paths. Generous verges will support the growth of mature street trees to provide shade, comfort and visual appeal, incorporating opportunistic water sensitive urban design. Laffing Waters will offer a range of housing choices and living densities. A higher living density will be centered around the Neighbourhood Activity Centre, transitioning out to larger lots towards the urban fringe.

The guiding principles of this Policy are relevant to ensuring design excellence is achieved in new medium density subdivisions and developments and existing and new Neighbourhood Activity Centres, such as that planned for Laffing Waters, and to compliment relevant planning standards contained in Council's planning controls.

This Policy

This policy responds to new opportunities to increase living densities within the Bathurst built up areas provided by the introduction of the R3 Medium Density zone. These new opportunities for increased living densities are supported by the Bathurst 2036 Housing Strategy.

The policy also seeks to respond to opportunities to improve existing and provide new Neighbourhood Activity Centres within the E1 Local Centres zone.

The policy sets the guiding principles to ensure impacts on the public realm respond to changing community values and economic and environmental influences. Decisions involving future changes will need to assess their consistency against these Principles. Other strategies and plans will also inform those decisions including for example the Bathurst Housing Strategy, and the future Active Transport Strategy and a revised Retail Strategy. Importantly, community engagement can continue as each new decision is made. This Policy compliments Council's Policy *Future Proofing our CBD – 2022 and Beyond* which applies to lands zoned B3 Commercial Core.

2.0 AIM OF THIS POLICY:

The policy will guide changes in the public realm of lands lands zoned (or proposed to be zoned) E1 Local Centre and R3 Medium Density Zones, whether owned publicly or privately.

3.0 OBJECTIVE OF THIS POLICY:

The objective of this policy is to establish the guiding principles to ensure the public realm of lands zoned (or proposed to be zoned) E1 Local Centre and R3 Medium Density Zones responds to changing community values and economic and environmental influences over time.

This policy will ensure that change within the public realm of lands zoned (or proposed to be zoned) E1 Local Centre and R3 Medium Density is positive, and negative impacts are minimised and mitigated.

4.0 LAND TO WHICH THIS POLICY APPLIES:

This policy applies to:

1. Lands zoned E1 Local Centre under Bathurst Regional Local Environmental Plan 2014; and
2. Lands zoned R3 Medium Density under Bathurst Regional Local Environmental Plan 2014; and
3. Lands for which a Planning Proposal is proposed to rezone lands E1 Local Centre and R3 Medium Density zones.

The public realm is those spaces around, between and within buildings that are publicly accessible and visible including streets, plazas, parks, footpaths, laneways, parks and open spaces and those parts of buildings that are normally accessible to the public.

This policy applies to changes that may be made to land, buildings, streets, lanes, footpaths, parks, spaces, views and vistas that may impact or change the public realm of lands zoned (or proposed to be zoned) E1 Local Centre and R3 Medium Density.

This policy applies to privately owned land to the extent to which new development on private land impacts on the public realm.

Part 8.0 of this policy also applies to lands within the B3 Commercial Core Zone.

5.0 GUIDING PRINCIPLES TO SUPPORT FUTURE DECISION MAKING TO ENSURE THE PUBLIC REALM MEETS COMMUNITY EXPECTATIONS:

The Council will consider the following guiding principles when making decisions that impact on the public realm (private or public) of lands zoned (or proposed to be zoned) E1 Local Centre and R3 Medium Density.

5.1 Sense of Place – How does change engage the street, neighbourhood and surrounding locality.

Considerations include:

- a. the street layout and topography, particularly main streets of neighbourhood activity centres.
- b. the role of any nearby heritage items, places of community interest, and open space.
- c. Predominant building height and scale.
- d. significant stories and memories of place recognising cultural longevity and promoting its greater visibility (including relating to Aboriginal culture and heritage).
- e. the extent the community enjoy being in and take pride in the place and its setting.

5.2 Heritage and Streetscape – How does change integrate with the street, neighbourhood, parklands and surrounding locality.

Considerations include:

- a. scale, bulk, massing, form, and siting of new development to complement and improve the quality and amenity of the public domain.
- b. the external appearance of new development (building design, character, materials, colours, and detailing) and how it might improve the quality and amenity of the public realm.
- c. the design of new development and how it responds to and mitigates its potential to impact other property and the public realm in terms of, overshadowing and solar access, visual and acoustic privacy, noise, wind and reflectivity.

- d. protecting heritage assets and encouraging adaptive reuse of heritage building stock.

5.3 Landscape and environment - How does change respond to and integrate with the environment and landscape.

Considerations include opportunities to improve:

- a. amenity by connecting to networks of open space.
- b. the quality and the value of the public realm.
- c. the amenity of streets and public spaces through landscaping and vegetation, using plant species which are particular to the locality.
- d. water and air quality by utilising sustainable and resilient infrastructure.

5.4 Economic vitality - How does change revitalise an existing Neighbourhood Activity Centre and activate new and existing Main Streets.

Considerations include:

- a. encouraging economic activity that creates a distinct and attractive place for business to trade and invest, and for people to visit.
- b. creating new or improved places for people and communities to gather, meet and interact that are safe enjoyable and equitable, inclusive of the provision of street furniture.
- c. encouraging opportunities for events.
- d. encouraging night-time activation.

5.5 Connection - How does change prioritise connectivity and walkability.

Considerations include:

- a. contributing to walkable blocks and neighbourhoods.
- b. increasing pedestrian traffic and contributing to business exposure in the public realm of a Neighbourhood activity centre.
- c. encouraging people to walk by integrating pedestrian paths with vehicle access and designated parking areas.
- d. connecting significant natural features, buildings, views and cultural assets to make the locality more navigable, accessible, engaging and attractive and to reinforce local character, including new places to sit, rest and socialise.
- e. slowing traffic and minimising unnecessary truck movements.
- f. increasing pedestrian safety by designing for a balance of all users (pedestrian, cyclist or vehicular) with differing abilities.
- g. encouraging temporary road closures and events spaces.

5.6 Traffic and Parking - How does change manage disruptions to traffic and parking and enhance opportunities for public and active transport.

Considerations include:

- a. offsetting on-street car parking losses with new off street parking opportunities.
- b. providing drop off and pick up kerb side spaces.
- c. signalisation of intersections and the prioritisation of traffic and off street car parking locations, particularly away from the neighbourhood activity centre main street.
- d. encouraging opportunities for new forms of travel into, through and out of neighbourhood activity centres, including cycling, park and ride, shuttle services and EV infrastructure.

5.7 Climate and Resilience - How does change respond to climate conditions and their impacts.

Considerations include:

- a. new water conservation infrastructure.
- b. mitigating the effect of summers with increasing temperatures and declining rainfall, particularly through appropriate landscaping and greenery.
- c. mitigating the predominant winter winds and their impact in the public realm.

5.8 Liveability - How does change encourage new employees to work and new residents to live.

Considerations include:

- a. adaptive reuse of heritage assets for commercial and residential opportunities.
- b. redevelopment of centre block locations and mid-block laneway improvements to open the centre of blocks and vacant lands.
- c. identification of opportunities to appropriately increase living and built form density (e.g. building height, floor space ratio, better utilisation of on ground car parking air space, alterations to residential density standards) in ways that mitigate impacts to street frontage rhythm and character.
- d. enhancing public safety particularly at night-time.

6.0 COMMITMENT TO COMMUNITY ENGAGEMENT

In guiding change under the principles of this Policy, Council commits to ongoing engagement with the community including the business community.

Where appropriate, Council will consider trialling change in stages rather than seeking wide ranging irreversible change, as an effective method of engaging with the community as to how that change is best managed and achieved.

7.0 ASSESSING CHANGE

In guiding change under the principles of this Policy, Council may require the submission of supporting documentation including but not limited to:

- Desired character statement
 - Urban Design and site analysis/Masterplan
 - Landscape plan
- Traffic Impact Assessment:
 - Movement and Place Assessment
 - Desired transit modal split assessment
 - Parking Plan (car and bicycle)
- Heritage impact assessment
- 3-dimensional bulk and scale analysis
 - Shadow diagrams
 - View analysis assessment
- Noise/acoustic assessment
- Servicing Strategy
- Social and economic impact report

3D modelling

3D modelling can provide an invaluable tool in simulating change to visualise proposed changes.

In guiding change under the principles of this Policy, Council may also require the submission of digital data in a format prescribed by Council for the purpose of 3D modelling. This data may be used by Council for community consultation/engagement purposes.

8.0 DESIGN REVIEW

Independent review of design proposals can provide important advice to aid decision making under this policy.

In guiding change under the principles of this Policy, Council may include an independent design review process for planning proposal, subdivision and development applications as may determined by Council's Director Environmental Planning and Building Services.

In considering whether an independent review might be required and what type of review may be warranted, the Director of Environmental Planning and Building Services will consider the following matters (but not limited to):

- The scale and size of the proposal.
- The level of community interest in the proposal (or expected level of interest).
- The extent to which the proposal might impact the wider community.
- The extent to which the proposal might represent a change in Council's current Policy/Planning controls.

Council may also apply opportunities for design review to proposals on lands zoned B3 Commercial Core in accordance with this section of the Policy.

POLICY:	USE OF REMOTELY PILOTED AIRCRAFT SYSTEMS / DRONES
DATE ADOPTED:	Director Environmental, Planning & Building Services Report #9.1.11 Council 18 October 2023 Resolution Number: ORD2023-308
ORIGINAL ADOPTION:	Director Environmental Planning & Building Services Report #1 Policy 5 December 2018 Council 20 February 2019 Minute Book No. 12902
FILE REFERENCE:	41.00089
OBJECTIVE:	To ensure that all legislated requirements for the use of Remotely Piloted Aircraft System (RPAS)/Drone technology and the management and use of data collected by such technology is applied and adhered to by Council staff.

Remote Piloted Aircraft can contribute to Council's corporate and operational activity across the local government area. The parameters described below are to be adhered to when operating a RPAS/Drone for Council use.

- That the operation of RPAS/Drone technology by Council shall be in accordance with Civil Aviation Safety Regulations Part 101 (CASR101). All CASA regulations and guidelines as well as approved operational procedures are to be adhered to at all times when piloting an RPAS.
- The operator of an RPAS/Drone must hold an operator accreditation.
- That Bathurst Regional Council will only fly RPAS/Drones over private property in connection with a lawful function of Council.
- Where practicable, notice of such flights over private property will be provided to property owners.
- Any and all data collected or recorded by the RPAS/Drone, including geospatial data, is owned by Council and may be subject to the *Privacy and Personal Information Act 1998 (NSW)*, the *Surveillance Devices Act 2007 (NSW)*, the *Privacy Act 1998 (Commonwealth)* and the Bathurst Regional Council Code of Conduct.
- Recordings are subject to the legislated Information Privacy Principles that determine the storage and retention of data. Data is considered and managed by:
 - Collecting (or recording) only for a specific purpose in support of a lawful Council function;
 - Reviewing to redact inadvertently collected personal data;
 - Editing to dispose of data that is not required; and
 - Storing data in accordance with Council's corporate record keeping requirements

Definitions:

CASA:	Civil Aviation Safety Australia
CASR:	Civil Aviation Safety Regulations
RPAS/Drone:	'Remotely piloted aircraft system' is the common term used to reference an unmanned aircraft and the equipment used to operate it. This term is used interchangeably with 'drone'.

POLICY: WAIVING OF DEVELOPMENT APPLICATION FEES

DATE ADOPTED: Director Environmental, Planning & Building Services
Report #8.2.9
Council 19 July 2023
Resolution Number: ORD2023-189

ORIGINAL ADOPTION: Director Environmental, Planning & Building Services
Report #11
Council 16 June 2021
Resolution Number: ORD2021-181

FILE REFERENCE: 11.00006 & 20.00123

OBJECTIVE: To support the lodgement of development applications that may have an impact on the broader streetscape and those that provide additional services and facilities, such as car parking, beyond relevant development standards.

That Council waive the following application fees:

Application type	Fee Waived
The painting of buildings in Zones E2 Commercial Centre and RU5 Village	Development Application fee and any application fee for approvals for footpath/road closures.
The erection of signage within Zone E2 Commercial Centre	Development Application fee and any application fee for approvals for footpath/road closures.
The provision of new private off-street car parking areas, where such areas are provided in excess of the car parking requirements attributable to that property under the Bathurst Regional Development Control Plan	Development Application fee
The reinstatement of historic verandahs within Zone E2 Commercial Centre	Development Application fee; Construction Certificate Application fee; and any application fee for approvals for footpath/road closures.

Note: that other statutory fees under the Environmental Planning and Assessment Act, Local Government Act, Roads Act and Long Service Levy Act (e.g. Planfirst, long service levy and NSW Planning portal fees) will continue to apply.