

18 March 2021

Dear Mr May PSM,

You are kindly requested to attend the **Ordinary Meeting** of Wingecarribee Shire Council to be held in **Council Chambers, Civic Centre, Elizabeth Street, Moss Vale** on **Wednesday 24 March 2021** commencing at **3.30pm**.

Yours faithfully

John Burgess  
**Acting General Manager**

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Nil

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*This report is referred to Closed Committee in accordance with s10A(2) of the Local Government Act, 1993, under clause 10A(2)(g) as it contains advice concerning litigation, or advice as comprises a discussion of this matter, that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege and the Council considers that it would be on balance contrary to the public interest to consider this information in Open Council.*

**20. RESUMPTION OF OPEN COUNCIL**

Resumption of Open Council  
Adoption of Closed Session

**21. MEETING CLOSURE**

## Our Mission, Our Vision, Our Values

### OUR MISSION

To create and nurture a vibrant and diverse community growing and working in harmony with our urban, agricultural and natural environments

### OUR VISION

**Leadership:** *'An innovative and effective organisation with strong leadership'*

**People:** *'A vibrant and diverse community living harmoniously, supported by innovative services and effective communication with Council'*

**Places:** *'Places that are safe, maintained, accessible, sympathetic to the built and natural environment, that supports the needs of the community'*

**Environment:** *'A community that values and protects the natural environment enhancing its health and diversity'*

**Economy:** *'A strong local economy that encourages and provides employment, business opportunities and tourism'*

### OUR VALUES

Integrity, trust and respect

Responsibility and accountability

Communication and teamwork

Service quality

## **Council Chambers**

### **Recording and Webcasting of Ordinary and Extraordinary Meetings of Council**

This meeting is being recorded and webcast via Council's website and a person's image and/or voice may be publicly broadcast. Attendance at the meeting is to be taken as consent by a person to their image and/or voice being webcast. Any part of the meeting that is held in closed session will not be webcast.

Council requests that everyone in attendance is respectful and uses appropriate language. All speakers should refrain from making any defamatory, discriminatory or offensive comments or releasing any personal information about another individual without their consent. Council accepts no liability for any damage that may result from defamatory, discriminatory or offensive comments made by persons attending meetings – all liability will rest with the individual who made the comments.

Individuals acting in a disorderly manner can be asked by the Chairperson to leave the meeting under the Council's Code of Meeting Practice.

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The meeting must not be recorded by others without the prior written consent of Council in accordance with Council's Code of Meeting Practice.

Please ensure that all electronic devices including mobile phones are switched to silent.

**The Council Chamber has 24 Hour Video Surveillance.**

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## **ACKNOWLEDGEMENT OF COUNTRY**

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Wingecarribee Shire Council acknowledge the Gundungurra and Tharawal people as the traditional custodians of this land we now call the Wingecarribee Shire. I pay my respect to Elders both past and present. I would also like to extend that respect to all Aboriginal and Torres Straight Islanders present here today.

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## **APOLOGIES**

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Nil at time of print.

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## **DECLARATIONS OF INTEREST**

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101/3, 101/3.1

The provisions of Chapter 14 of the *Local Government Act 1993* regulate the way in which Councillors and nominated staff of Council conduct themselves to ensure that there is no conflict between their private interests and their public trust.

The Act prescribes that where a member of Council (or a Committee of Council) has a direct or indirect financial (pecuniary) interest in a matter to be considered at a meeting of the Council (or Committee), that interest and the reasons for declaring such interest must be disclosed as soon as practicable after the start of the meeting.

As members are aware, the provisions of the Local Government Act restrict any member who has declared a pecuniary interest in any matter from participating in the discussions or voting on that matter and further require that the member vacate the Chamber.

Council's Code of Conduct provides that if members have a non-pecuniary conflict of interest, the nature of the conflict must be disclosed. The Code also provides for a number of ways in which a member may manage non pecuniary conflicts of interest.

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## 9 VISITOR MATTERS

### CORPORATE STRATEGY AND DEVELOPMENT SERVICES

#### 9.1 Development Application 21/0257 - Two (2) Lot Subdivision Part Lot 313 DP1245164, 27 Kimberley Drive Bowral

Reference:	21/0257
Report Author:	Development Assessment Planner
Authoriser:	Manager Development Assessment
Applicant:	Tujilo Pty Ltd
Owner:	Dobler Properties Pty Ltd
Link to Community Strategic Plan:	Conserve the key natural resources of the Shire and minimise the impact from development

#### PURPOSE

The purpose of this report is to present Development Application 21/0257 for determination and recommends APPROVAL subject to the conditions specified in **Attachment 1**.

#### RECOMMENDATION

**THAT** Development Application DA21/0257 for a two (2) Lot Subdivision of land at Part Lot 313 DP 1245164, No 27 Kimberley Drive Bowral be APPROVED subject to conditions as described in Attachment 1 to the report.

#### REPORT

##### *Previous Consideration of Application.*

Development Application DA21/0257 was considered by Council at its meeting of 24 February 2021 when Council resolved:

**THAT** Development Application DA21/0257 for a two (2) Lot Subdivision of land at Part Lot 313 DP 1245164, No 27 Kimberley Drive Bowral be DEFERRED pending an inspection of the site to enable all Councillors to understand the issues and concerns relating to the proposal.

Councillors attended the site on Wednesday 10 March 2021 for the purpose of a site inspection. Having fulfilled the resolution of Council, the matter is now being put to Council for determination.

##### *Subject Site and Locality*

Milton Park is located at the eastern end of Horderns Road Bowral. It is approximately 8.5 kilometres east of the Bowral Town Centre. The site contains the heritage listed Milton Park House, grounds and outbuildings, significant for their association with the Hordern family.





Figure 1: Locality Map (Attachment 3) (Source: Six Maps)



Figure 2: Aerial image (Attachment 4) (Courtesy Nearmap)

### ***History of Site***

The Milton Park site has a long history to which this latest subdivision proposal is related.

Development consent DA32/27/3182/84 was issued over thirty-five years ago and since that time there has been substantial progress in completing elements of the original approval. This included tourist and recreational uses and the retention and restoration of a number of historically important buildings on the site, all of which have some historical link to the site and its occupation and use by the Hordern family.

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In addition to the main Milton Park former residence that now operates as the Milton Park Country House Hotel, a number of these smaller buildings are all actively utilised for a variety of functions as envisaged in the original overarching development approval, including for tourist related accommodation.

The original approval, DA32/27/3182/84, issued in July 1985, allowed amongst other things, 44 strata titled villas on the Milton Park site, to be set out in two groups, or 'villages'. The original 1985 approval was not specifically detailed and the approval was more reliant upon 'Master Plans'. In essence, Village 1 was located to the north of the Milton Park home and gardens and Village 2 was located to the east.

To date, twenty (20) of these villas have been constructed, being the 'Village 1' that was part of the overall master plan. These villas sit within Strata Plan SP32202. They were constructed shortly after the original approval was granted and they sit just to the north of and adjacent to the Milton Park Hotel and gardens, which is within Lot 3 DP 1191798. These villas are utilised as both permanent residences and shorter stay rental/visitor accommodation.

The remaining twenty four (24) villas that constitute Village 2 have not yet been built and have been considered by Council under various subsequent applications, all of which have been lodged under the auspices of the original approval.

A Construction Certificate has been issued and work commenced associated with development approval, LUA11/0869 (a modification of DA32/27/3182/84), that was issued by Council in October 2011.

The boundaries of the submitted subdivision application is consistent with the location approved for Village 2.

The subdivision has a direct purpose of providing a parcel of land for the approved Village 2 development in exactly the same way that Village 1 sits within its own Strata plan separate from the Milton Park home and gardens.

Development consent DA32/27/3182/84 was issued over thirty five years ago.

Stage 1 (dated 06/11/1984) granted consent to Tourist facilities, Hotel, Conference Centre and Associated Facilities. Restaurant/Conference centre, Amphitheatre, Three (3) Residences for proprietor/Management, Storage Facilities.

Stage 2 (dated 02/07/1985) granted consent for 44 Strata Title Villa Units and Arts and Craft Centre.

DA5039 D1 & D2 – 575/89 (dated 14/09/1989) granted consent for alterations and additions to existing hotel, Tourist Facility including 18 hole golf course, Golf Lodge Hotel, Highlands House Hotel, equestrian centre, polo fields, tennis courts, swimming pools and main entry gates. Whilst works were carried out to form the golf course, this consent has not proceeded.

The approved Strata Titled Arts and Craft Centre comprises The Hay Loft, The Carriage House, two (2) adjacent Manager's Cottages and the AI Centre, all of which are original historic elements of the Milton Park estate and all of which are being utilised in accordance with the original consent.

The original consent has been commenced and remains as an active consent.

As a result of the development proceeding in various stages over many years, through various subdivisions and ownership patterns, the original development site now comprises:



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- Lot 310 DP 1191798, being the 8 hectare site of the Milton Park Country House Hotel and Spa;
- Strata Plan SP32202 being the Village 1 villas;
- Lot 313 DP 1245614 being the 53 hectare north paddock and development site for Village 2 villas, which was previously Lot 309 and Part lot 312 DP 1104165 and a registered Strata Plan SP 78022; and
- Lot 314 DP 1245614 being the 40 hectare south paddock.

The already constructed twenty strata titled villas are situated within SP 32202 and is referred to as Village 1.

Village 2 villas have been subject to the approval issued to LUA11/0869 that modified the original development consent 32/27/3182/84. A Construction Certificate has been issued relating to LUA 11/0869 and work has commenced.

The location for the Village 2 villas mirrors the original 1984 location with the largest layout having been modified over several applications.

These villas are to be clustered to the east of the Milton Park Country House Hotel and Garden and are separate to the existing cluster of the Village 1 villas. This general arrangement has always been accepted as part of the original master plan.

The land the focus of this application is lot 313 DP 1245614. It lies to the north and east of the Milton Park Country House and Hotel as identified in the map in Figure 2.

The development site is currently undergoing transformation with work being undertaken in accordance with a Construction Certificate associated with LUA 11/0869.

The extent of the work so far includes:

- The formation of access roads including the placement of lower course base material and final surface;
- The formation and shaping of all building envelopes, including retaining walls for the approved villas plus the approved pool and tennis court, including necessary retaining walls; and
- The provision of services (electricity, water, gas, telecommunications).

There is also road upgrade works in progress from the main Milton Park entrance gate at the end of Horderns Road, to the boundary of the Village 2 site.

#### ***Proposed Development***

The proposed development is a two-lot subdivision of Lot 313 DP 1245164. This existing lot was created as a consequence of an approved two lot subdivision of Lot 3 DP 740232, that was granted by Council under development consent LUA00/0898.

Proposed Lot 1 is a 40-hectare parcel that is to the north of the Milton Park Country House Hotel and gardens and north of the existing Village 1 villas. It will accommodate an existing dwelling house that was approved by Council under LUA03/0812. This dwelling is situated in the north west corner of proposed lot 1 and has vehicular access off the eastern end of Kimberley Drive Bowral.

Apart from the dwelling, proposed Lot 1 is open grazing land. It also accommodates the existing on-site waste water treatment pumping station and treatment/maturation pond that is an integral part of the original site development process. This infrastructure is accommodated within appropriate easements as described upon the Plan of Proposed Subdivision.

Proposed Lot 2 is approximately 13-hectare parcel that is situated to the east of the Milton Park Country House and gardens. This lot reflects the approved development area for the



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Village 2 villas. Within proposed Lot 2, work has commenced that reflects the approval issued by Council under LUA11/0869, for which a Construction Certificate has been issued.

The proposed subdivision represents a more logical and relevant property boundary for ongoing management of land associated with an approved development outcome at Milton Park and a single 40 hectare parcel that accommodates a single residential dwelling house.



**Figure 3:** Aerial view of proposed Lot 2 showing the building pads and roads constructed pursuant to LUA11/0869. **(Attachment 5)**





**Figure 4:** Aerial view of Village 1 that sits on its own Strata Plan. (Attachment 6)



**Figure 5:** Aerial view of existing dwelling that will be accommodated on the 40 hectare proposed Lot 1. (Attachment 7).



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## STATUTORY PROVISIONS

### ***State Environmental Planning Policies***

#### State Environmental Planning Policy No 55 – Remediation of Land

Clause 7 of SEPP 55 requires the consent authority to consider whether land is contaminated prior to granting consent to the carrying out of any development on that land, and to be satisfied that the land is suitable for the proposed use. After undertaking a desktop search using Council's Property and Rating database, Council is satisfied the land is not a site of possible contamination and therefore no further assessment is required.

#### State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011

The Catchment SEPP aims:

- (a) to provide for healthy water catchments that will deliver high quality water while permitting development that is compatible with that goal.
- (b) to provide that a consent authority must not grant consent to a proposed development unless it is satisfied that the proposed development will have a neutral or beneficial effect on water quality.
- (c) to support the maintenance or achievement of the water quality objectives for the Sydney drinking water catchment.

Whilst the development is a Module 1 under the NorBE Guidelines, and Council has assumed concurrence to consider water quality, Water NSW have provided input into the assessment and provided suggestions to Council for imposed conditions of consent. In accordance with clause 10 of the Catchment SEPP, the NorBE Tool has been used to determine that the carrying out of the proposed development would have a neutral or beneficial effect on water quality subject to conditions of consent that have been provided in the draft conditions as described in **Attachment 1** to the report.

### ***Local Environmental Plans***

#### Wingecarribee Local Environmental Plan 2010

The relevant provisions of the LEP are discussed as follows.

##### Clause 1.2—Aims of Plan

The proposed development is considered satisfactory with respect to the particular aims specified by clause 1.2 (2).

##### Clause 2.3—Zone objectives and Land Use Table

The land is zoned E3 Environmental Management. Development of the Milton Park site would not be permissible development within the E3 zone that now applies to the land.

However, the original development to which this application is connected, was lawfully approved under the provisions of Wingecarribee Local Environmental Plan – Amendment No. 84, dated 15 April 1985, which permitted, amongst other things, 44 strata titled villas on the land.

The original Development Application was subsequently issued (DA32/27/3182/84) to reflect that LEP amendment.

In relation to the objectives of the E3 Environmental Management zone that now applies to the land, it is again noted that the proposed subdivision is giving effect to an existing development consent which is in force, a substantial part of which has been completed.

The original development approval specifically set aside underlying zoning of the land as it applied at that time, in favour of the development proposal under DA32/28/3182/84. Having said that it is still instructive to measure the proposed subdivision against the zone objectives which are expressed as follows:

- *To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*
- *To provide for a limited range of development that does not have an adverse effect on those values.*
- *To encourage the retention of the remaining evidence of significant historic and social values expressed in existing landscape and land use patterns.*
- *To minimise the proliferation of buildings and other structures in these sensitive landscape areas.*
- *To provide for a restricted range of development and land use activities that provide for rural settlement, sustainable agriculture, other types of economic and employment.*
- *Development, recreation and community amenity in identified drinking water catchment areas.*
- *To protect significant agricultural resources (soil, water and vegetation) in recognition of their value to Wingecarribee's longer term economic sustainability.*

With regard to these specific objectives of the E3 Environmental Management Zone:

- The development does not preclude appropriate management of the site, in fact it facilitates it;
- There is no ecological significance associated with the portion of the site upon which the development will proceed that is compromised by the new lot boundaries;
- There is no view impact associated with the development;
- There is no impact upon the values of the site, including upon the historic values of the site which have been faithfully retained and restored;
- The application does not propose a proliferation of buildings because it is a subdivision that requires no work nor does it allow for any further buildings that have not already been approved.

Clause 2.6—Subdivision—consent requirements

Clause 2.6 (1) effectively specifies the land may be subdivided only with development consent.

Clause 4.1—Minimum subdivision lot size

With reference to the Minimum Lot Size Maps of the WLEP2010 that are referenced in Clause 4.1(3), the minimum lot size for subdivision in this locality is 40 hectares.

Proposed Lot 1 is 40 hectares and therefore compliant.

Proposed Lot 2 is approximately 13 hectares and is therefore non-compliant with this numerical standard.

**Clause 4.2 – Exceptions to minimum subdivision lot sizes for certain rural subdivisions.**

This clause provides for some alternative lot size outcomes outside of the regular 40 hectare standard.

The objective of the clause is set out in Subclause (1) as follows:

- (1) The objective of this clause is to enable the subdivision of land in rural areas to create lots of an appropriate size to meet the needs of permissible uses other than for the purpose of dwelling houses or dual occupancies.*

In this case, the subdivision is not proposed for the purpose of creating entitlements for dwelling houses or dual occupancies. On proposed lot 1 there will an existing dwelling house, but this lot is the required 40 hectares and can be considered a fully compliant parcel.

The purpose of Proposed Lot 2, is to describe a development parcel that aligns with a previous development approval that has already been activated with that development now under construction.

Subclause (2) makes clear that it applies to land within the E3 Environmental Management Zone.

Subclause (3) states that it is possible for Council to grant consent to subdivide land and create a lot less than the minimum lot size.

- (3) Land to which this clause applies may, with development consent, be subdivided to create a lot of a size that is less than the minimum size shown on the Lot Size Map in relation to that land if the consent authority is satisfied that the use of the land after the subdivision will be the same use (other than a dwelling house or a dual occupancy) permitted under any existing consent for the land.*

In this case, the proposed subdivision will not lead to any change of land use.

Propose Lot 1 is a compliant 40 hectare site. It will accommodate an approved and constructed dwelling house.

For Proposed Lot 2, which is less than the standard 40 hectares, it will facilitate the management of land in accordance with approvals that have been granted, dating back to DA32/27/3182/84 and more recently LUA11/0869. The approved use upon proposed Lot 2 is not a dwelling house or a dual occupancy.

Subclause (4) sets out the matters that Council, as the consent authority, must be satisfied of, if it is to grant consent under Clause 4.2D. The matters are:

- (a) The subdivision will not adversely affect the use of the surrounding land for agriculture; and*  
*(b) The subdivision is necessary for the ongoing operation of the permissible use; and*  
*(c) The subdivision is appropriate having regard to the natural and physical constraints affecting the land.*

In relation to proposed Lot 1, its 40-hectare site area is compliant with the minimum standard and as a larger land holding, it has capacity for agriculture if that was a desired land use. The Lot already accommodates an existing dwelling house. All surrounding land is typical of the locality, with land parcels of different sizes and a range of low-key agriculture, mainly stock grazing. There are large homes enjoying a rural residential amenity. Lot 1 is completely consistent with this existing character.

Proposed Lot 2 is much smaller, deliberately so, because it has the specific purpose of establishing a parcel that relates to the Village 2 villas that have been approved and are

now under construction. The boundary definition of this 'development parcel' will ensure that the approved Village 2 development area is clear, and Village 2 can be readily managed and that surrounding lands are not impacted.

The proposed subdivision is appropriate having regard to the natural and physical constraints of the land because it will provide two lots, both of which will be 'fit for purpose'.

Proposed Lot 1 will accommodate an existing dwelling house on a large rural lot that will be completely consistent with all surrounding large rural lots.

Proposed Lot 2 will accommodate the approved Village 2 villas in the same way that the Village 1 villas are completely contained within their own parcel, being SP32202.

#### Clause 5.10—Heritage Conservation

Part 5 of WLEP2010 deals with miscellaneous provisions, one of which is Clause 5.10, Heritage conservation.

Milton Park (house, grounds and outbuildings), are listed as an item of environmental heritage in Schedule 5 of WLEP2010 and as a consequence, Clause 5.10 of the WLEP 2020 is relevant.

Council's heritage inventory sheets, that provide some background to the listing of items, does not contemplate the entire Milton Park site as heritage significant. It is generally considered that the significant heritage precinct is contained within what is now Lot 310 DP1191798, although there are smatterings of individual original buildings across the site. As noted previously, these other buildings are now in good condition having been faithfully restored and are being utilised for a variety of uses in accordance with the original development consent DA32/27/3182/84.

The current Schedule 5 heritage listing is reflected in the heritage maps of the WLEP2010. With reference to the maps it can be seen that proposed Lot 1 is outside of the heritage area, whereas proposed Lot 2 is within the heritage precinct as depicted by the maps.

Clause 5.10(5)(c) is relevant. This sub clause deals with development on land within the vicinity of a heritage item and may, in some circumstances, require the preparation of a heritage management document that assesses the extent to which a development may affect the heritage significance of an item.

The proposed development does not contemplate any work to the Milton Park house, grounds, gardens or any outbuildings. This is because the subdivision requires no work and is necessary only to facilitate the ongoing management of development that is already built (dwelling house on Proposed Lot 1) or under construction (Village 2 villas on Proposed Lot 2).

In previous considerations of the matter, Council had been concerned in regard to potential heritage impacts, in particular the potential for visual impact when viewed from Milton Park house and gardens. With no building work proposed or facilitated by the subdivision and with Proposed Lot 2 creating a parcel of land in the location that was identified for Village 2 in the original development consent, there is no heritage impact upon the listed item. As can be seen from the change that has occurred between the legal property descriptions listed in Schedule 5 and the legal property descriptions that currently exist, it is not the property boundaries that affect the heritage characteristics of the broader Milton Park Estate. It is the retention of the original homestead, gardens and associated outbuildings and none of these are impacted by the proposed subdivision.

Clause 7.4 and 7.5—Biodiversity and Water

Clauses 7.4 and 7.5 relating to natural resources sensitivity for both biodiversity and water. The site is not affected by the biodiversity wildlife corridor but there are a number of Category 3 streams that traverse the site. However, as previously described, the subdivision does not contemplate work, nor does it facilitate any additional future development.

Clause 7.10—Public utility infrastructure

Provided all recommended consent conditions are complied with, the proposed development will have access to water supply, electricity supply and sewerage infrastructure.

***Development Control Plans***

Rural Lands Development Control Plan

The applicable sections of the Bowral DCP are addressed below:

Part A—Managing our Rural Lands

Section 2—Classification and Distribution of Rural Lands

Section A2.4—Agricultural Land Classification

Section A2.5.4—Environmental Management (E3)

Section A2.7—Subdivision of Rural Land.

Section A2.7.1—Allotment Sizes

Section 3—Ecologically Sustainable Development

Section A3.2—Development in Sydney's Drinking Water Catchments

Section 8—Heritage and Landscape Conservation.

Section A8.4—Development in the Vicinity of Heritage Items

***Section 4.15 Evaluation***

*(1) Matters for consideration—general*

*In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:*

*(a) the provisions of:*

*(i) any environmental planning instrument, and*

As discussed earlier, provided all recommended consent conditions are complied with, the proposed development is considered satisfactory with respect to the LEP's relevant provisions.

*(ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*

Not applicable.

*(iii) any development control plan, and*



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As discussed earlier, provided all recommended consent conditions are complied with, the proposed development is considered satisfactory with respect to the relevant provisions of Council's applicable Rural Lands Development Control Plan.

*(iii) any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and*

Not applicable.

*(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), and*

Not applicable.

*(v) any coastal zone management plan (within the meaning of the Coastal Protection Act 1979), that apply to the land to which the development application relates,*

Not applicable.

*(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*

Provided all recommended consent conditions are complied with, the likely impacts of the proposed development are considered acceptable.

*(c) the suitability of the site for the development,*

The proposed development is considered generally compatible with the intended character and amenity of the locality, and no site attributes are considered to render the land unsuitable for it.

*(d) any submissions made in accordance with this Act or the regulations,*

Refer to the Consultation section of this report.

*(e) the public interest.*

There is not considered to be any overriding public interest against granting consent for the proposed development.

## CONSULTATION

### ***Pre-lodgment Meeting***

The applicant did not seek formal pre-lodgment meeting before making the application.

### ***External Referrals***

Referrals	Advice/Response/Conditions
NSW Rural Fire Service (integrated development)	The RFS has provided their General Terms of Approval, under Division 4.8 of the <i>Environmental Planning and Assessment Act 1997</i> , and a Bush Fire Safety Authority, under section 100B of the <i>Rural Fires Act 1997</i> dated 20 October 2020 subject to conditions that are included in the draft notice of determination.
Natural Resources	Controlled Activity not required.



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Referrals	Advice/Response/Conditions
Access Regulator	
Heritage Council of New South Wales	The Heritage Council of New South Wales has provided their General terms of Approval for the land inside of the State Heritage Register listing boundary, in accordance with Section 4.47 of the <i>Environmental Planning and Assessment Act 1979</i> , dated 16 November 2020 subject to conditions that are included in the draft notice of determination.

#### **Internal Referrals**

Referrals	Advice/Response/Conditions
Development Engineer	No objection, subject to various recommended consent conditions.
Development Engineer – Water & Sewer	No objection, subject to various recommended consent conditions.
Environmental Health Officer (OSSM)	No objection, subject to various recommended consent conditions.

#### **Neighbour Notification (or Advertising)/Public Participation**

The development application was Neighbour Notified from 04/09/20 to 25/09/20 and Council received 8 submissions, objecting to the proposed development. The issues raised in the submissions have been summarised and are considered below:

Issues	Response
The development of Milton Park was intended to carefully follow the master plan approved in 1984.	The proposed 2 lot subdivision is to provide a small allotment to cater for the strata subdivision of village 2 that is under construction under DA11/0869.
The existing dwelling house constructed nearly a kilometre away and built as a demonstration home has a combined area of 500 square metres and is significantly larger than the dwellings in the strata.	The application under consideration is purely for subdivision and is to cater for the future strata subdivision of village 2.
Unlike the buildings for Village 2 in the approved Master Plan, the buildings for Village 2 will be visible from our villa for a period of About 4 months spanning winter and spring.	The proposed 2 lot subdivision is to provide a small allotment to cater for the strata subdivision of village 2 that is under construction under LUA11/0869.
The location of village 2 was firmly established in 1984. The design and location of the proposed villas have no relationship to their design and location in the approved master plan.	The proposed 2 lot subdivision is to provide a small allotment to cater for the strata subdivision of village 2 that is under construction under LUA11/0869.
The existing dwelling which is included	The dwelling was constructed under an

## AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 24 March 2021

### REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY AND DEVELOPMENT SERVICES



Issues	Response
in proposed Lot 1 was not a part of the original approval for Milton Park and was undertaken separately by the applicant.	approved development consent.
If it is suggested that this development application is only for the subdivision of land and the development of village 2 has nothing to do with it then such an argument is not supported by the application.	Village 2 is under construction under LUA11/0869 and the current application is only for subdivision.
Council should consider if the use is permissible for multi dwelling housing.	The application is permissible for a 2-lot subdivision. The villas are under construction under LUA11/0869.
Milton Park is a heritage item and the application should be assessed by the Heritage Council of NSW.	The application was referred to the Heritage Council of NSW who have provided their General Terms of Approval.
The Hotel should not be accountable for the ongoing usage costs of this development.	The application is for a subdivision only and does not involve building works therefore there are no ongoing costs to the Hotel.
The proposed subdivision allows for further fragmentation of lots against the objectives of the DCP. All the outbuildings should be kept together with a parcel of rural land to ensure no further break-up of the estate.	The estate has been fragmented in past approvals and this subdivision application is to provide for the strata subdivision of the land to accommodate the previously approve village 2.
Water metering and costs need to be addressed to avoid Yufan paying the usage costs for the entire site and is a solution that should be resolved by Council.	The water usage and water metering on the entire site is for the owners of the land to resolve.
Council approved the application for Village 2, which was significantly different from the Masterplan and allowed 6 villas to be outside the allocated land	This application is for subdivision only and the construction of the Villas was approved under LUA 11/08659.
The masterplan did not envisage this subdivision. This would allow the applicant to sell off the "Lake House" with 40 hectares of land.	The masterplan did not provide restrictions on title that prevent the subdivision of land.
It is obvious that another tourist resort on the site was never considered in 1985, especially one that would compete with the Hotel and degrade the heritage of the Milton Park House and grounds that it was meant to protect.	This is incorrect and in fact DA5039 D1 & D2 – 575/89 (dated 14/09/1989) granted consent for alterations and additions to existing hotel, Tourist Facility including 18 hole golf course, Golf Lodge Hotel, Highlands House Hotel, equestrian centre, polo fields, tennis courts, swimming pools and main entry gates. Whilst

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Issues	Response
	works were carried out to form the golf course, this consent has not proceeded.
It has been our experience that Council in general, and perhaps through financial means, does not prioritise and ensure compliance of the law, and we are concerned that these buildings will be used incorrectly without such clarification.	Council has Compliance Officers that ensure strict compliance with development consents and land usage. The usage of the villas as approved in the future is not the subject of this application.
I support the sub-division of this land provided the following rights are protected: <ul style="list-style-type: none"><li>The recreational leases current and maintained and protected for residents of SP32202</li></ul>	The current leases and restrictions over the current land will be carried across to the new lots.

## SUSTAINABILITY ASSESSMENT

### • **Environment**

Provided all recommended consent conditions are complied with, the proposed development is not expected to have any significant negative environmental impact.

### • **Social**

There are no social issues in relation to this report.

### • **Broader Economic Implications**

There are no broader economic implications in relation to this report.

### • **Culture**

There are no cultural issues in relation to this report.

### • **Governance**

The development application has been considered in accordance with the *Wingecarribee Local Environmental Plan 2010*, section 4.15 of the *Environmental Planning and Assessment Act 1979* and any other matters relevant to the development.

## COUNCIL BUDGET IMPLICATIONS

The financial implications of Council's decision in this matter are directly related to the legal implications. The possibilities are detailed as follows:

- Should the applicant choose to appeal a refusal, or pursue a deemed refusal, by Council through the Land and Environment Court and lose, the question of cost with regard to Council's legal representation would be determined by the extent of the reasons for refusal;

## AGENDA FOR THE ORDINARY MEETING OF COUNCIL

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### REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY AND DEVELOPMENT SERVICES



- Should the applicant choose to appeal a refusal, or pursue a deemed refusal, by Council through the Land and Environment Court and win, the question of cost would be dependent upon the extent of the reasons for refusal;
- Should any person choose to take out Class 4 proceedings against Council to the Land and Environment Court and lose, the question of cost with regard to Council's legal representation would be calculated at the appropriate time;
- Should any person choose to take out Class 4 proceedings against Council to the Land and Environment Court and win, the question of cost would still be calculated at the appropriate time;
- Should the applicant make no appeal, or proceedings not be taken out by another party, to the Land and Environment Court regardless of the determination, the application would result in no further financial implication to Council.

### RELATED COUNCIL POLICY

An assessment of the proposal has been made against the *Wingecarribee Local Environmental Plan 2010* and the Rural Lands Development Control Plan. No other Council policies apply to the subject development

### OPTIONS

The options available to Council are:

#### Option 1

That the Council determines Development Application 21/0257 by granting consent, subject to the conditions specified in **Attachment 1**.

#### Option 2

That the Council determines Development Application 21/0257 by refusing consent and specifies the reasons for its determination.

**Option 1** is the recommended option to this report.

### CONCLUSION

It is recommended Development Application 21/0257 which seeks approval for a two (2) Lot Subdivision of land at Part Lot 313 DP 1245164, No 27 Kimberley Drive Bowral be supported subject to conditions.

The proposal is considered satisfactory in terms of section 4.15 of the *Environmental Planning and Assessment Act 1979*, therefore it is recommended that the development application be approved, subject to the attached draft conditions of consent nominated in **Attachment 1**.

### ATTACHMENTS

1. DA21/0257 - Draft Condition of Consent
2. Plan of Subdivision - *circulated under separate cover*
3. DA/0257 - Locality Map - *circulated under separate cover*
4. DA21/0257 - Aerial image - *circulated under separate cover*
5. DA21/0257 - Aerial view of proposed Lot 2 - *circulated under separate cover*

**AGENDA FOR THE ORDINARY MEETING OF COUNCIL**

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**REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY  
AND DEVELOPMENT SERVICES**



6. DA21/0257 - Aerial view of Village 1 - *circulated under separate cover*
7. DA21/0257 - Aerial view of existing dwelling that will be accommodated on proposed Lot 1 - *circulated under separate cover*

Mark Pepping

**Deputy General Manager Corporate, Strategy and Development Services**

Thursday 18 March 2021

## AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 24 March 2021

### REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY AND DEVELOPMENT SERVICES



TBA

TUJILLO PTY LIMITED  
PRIVATE BAG 1  
BOWRAL NSW 2576



Civic Centre, 68 Elizabeth St,  
Moss Vale NSW 2577  
PO Box 141, Moss Vale  
**02 4868 0888**  
mail@wsc.nsw.gov.au  
ABN 49 546 344 354

#### NOTICE OF DETERMINATION OF A DEVELOPMENT APPLICATION Pursuant to section 4.16 of the Environmental Planning and Assessment Act 1979

APPLICATION NO:	21/0257
APPLICANT:	TUJILLO PTY LIMITED
OWNER:	TUJILLO PTY LIMITED
PROPERTY DESCRIPTION:	Part Lot 313 DP 1245164
PROPERTY ADDRESS:	27 KIMBERLEY DRIVE BOWRAL NSW 2576
PROPOSED DEVELOPMENT:	Subdivision - 2 Lots
DETERMINATION:	Approval subject to conditions
CONSENT TO OPERATE FROM:	TBA
CONSENT TO LAPSE ON:	TBA

#### Rights of Appeal

Pursuant to Section 8.7 of the *Environmental Planning and Assessment Act 1979*, an applicant for development consent who is dissatisfied with the determination of the application by Council authority may appeal to the Court against the determination. Pursuant to Section 8.10, an appeal may be made only within 12 months after the date the decision appealed against is notified.

#### Review of Determination

You have the right to request a review of determination under section 8.2 of the *Environmental Planning and Assessment Act 1979*, subject to the provisions of Division 8.2 Reviews.

Ross Jauncey  
Development Assessment Planner

TBA  
Date of Determination

*Working with you*

WSC.NSW.GOV.AU

WINGECARRIBEE - A COAL MINING FREE SHIRE



21/0257, Part Lot 313 DP 1245164

## SCHEDULE 1 CONDITIONS OF DEVELOPMENT CONSENT

### ADMINISTRATION CONDITIONS

#### 1. Development Description

Development consent has been granted in accordance with this notice of determination for the purposes of Subdivision – 2 Lots.

**Reason:** *To confirm the use of the approved development.*

#### 2. Development in Accordance with Plans and Documents

The development shall be implemented in accordance with the approved plans and supporting documents set out in the following table except where modified by any conditions of development consent.

Plan Title / Supporting Document	Reference / Version	Prepared By	Dated
Plan of Subdivision of Lot 313 DP 1246164	Ref: 13147	Richard Cox	13-05-2016
Plan of Subdivision of Lot 313 DP 1246164	Ref: 13147, Sheet 2	Richard Cox	13-05-2016
Statement of Environmental Effects	Not Referenced	Lee Environmental Planning	August 2020
Bushfire Report	Ref: 3813	Harris Environmental Consulting	29/07/2020

**Reason:** *To ensure the development is carried out in accordance with the approved plans and documentation.*

#### 3. Inconsistency between documents

In the event of any inconsistency between the conditions of this consent and the drawings/documents referred to above, the conditions of this consent shall prevail to the extent of the inconsistency.

**Reason:** *To ensure that the development is undertaken in accordance with the submitted plans and documents (as amended).*

### CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE SUBDIVISION WORKS CERTIFICATE

#### 4. Application for a Subdivision Works Certificate

Subdivision work in accordance with the consent shall not be commenced until a Subdivision Works Certificate has been applied for and issued by Council, pursuant to Section 6.13 of the *Environmental Planning and Assessment Act 1979*. The application for a Subdivision Works Certificate needs to be accompanied by detailed engineering plans and specifications and completed design checklists found in Council's Engineering Policies.



9.1 Development Application 21/0257 - Two (2) Lot Subdivision Part Lot 313  
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ATTACHMENT 1 DA21/0257 - Draft Condition of Consent



21/0257, Part Lot 313 DP 1245164

**Reason:** *A requirement under the provisions of the Environmental Planning and Assessment Act 1979.*

5. **Appointment of Principal Certifier (PC)**

No work shall commence in connection with this Development Consent until:

- (a) A Subdivision Works Certificate for the subdivision work has been issued by:
  - (i) the consent authority; or
  - (ii) a Principal Certifier (PC); and
- (b) the person having the benefit of the development consent has:
  - (i) appointed a Principal Certifier (PC) for the subdivision work, and
  - (ii) notified the Principal Certifier (PC) that the person will carry out the subdivision work as an owner-builder, if that is the case, and
- (b1) the principal certifying authority has, no later than 2 days before the building work commences:
  - (i) notified the Council of his or her appointment, and
  - (ii) notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
- (b2) the person having the benefit of the development consent, if not carrying out the work as an owner builder, has:
  - (i) appointed a principal contractor for the subdivision work who must be the holder of a contractor licence if any residential building work is involved, and
  - (ii) notified the Principal Certifier (PC) of such appointment, and
  - (iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspections and other inspections that are to be carried out in respect of the subdivision work, and
- (c) the person having the person having the benefit of the development consent has given at least 2 days' notice to the Council of the person's intention to commence the subdivision work.

**Reason:** *To ensure that there is certainty as to the consent applying to the land.*

6. **Section 68 Local Government Act 1993 Approvals**

Prior to the issue of a Subdivision Works Certificate, an application under section 68 of the *Local Government Act 1993* shall be made to, and issued by, Wingecarribee Shire Council, for the following approvals:

- Water Services
- Stormwater services
- Sewerage services

**Reason:** *A requirement under the provisions of the Local Government Act 1993.*



9.1 Development Application 21/0257 - Two (2) Lot Subdivision Part Lot 313  
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ATTACHMENT 1 DA21/0257 - Draft Condition of Consent



21/0257, Part Lot 313 DP 1245164

#### CONDITIONS TO BE SATISFIED PRIOR TO THE COMMENCEMENT OF WORK

##### 7. Notice of Commencement

No work shall commence until a notice of commencement form has been submitted (form will be attached with issue of a Construction Certificate or Subdivision Works Certificate or available from Council's website), giving the Principal Certifier (PC):

- (a) Not less than two (2) days' notice of the date on which it is proposed to commence work associated with this Development Consent.
- (b) Details of the appointment of a Principal Certifier (PC) (either Wingecarribee Council or another Principal Certifier).
- (c) Details of the Principal Contractor or Owner Builder:
  - Name
  - Builders Licence Number or Owner Builder Permit Number
  - Principal Contractor Company Name
  - Principal Contractor ABN
  - Address of Principal Contractor or Owner Builder
  - Email Address
- (d) Copy of the HBCF Insurance Certificate (if residential building works exceed \$20,000) or Owner Builder Permit.
- (e) Details demonstrating compliance with development consent conditions relevant prior to commencement of the development been satisfied.

**Reason:** Statutory requirement.

**Advice:** Attached Notice of Commencement form to be completed.

##### 8. Principal Certifier (PC) Sign

Prior to commencement of any work, signage must be erected in a prominent position on the work site identifying:

- The Principal Certifier (PC) by showing the name, address and telephone number of the Principal Certifier (PC);
- The Principal Contractor by showing the Principal Contractor's name, address and telephone number (outside of work hours) for that person.
- The sign must state that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the work is being carried out, but must be removed when the work has been completed.

This clause does not apply to building work, subdivision work or demolition work that is carried out inside an existing building that does not affect the external walls of the building.

**Advice:** Where Council is the PCA, signage is available from Council.

**Reason:** Statutory requirement.

9.1 Development Application 21/0257 - Two (2) Lot Subdivision Part Lot 313  
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21/0257, Part Lot 313 DP 1245164

9. **Subdivision Works Certificate & Appointment of Principal Certifier (PC)**

Subdivision work in accordance with a consent must not commence until:

- (a) A Subdivision Works Certificate has been issued.
- (b) The person having the benefit of the development consent has appointed the Principal Certifier (PC).
- (c) The Principal Certifier (PC) (if not Council) has, no later than two (2) days before the subdivision work commences, notified the Council (or other consent authority where applicable) of the Principal Certifier's (PC) appointment.
- (d) The person having the benefit of the consent has given at least two (2) days' notice to the Council of the person's intention to commence the subdivision work.

**Advice:** *Crown work certified in accordance with Part 6 of the Environmental Planning and Assessment Act 1979 is exempted from the above requirements.*

**Reason:** *Statutory requirement.*

**CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF A SUBDIVISION CERTIFICATE**

10. **Subdivision Certificate**

An application for a Subdivision Certificate shall be lodged with Council or an Accredited Certifier (in accordance with Section 6.15 of the *Environmental Planning and Assessment Act 1979*) for approval to enable the subdivision plans to be submitted to and registered with NSW Land Registry Services. Should the Subdivision Certificate application be lodged with Council, a final plan of subdivision and 3 copies shall be included with the application.

All works specified in Council's development consent and approved Subdivision Works Certificate plans shall be completed and all development consent conditions complied with prior to issue of the Subdivision Certificate.

The application for a Subdivision Certificate is to be accompanied by supporting documentation outlining how each condition of consent has been complied with.

**Reason:** *To comply with the provisions of the Environmental Planning and Assessment Act 1979.*

**Note:** *The applicant is to ensure that works associated with the Section 138 (Roads Act) approval and Section 68 (Local Government Act) approval are completed and inspected by Council.*

11. **Legal Instruments**

All instruments setting out terms of Easements or Profits a Prendre intended to be created or released and of Restrictions on the Use of Land or Positive Covenants intended to be created pursuant to Section 88B of the *Conveyancing Act 1919* that were applicable to Lot 313 DP 1245164 shall be carried through and be placed on the proposed Lots 1 and 2

**Reason:** *To ensure proper land management under the Act.*

12. **Section 68 Local Government Act Final**

9.1 Development Application 21/0257 - Two (2) Lot Subdivision Part Lot 313  
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21/0257, Part Lot 313 DP 1245164

The applicant is to ensure that the works associated with the Section 68 approval for this development be completed and inspected by Council prior to the issue of the Subdivision Certificate.

**Reason:** *To ensure that the development is completed as per this consent and the approved plans.*

**13. Wastewater Treatment and Effluent Management Systems**

To maintain the functionality and effectiveness of the wastewater treatment system, maturation ponds, effluent pond and irrigation systems over the long term the following is required:

- (a) An Operation Environmental Management Plan (OEMP) detailing the location of all aspects of the wastewater and effluent management systems; procedures and responsibilities for inspection, maintenance and management of the systems. The OEMP shall be distributed to all lots owners/strata corporations that benefit or are burdened from the systems, and
- (b) Plan of subdivision showing all easements (benefitting or burdened) related to all components of the wastewater treatment and management systems including Lot 310 DP 1191798, SP 32232 and the proposed Lot 1 requiring easements over the proposed Lot 2 to irrigate treated wastewater.

**Reason:** *To maintain the functionality and effectiveness of the wastewater treatment and effluent management system.*

**14. Existing Services - Reticulation**

An easement (Section 88B of the *Conveyancing Act 1919*) shall be created in favour of Lot 2 over the following assets:

- (a) Private sewer main and wastewater treatment system; and
- (b) Private water service

Located centrally within that easement.

Details of registration of the above easement shall be submitted to Council prior to the release of the Subdivision Certificate.

**Reason:** *Statutory requirement.*

**15. Construction of Water Service**

Each lot in the subdivision shall have its own dedicated water service prior to the issue of the Subdivision Certificate.

In the case that a new water service is required Council's application form shall be completed by the developer and the appropriate fee paid.

**Reason:** *To ensure that the development is serviced.*

**INTEGRATED DEVELOPMENT CONDITIONS**

9.1 Development Application 21/0257 - Two (2) Lot Subdivision Part Lot 313  
 DP1245164, 27 Kimberley Drive Bowral  
 ATTACHMENT 1 DA21/0257 - Draft Condition of Consent



21/0257, Part Lot 313 DP 1245164

16. General Terms of Approval – Heritage Council of NSW

General Terms of Approval have been granted by the Heritage Council of NSW for the development pursuant to section 4.47 of the *Environmental Planning and Assessment Act 1979*. The conditions provided by the Heritage Council of NSW are provided below:



Our ref: DOC20/833842

Ross Jauncey  
 Development Assessment Planner  
 Wingecarribee Shire Council

By email: ross.jauncey@wsc.nsw.gov.au

Dear Mr Jauncey

HERITAGE COUNCIL OF NSW – GENERAL TERMS OF APPROVAL  
 INTEGRATED DEVELOPMENT APPLICATION

**Address:** 27 Kimberley Drive, Bowral 2576 NSW  
**SHR item:** Milton Park Cultural Landscape (SHR no. 02026)  
**Proposal:** Two lot subdivision  
**IDA application no:** IDA/2020/110, received 12 October 2020

As delegate of the Heritage Council of NSW (the Heritage Council), I have considered the above integrated development application.

The majority of the land subject to the proposed subdivision is located outside of the State Heritage Register (SHR) listing boundary. The Heritage Council does not have the authority to grant general terms of approval in relation to development to the land outside of that SHR listing boundary. Therefore, the below general terms of approval only apply to the land within this boundary.

In accordance with Section 4.47 of the *Environmental Planning and Assessment Act 1979*, the following general terms of approval are granted (for the land inside of the State Heritage Register listing boundary):

APPROVED DEVELOPMENT

1. Development must be in accordance with:

a) Subdivision drawings, prepared by Richard R Cox as listed below:

Dwg No	Dwg Title	Date	Rev
<b>Project Name: Plan of Subdivision of Lot 313 DP 1245164</b>			
Sheet 1	N/A	12/05/16	N/A
Sheet 2	N/A	13/05/16	N/A

b) *Statement of Environmental Effects for Proposed Subdivision of Lot 313 DP 1245164 at Milton Park Horderns Road Bowral*, prepared by LEP, dated August 2020.

EXCEPT AS AMENDED by the following general terms of approval:

COMPLIANCE

2. If requested, the applicant and any nominated heritage consultant may be required to participate in audits of Heritage Council of NSW approvals to confirm compliance with conditions of consent.

*Reason: To ensure that the proposed works are completed as approved.*

Level 6, 10 Valentine Ave Parramatta NSW 2150 ■ Locked Bag 5020 Parramatta NSW 2124  
 P: 02 9873 8500 ■ E: heritagemailbox@environment.nsw.gov.au

9.1 Development Application 21/0257 - Two (2) Lot Subdivision Part Lot 313  
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21/0257, Part Lot 313 DP 1245164

#### SECTION 60 APPLICATION

3. An application under section 60 of the *Heritage Act 1977* must be submitted to, and approved by, the Heritage Council of NSW (or delegate), prior to work commencing.

*Reason: To meet legislative requirements.*

#### COMMENTS ON PROPOSED SUBDIVISION OUTSIDE SHR CURTILAGE:

*The reasons for the proposed subdivision provided in the Statement of Environmental Effects are ambiguous and insufficient. The proposed Lot 2 is significantly larger than the original Lot conceived for Village 2 and includes additional land and significant historic outbuildings. The area added to the original Lot 2 is significant due to historic view lines. It is recommended that these views be retained in any future development on the proposed Lot 2.*

*A number of historic outbuildings that are part of Milton Park Cultural Landscape (SHR no. 02026) are also included in the proposed Lot 2. The applicant should be advised that:*

- *Any development within the SHR curtilage will require an approval under the Heritage Act 1977; and*
- *Any development in the vicinity of these historic outbuilding (outside the SHR curtilage) must consider potential impacts upon the heritage significance of the SHR item.*

Section 148 of the *Heritage Act 1977* (the Act), allows people authorised by the Minister to enter and inspect, for the purposes of the Act, with respect to buildings, works, relics, moveable objects, places or items that is or contains an item of environmental heritage. Reasonable notice must be given for the inspection.

#### Right of Appeal

If you are dissatisfied with this determination, section 70A of the Act gives you the right of appeal to the Land and Environment Court.

If you have any questions regarding these general terms of approval, please contact Veerle Norbury, Senior Heritage Assessment Officer, at Heritage NSW, on 9873 8616 or [veerle.norbury@environment.nsw.gov.au](mailto:veerle.norbury@environment.nsw.gov.au).

Yours sincerely

**Rajeev Maini**  
 Senior Team Leader  
 Regional Heritage Assessments South  
 Heritage NSW  
 Department of Premier and Cabinet  
As Delegate of the Heritage Council of NSW  
 16 November 2020

#### 17. General Terms of Approval - NSW Rural Fire Service

General Terms of Approval have been granted by the NSW Rural Fire Service for the development pursuant to section 100B of the *Rural Fires Act 1997*. The conditions provided by the NSW Rural Fire Service are provided below:



9.1 Development Application 21/0257 - Two (2) Lot Subdivision Part Lot 313  
 DP1245164, 27 Kimberley Drive Bowral  
 ATTACHMENT 1 DA21/0257 - Draft Condition of Consent



21/0257, Part Lot 313 DP 1245164



NSW RURAL FIRE SERVICE

Wingecarribee Shire Council  
 PO Box 141  
 MOSS VALE NSW 2577

Your reference: 21/0257 (CNR-12067)  
 Our reference: DA20201016003791-Original-1

ATTENTION: Elizabeth Garner  
 ATTENTION:

Date: Tuesday 20 October 2020

Dear Sir/Madam,

Integrated Development Application  
 s100B - Subdivision - Torrens Title Subdivision  
 27 Kimberley Drive Bowral NSW 2576, 313//DP1245164, 314//DP1245164, 313//DP1245164

I refer to your correspondence dated 14/09/2020 seeking general terms of approval for the above Integrated Development Application.

The New South Wales Rural Fire Service (NSW RFS) has considered the information submitted. General Terms of Approval, under Division 4.8 of the *Environmental Planning and Assessment Act 1979*, and a Bush Fire Safety Authority, under section 100B of the *Rural Fires Act 1997*, are now issued subject to the following conditions:

**Asset Protection Zones**

*Intent of measures: to provide sufficient space and maintain reduced fuel loads to ensure radiant heat levels at the buildings are below critical limits and prevent direct flame contact.*

1. At the issue of a subdivision certificate, and in perpetuity to ensure ongoing protection from the impact of bush fires, the site around the existing building on proposed Lot 1 must be managed as an inner protection area (IPA), in accordance with the requirements of Appendix 4 of *Planning for Bush Fire Protection 2019*, for a distance of 15 metres. When establishing and maintaining an IPA the following requirements apply:

- tree canopy cover should be less than 15% at maturity;
- trees at maturity should not touch or overhang the building;
- lower limbs should be removed up to a height of 2m above the ground;
- tree canopies should be separated by 2 to 5m;
- preference should be given to smooth barked and evergreen trees;
- large discontinuities or gaps in vegetation should be provided to slow down or break the progress of fire towards buildings;
- shrubs should not be located under trees;
- shrubs should not form more than 10% ground cover;

1

**Postal address**

NSW Rural Fire Service  
 Locked Bag 17  
 GRANVILLE NSW 2142

**Street address**

NSW Rural Fire Service  
 4 Murray Rose Ave  
 SYDNEY OLYMPIC PARK NSW 2127

T (02) 8741 5555  
 F (02) 8741 5550  
[www.rfs.nsw.gov.au](http://www.rfs.nsw.gov.au)

9.1 Development Application 21/0257 - Two (2) Lot Subdivision Part Lot 313  
 DP1245164, 27 Kimberley Drive Bowral  
 ATTACHMENT 1 DA21/0257 - Draft Condition of Consent



21/0257, Part Lot 313 DP 1245164

- clumps of shrubs should be separated from exposed windows and doors by a distance of at least twice the height of the vegetation.
- grass should be kept mown (as a guide grass should be kept to no more than 100mm in height); and
- leaves and vegetation debris should be removed.

**Access - Property Access**

*Intent of measures: to provide safe operational access to structures and water supply for emergency services, while residents are seeking to evacuate from an area.*

2. Property access roads must comply with the general requirements of Table 5.3b of *Planning for Bush Fire Protection 2019* and the following:

- property access roads are two-wheel drive, all-weather roads;
- minimum 4m carriageway width;
- in forest, woodland and heath situations, rural property access roads have passing bays every 200m that are 20m long by 2m wide, making a minimum trafficable width of 6m at the passing bay;
- a minimum vertical clearance of 4m to any overhanging obstructions, including tree branches;
- provide a suitable turning area in accordance with Appendix 3;
- curves have a minimum inner radius of 6m and are minimal in number to allow for rapid access and egress;
- the minimum distance between inner and outer curves is 6m; the crossfall is not more than 10 degrees;
- maximum grades for sealed roads do not exceed 15 degrees and not more than 10 degrees for unsealed roads.

Note: Some short constrictions in the access may be accepted where they are not less than 3.5m wide, extend for no more than 30m and where the obstruction cannot be reasonably avoided or removed.

**Water and Utility Services**

*Intent of measures: to provide adequate services of water for the protection of buildings during and after the passage of a bush fire, and to locate gas and electricity so as not to contribute to the risk of fire to a building.*

3. The provision of water, electricity and gas must comply with Table 5.3c of *Planning for Bush Fire Protection 2019*.

**General Advice - Consent Authority to Note**

Future development applications lodged on lots created within this subdivision may be subject to further assessment under the *Environmental Planning & Assessment Act 1979* and the requirements of *Planning for Bush Fire Protection 2019*.

For any queries regarding this correspondence, please contact Adam Small on 1300 NSW RFS.

Yours sincerely,

Nika Fomin  
 Manager Planning & Environment Services  
 Planning and Environment Services

2



21/0257, Part Lot 313 DP 1245164



## BUSH FIRE SAFETY AUTHORITY

Subdivision - Torrens Title Subdivision  
27 Kimberley Drive Bowral NSW 2576, 313//DP1245164, 314//DP1245164, 313//DP1245164  
RFS Reference: DA20201016003791-Original-1  
Your Reference: 21/0257 (CNR-12067)

This Bush Fire Safety Authority is issued on behalf of the Commissioner of the NSW Rural Fire Service under s100b of the Rural Fires Act (1997) subject to the attached General Terms of Approval.

This authority confirms that, subject to the General Terms of Approval being met, the proposed development will meet the NSW Rural Fire Service requirements for Bush Fire Safety under s100b of the Rural Fires Act 1997.

**Nika Fomin**

Manager Planning & Environment Services  
Planning and Environment Services

Tuesday 20 October 2020

END OF CONDITIONS



## 11 OPERATIONS FINANCE AND RISK

### 11.1 Tender for Design Services - Bowral to Moss Vale Duplication Water Main

Reference:	6330.21.1
Report Author:	Project Manager
Authoriser:	Group Manager Capital Projects
Link to Community Strategic Plan:	Manage and plan for future water, sewer and stormwater infrastructure needs

#### PURPOSE

The purpose of this report is to present the evaluation of the Request for Tender for Design Services for the Bowral to Moss Vale Duplication Water Main.

#### RECOMMENDATION

**THAT Council accepts Separable Portion 1, Separable Portion 2 & Separable Portion 3 of the Bowral to Moss Vale Duplication Water Main – Design Services from GHD Pty Ltd at a Lump Sum of \$418,302.73 (Inclusive of GST) AND THAT Council rejects Separable Portion 4 and pursues alternative means of undertaking the works.**

#### REPORT

##### **BACKGROUND**

To improve the robustness of the potable water network in response to the growing population of the Wingecarribee Local Government Area; Council is proposing to install a duplicate water trunk main between the intersection of Kangaloon Road and Eridge Park Road in Bowral through to Hill Road in Moss Vale.

This main will augment the supply capacity of the Hill Road Reservoir enabling the reservoir to adequately service the Moss Vale system into the future.

Due to external constraints in a number of areas of the proposed trunk main alignment, the design tender was structured into Separable Portions in order that impacts of certain sections of the route do not adversely affect the whole design.

Separable Portion 1 is the section of the duplicate water main alignment along Eridge Park Road between Kangaloon Road and Moss Vale Road. Council has received grant funding to deliver road safety improvements to selected 'black spots' along Eridge Park Road. With increased vehicle movements forecast along Eridge Park Road Council is concurrently taking the opportunity to develop a master plan for the eventual upgrade of Eridge Park Road to an 11m wide 'Collector' road.

The design of the duplicate water main along Eridge Park Road needs to be consistent with this master plan for the road corridor. Works under Separable Portion 1 cannot begin until

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after an allocation for the water main has been determined within the road corridor master plan.

Separable Portion 2 is the section of the duplicate water main alignment along Moss Vale Road between Eridge Park Road and Headlam Road. This portion has no external constraints and can begin at award of contract.

Separable Portion 3 is the section of the duplicate water main alignment between Headlam Road around the eastern side of Moss Vale to Hill Road. It is proposed as part of this section to pass through two private properties. Council negotiations for access and easements through these properties is ongoing. Works under Separable Portion 3 cannot begin until after access to the private properties has been finalised.

As part of Council's 'Mittagong, Bowral & Moss Vale Bicycle Strategy 2008' a shared user path along Moss Vale Road, between Bowral and Moss Vale, is included in the bicycle network master plan. While design works are occurring along Moss Vale Road for the duplicate water main (Separable Portion 2) it was proposed to start concept design works for the shared user path along this road – designated as Separable Portion 4.

This was because a significant portion of the survey works required for Separable Portion 4 would already be included as part of Separable Portion 2 and the presence of the shared user path would impact on the design of the watermain (and vice versa).

### **REPORT**

Council sought tenders for suitable and qualified contractors to provide a lump sum tender for the scope of works. The full scope of works was detailed in the design drawings and tender documents.

In accordance with the *Local Government Act 1993* part 3, section 55(3)(n), Council is required to invite tenders where estimated expenditure is greater than \$250,000 (GST inclusive).

This report presents the assessment and recommendation relating to the advertised tender.

### **ADVERTISING**

The tender advertising period was from the 26 January 2021 to 2 March 2021 (25 days).

The tender was advertised as follows:

Newspaper / Website	Date Advertised
Newspaper – Sydney Morning Herald	26 January 2021
Newspaper – Southern Highlands News	27 January 2021 and 3 February 2021
Council's Website	For the duration of the advertising period
Council's eTendering Website	For the duration of the advertising period

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#### **TENDERS RECEIVED**

A total of eight (8) tender submissions were received:

Company Name	Location	Postcode
ADW Johnson Pty Ltd	Warners Bay	2282
Calibre Professional Services Pty Ltd	Baulkham Hills	2153
Cardno (NSW/ACT) Pty Ltd	Wollongong	2500
GHD Pty Ltd	Canberra	2601
H&H Consulting Engineers Pty Ltd (T/A Henry and Hymas)	Gordon	2072
Indesco Pty Ltd	North Sydney	2060
Kellogg Brown & Root Pty Ltd	Sydney	2000
WSP Australia Pty Ltd	Sydney	2000

#### **LATE TENDERS**

No late tenders were received.

#### **TENDER EVALUATION**

A Procurement Initiation Plan was developed which outlined the pre-determined selection criteria, the criteria weightings, and members of the tender evaluation panel.

Each submission was evaluated against the specified criteria by the tender evaluation panel with a scoring system based from 0 to 10 and weighted according to the pre-determined criteria.

#### **SELECTION CRITERIA**

The pre-determined criteria used to evaluate the tender were as follows:

##### **Mandatory Criteria:**

Criteria
Public Liability - \$20 million
Workers Compensation OR [Self Employed] Personal Accident and Illness Insurance or Personal Income Protection
Professional Indemnity - \$1 million
Motor Vehicle - Comprehensive
Certificates of Accreditation – Quality, Environmental & Safety Management Plans

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Tenderers were required to meet the mandatory criteria to be eligible to be shortlisted and progress any further in the evaluation process.

#### Non-Cost Selection Criteria & Weighting:

Criteria	Weighting
Local Procurement	10%
Capability & Experience – Past Projects of Tenderer	10%
Capability & Experience – Experience of Proposed Key Personnel	10%
Methodology	15%
Project Program	5%
<b>Total</b>	<b>50%</b>

#### Summary of Selection Criteria & Weighting:

Criteria	Weighting
Total Non-Cost Criteria	50%
Total Cost Criteria	50%
<b>Total</b>	<b>100%</b>

### NON-COMPLIANT TENDERS

Upon evaluation no tender submissions were determined to be non-compliant.

### EVALUATION COMMENTS

#### COMMENTS ON OVERALL EVALUATION OUTCOME

All tender submissions were assessed against the mandatory criteria to determine if the submission was to be considered further by Council.

A Tender Evaluation Panel was formed, and the Tender submissions were then evaluated against the non-cost criteria. Each Panel Member scored the no-cost selection criteria in accordance with the Procurement Initiation Plan (PIP). A weighted average score was given to each tenderer for each non-cost selection criteria.

In accordance with the PIP tender submissions, meeting the minimum non-cost selection criteria threshold of 60%, proceeded to the Price Evaluation phase.

#### COMMENTS ON RECOMMENDED TENDER SUBMISSION

GHD proposes a team of designers experienced in water infrastructure projects and are familiar with Council's expectations having completed a design for a water trunk main in Bowral in the last 6 months.

As a company GHD have been involved in designing similarly sized pipelines such as:

- 11km of DN450 water main for Goldenfields Water

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- Underbore of the Shoalhaven River for Shoalhaven Water

The Tender Evaluation Panel considered that GHD have the skills and experience to be able to complete the scope of works envisioned by Separable Portions 1, 2, & 3 of the Contract satisfactorily.

With respect to Separable Portion 4, rather than co-ordinate between two different consultants, the Tender Evaluation Panel recommended not awarding Separable Portion 4 at this time and pursuing other options to deliver the shared user path concept design.

This will likely follow a low value Request for Quotation procurement process (In accordance with Council's Procurement Policy) once the pipeline design for Separable Portion 2 has been completed.

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## CONSULTATION

### Community Engagement

Tenders are part of a commercial arrangement and therefore no community engagement is required.

### Internal Consultation

Extensive consultation has taken place between Council's Procurement, Assets, Water Operations and Project Delivery Branches. This consultation included scope, technical requirements, operational and maintenance requirements and evaluation methodologies.

### External Consultation

Tenders are part of a commercial arrangement and therefore no external consultation is required.

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## SUSTAINABILITY ASSESSMENT

- **Environment**

There are no environmental issues in relation to this report.

- **Social**

There are no social issues in relation to this report.

- **Broader Economic Implications**

There are no broader economic implications in relation to this report.

- **Culture**

There are no cultural issues in relation to this report.

- **Governance**

This tender has been conducted in accordance with Part 7 of the *Local Government (General) Regulation 2005*.

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#### **COUNCIL BUDGET IMPLICATIONS**

Council's 2020/21 Adopted Budget includes a \$200,000 allocation for this project. A further \$300,000 has been allocated in the draft forward estimates to be included in the 2021/22 Budget.

Sufficient funding is available within the Water Fund (DSP and Augmentation cash reserves) to fund this design project.

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#### **RELATED COUNCIL POLICY**

Council's Procurement Guidelines have been used to inform the tender process.

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#### **CONCLUSION**

It is recommended that Council accept Separable Portions 1, 2 & 3 of the tender and award this contract to GHD Pty Ltd.

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#### **ATTACHMENTS**

There are no attachments to this report.



## 11.2 Proposed Transfer of Crown Road known as Wombat Lane, Wingello

**Reference:** PN 306702, RD 600 0141  
**Report Author:** Coordinator Property Services  
**Authoriser:** Acting Deputy General Manager Operations Finance and Risk  
**Link to Community Strategic Plan:** Effective financial and asset management ensure Council's long term sustainability

### **PURPOSE**

The purpose of this report is to obtain Council approval to make an application to the NSW Department of Planning, Industry and Environment – Crown Lands (“Crown”) for the transfer of Crown road known as Wombat Lane, Wingello to Council as roads authority.

### **RECOMMENDATION**

**THAT Council make an application to NSW Department of Planning, Industry and Environment – Crown Lands for the transfer of Crown road known as Wombat Lane, Wingello to Council as roads authority.**

### **REPORT**

#### **BACKGROUND**

A resident of Wombat Lane, Wingello (being a Crown road) has recently contacted Council regarding the status of the road as a Crown road. The resident has requested that Council consider lodging a formal application for the transfer of the road to Council; to assist with a number of property matters which have arisen out of the 2020 summer bushfires.

#### **REPORT**

Wombat Lane, Wingello is at present an unformed Crown road. **Attachment 1** to this report is an aerial map of the road, which is proposed to be transferred to Council as roads authority.

The subject road has been identified by Council as a Crown road that should be transferred to Council and is included in the list of future roads to be transferred from Crown to Council.

In accordance with the *Roads Act, 1993*, the Minister may, by order published in the Government Gazette, transfer a specified Crown road to another roads authority (i.e. Council). Upon publication of the order, the road ceases to be a Crown road and becomes a Council public road.

In order for the road to be transferred, Council must make an application to the NSW Department of Planning, Industry and Environment – Crown Lands.

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When transferred to Council, the road will be classed as a Lower order Road in accordance with Council's Road Maintenance Policy adopted 11 December 2019.

This report seeks Council approval to make the required application to transfer Wombat Lane, Wingello from Crown to Council as roads authority.

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## COMMUNICATION AND CONSULTATION

### Community Engagement

No community engagement is required for the purpose of submitting a road transfer application to NSW Department of Planning, Industry and Environment – Crown Lands.

### Internal Communication and Consultation

Assets

### External Communication and Consultation

Adjoining resident

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## SUSTAINABILITY ASSESSMENT

- **Environment**

There are no environmental issues in relation to this report.

- **Social**

There are no social issues in relation to this report.

- **Broader Economic Implications**

There are no broader economic implications in relation to this report.

- **Culture**

There are no cultural issues in relation to this report.

- **Governance**

There are no governance issues in relation to this report.

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## COUNCIL BUDGET IMPLICATIONS

There are no direct budgetary implications in relation to this report. Future maintenance activities will be in line with the risk management hierarchy for roads across the Local Government Area, as outlined in Council's Road Maintenance Policy.

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## RELATED COUNCIL POLICY

Road Maintenance Policy

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#### **CONCLUSION**

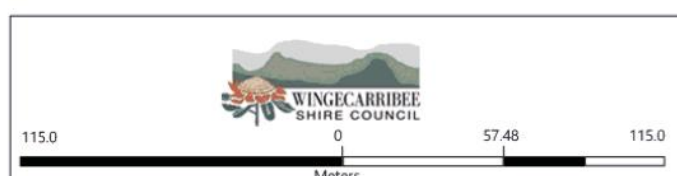
It is recommended that Council make an application to the NSW Department of Planning, Industry and Environment – Crown Lands to transfer the Crown road known as Wombat Lane, Wingello to Council as roads authority.

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#### **ATTACHMENTS**

1. Attachment 1 - aerial map





Wombat Lane Wingello

Any information (numerical or otherwise), representation, statement, opinion or advice expressed or implied in this publication is made in good faith but on the basis that the council of the shire of Wingecarribee, its agents and its employees are not liable (whether by reason of negligence, lack of care or otherwise) to any person for any damage or loss whatsoever which has occurred or may occur in relation to that person taking or not taking (as the case may be) action in respect of any information, representation, statement, or advice referred to above.



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## 11.3 Compulsory Acquisition of Crown Land - Kangaroo Valley

Reference:	PN 1765930
Report Author:	Coordinator Property Services
Authoriser:	Acting Deputy General Manager Operations Finance and Risk
Link to Community Strategic Plan:	Effective financial and asset management ensure Council's long term sustainability

### PURPOSE

The purpose of this report is to seek Council approval to acquire Crown land for road purposes. The subject property is Crown Land within the Yeola Wildlife Refuge at Kangaroo Valley being Lot 1 in Deposited Plan 1251105 ('the Land').

### RECOMMENDATION

1. **THAT** the Acting General Manager be delegated authority to negotiate with NSW Department of Planning, Industry and Environment – Crown Lands for the acquisition of land known as Lot 1 Deposited Plan 1251105 for the purpose of road **AND THAT** compensation be negotiated within 10% range of the formal valuation obtained by Council in respect of the proposed acquisition.
2. **THAT** if the acquisition referred to in Resolution 1 cannot be negotiated by agreement, Council resolves to:
  - (a) acquire the Land by compulsory acquisition in accordance with the requirements of Section 177 and 178 of the *Roads Act 1993*;
  - (b) approve the making of an application to the Minister for Local Government for the issue of a Proposed Acquisition Notice under the *Land Acquisition (Just Terms Compensation) Act 1991 (NSW)* with respect to the Land **AND THAT** Council request the Minister for Local Government approve a reduction in the notification period from ninety (90) days to sixty (60) days;
  - (c) approve the making of an application to the Governor for the publication of an Acquisition Notice in the NSW Government Gazette under the *Land Acquisition (Just Terms Compensation) Act 1991 (NSW)* with respect to the Land.
3. **THAT** upon acquisition, the Land is classified as Operational land.
4. **THAT** Council affix the Common Seal of Council to any documents required to be sealed for the Land referred to in Resolution 1 above **AND THAT** authority be delegated to the Interim Administrator and Acting General Manager to execute those documents.
5. **THAT** authority be delegated to the Acting General Manager to execute on behalf of Council any documents associated with the acquisition of land referred to in Resolution 1 not requiring affixing of the Common Seal of Council.

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## **REPORT**

### **BACKGROUND**

At its meeting held on the 10 October 2012, Council considered a report regarding the misalignment of a road reserve within the Yeola Wildlife Refuge at Kangaroo Valley.

At that time Council resolved as follows (CW 250/12):

1. *THAT authority be delegated to the General Manager to do all things necessary to undertake a realignment of the road reserve through Yeola Reserve, Lot 290 DP 751302, so as to align the legal and practical access through that lot.*
2. *THAT the Common Seal of Council be affixed to any document requiring Councils Seal as part of the process of realigning the road reserve within Yeola Reserve, Lot 290 DP 751302.*
3. *THAT authority be delegated to the General Manager to contract with Shoalhaven City Council for provision of services related to the realignment of the road reserve through Yeola Reserve, Lot 290 DP 751302 AND THAT the expenditure for such works be approved from Council's Property Development Reserve.*
4. *THAT the Council write to the Shoalhaven City Council expressing its application for its assistance with this matter.*

Following the above resolution, Council made a joint application with Shoalhaven City Council for the closure and opening of roads to resolve the issue of the misalignment and legal access issues.

Conditional approval was received from NSW Department of Planning, Industry and Environment – Crown Lands (“the Crown”) subject to Council acquiring a portion of the Crown Reserve for road purposes (to resolve misalignment and legal access issues).

A further report was presented to Council on the 25 May 2016 at which time Council resolved (MN242/16):

1. *THAT the General Manager be delegated authority to negotiate with New South Wales Department of Primary Industries – Crown Land, for the acquisition of part of the Land known as Lot 290 Deposited Plan 751302 (“the Land”) for the purpose of road.*
2. *THAT if the acquisition referred to in Resolution 1 cannot be negotiated by agreement, Council resolve to:*
  - (a) *acquire the Land by compulsory acquisition under Sections 186 and 187 of the Local Government Act 1993 (NSW) and in accordance with the requirements of the Land Acquisition (Just Terms Compensation) Act 1991;*
  - (b) *approve the making of an application to the Minister of Local Government for the issue of a proposed Acquisition Notice under the Land Acquisition (Just Terms Compensation) Act 1993 (NSW) with respect to the Land AND*

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*THAT Council request the Minister for Local Government to approve a reduction in the notification period from ninety (90) days to sixty (60) days.*

- (c) approve the making of an application to the Governor for the publication of an Acquisition Notice in the NSW Government Gazette under the Land Acquisition (Just Terms Compensation) Act 1993 (NSW) with respect to the Land;*
- (d) delegate authority to the General Manager and Mayor to execute and affix the Common Seal of Council to any documents required to be sealed as part of the compulsory acquisition process for the Land;*
- (e) delegate authority to the General Manager to execute on behalf of Council any documents associated with the compulsory acquisition process that does not require the Common Seal of Council.*

### **REPORT**

The Yeola Reserve traverses both the Wingecarribee Shire and Shoalhaven Council boundaries. The formed access road is constructed outside of the legal road reserve. The access road is a narrow gravel road which is not on Council's maintained roads register.

Once acquired, the road will vest in Council and will be classified in accordance in accordance with Council's Road Maintenance Policy.

Following the decision made by Council on 10 October 2012, a joint application was made for the closure and opening of roads within the Reserve to resolve the issue of misalignment and legal access.

The joint application for road closure was publicly advertised by both Wingecarribee Shire Council and Shoalhaven City Council. There were no objections received during the period of public notice. Subsequently the application for road closure was lodged with NSW Department of Planning, Industry and Environment – Crown Lands ('the Crown').

The Crown provided conditional approval to the closures, noting the road closures could not be finalised until a new road was opened by Wingecarribee Shire Council through the Crown Reserve (being part Lot 290 DP 751302).

The road to be opened is required to link the existing public road system from Shoalhaven City Council to provide legal access to the Crown Reserve and private properties to the north within the Wingecarribee Shire. To facilitate this, Council must acquire land for the road from the Crown.

Council engaged its solicitors to undertake the compulsory acquisition of part of the Crown Reserve (being part Lot 290 in Deposited Plan 751302) following the resolution of Council on the 25 May 2016.

Council's solicitors made contact with the Crown to discuss the conditions of acquisition. At that time the Crown advised Council that an application to compulsorily acquire the land could not be made until such time that a Plan of Acquisition was registered at NSW Land Registry Services.

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It was agreed between Wingecarribee Shire Council and Shoalhaven City Council that Shoalhaven City Council would carry out the required surveying works in order for a Plan of Acquisition to be prepared and registered.

Due to dense vegetation and topography of the site, surveying took a considerable length of time to undertake.

The '*Plan of Land to be Acquired for the Purposes of the Roads Act 1993, Affecting Lot 290 in Deposited Plan 751302*' was registered at NSW Land Registry Services in 2020.

**Attachment 1** is an extract from Deposited Plan 1251105 (the area to be acquired for road purposes being Lot 1 in Deposited Plan 1251105 highlighted in green).

To enable the road closure and road opening to be finalised, a formal resolution of Council is now required to compulsorily acquire the newly created lot being part of the Crown Reserve. This resolution must accord with the now registered plan of acquisition referred to above.

Council has obtained formal valuation from a registered valuer to assess the likely compensation payable to the Crown to acquire the Land for the purpose of road. The valuation assessed compensation at forty one thousand dollars (\$41,000) exclusive of GST.

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## COMMUNICATION AND CONSULTATION

### **Community Engagement**

Public notice was given by both Wingecarribee Shire Council and Shoalhaven City Council in respect of the proposed joint road closure application and no objections were received.

No further engagement with the community is required as this is now an administrative matter between Council and the Crown.

### **Internal Communication and Consultation**

Acting Deputy General Manager

### **External Communication and Consultation**

Shoalhaven City Council

NSW Department of Planning, Industry and Environment – Crown Lands

Council's solicitors

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## SUSTAINABILITY ASSESSMENT

- **Environment**

There are no environmental issues in relation to this report.

- **Social**

There are no social issues in relation to this report.



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- **Broader Economic Implications**

There are no broader economic implications in relation to this report.

- **Culture**

There are no cultural issues in relation to this report.

- **Governance**

There are no governance issues in relation to this report.

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### **COUNCIL BUDGET IMPLICATIONS**

It is proposed to fund the compulsory acquisition from the Property Development Reserve in accordance with Council resolution CW250/12.

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### **RELATED COUNCIL POLICY**

None identified.

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### **CONCLUSION**

To enable the joint road closure to proceed, Council must first compulsorily acquire part of the Crown reserve for road opening purposes. This report recommends Council adopt the model resolutions set out in this report as drafted by Council's panel solicitors.

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### **ATTACHMENTS**

1. Attachment 1



## 11.4 Investment Report - February 2021

Reference:	2104
Report Author:	Accounting Officer (Banking and Investments)
Authoriser:	Acting Chief Financial Officer
Link to Community Strategic Plan:	Effective financial and asset management ensure Council's long term sustainability

### PURPOSE

The purpose of this report is to present Council's Investment Portfolio held at 28 February 2021.

### RECOMMENDATION

**THAT** the information on Council's Investments as at 28 February 2021 be received and noted.

### REPORT

In accordance with section 212 of the *Local Government (General) Regulation 2005*, the Responsible Accounting Officer must provide Council with a written report setting out details of all money that Council has invested under section 625 of the *Local Government Act 1993*.

This report provides details of Council's Investment Portfolio as at 28 February 2021.

**Attachment 1** to this report provides Council's Investment Portfolio, detailing investments held and a summary of the portfolio by the institution invested with and their credit rating. In accordance with section 212(1)(b) of the *Local Government (General) Regulation 2005*, the investments listed in **Attachment 1** have been made in accordance with:

- The *Local Government Act 1993*
- The *Local Government (General) Regulation 2005*,
- The Ministerial Investment Order 2011, and
- Council's Investment Policy.

Interest earned from investments totalled \$1,316,522.11 for eight (8) months to 28 February 2021.

### ATTACHMENTS

1. Investment Report Summary as at 28 February 2021

## 11.4 Investment Report - February 2021

## ATTACHMENT 1 Investment Report Summary as at 28 February 2021



## Wingecarribee Shire Council Investment Report Summary

For the period ending 28 February 2021

### List of Investments

Council's investment portfolio as at 28 February 2021 consists of the following investments:

INVESTMENT PORTFOLIO AS AT 28 February 2021						
Institution	Type	Amount	Interest Rate	Investment Term - Days	Maturity Date	% Investment Portfolio
MyState	Term Deposit	5,000,000	1.55%	364	5/03/2021	2.70%
NAB	Term Deposit	5,000,000	0.40%	90	18/03/2021	2.70%
IMB	Term Deposit	4,000,000	1.85%	364	26/03/2021	2.16%
BOQ	Term Deposit	8,000,000	0.40%	131	7/04/2021	4.32%
Macquarie	Term Deposit	3,000,000	1.40%	365	29/04/2021	1.62%
Auswide	Term Deposit	4,000,000	0.45%	159	5/05/2021	2.16%
BDCU	Term Deposit	5,000,000	1.30%	365	21/05/2021	2.70%
BDCU	Term Deposit	5,000,000	1.30%	365	28/05/2021	2.70%
BOQ	Term Deposit	2,500,000	1.20%	365	28/05/2021	1.35%
NAB	Term Deposit	5,000,000	1.00%	364	4/06/2021	2.70%
NAB	Term Deposit	5,000,000	0.95%	365	15/06/2021	2.70%
NAB	Term Deposit	10,000,000	1.00%	365	23/06/2021	5.40%
Auswide	Term Deposit	5,000,000	1.01%	364	25/06/2021	2.70%
NAB	Term Deposit	10,000,000	0.95%	364	2/07/2021	5.40%
Auswide	Term Deposit	5,000,000	0.55%	180	12/07/2021	2.70%
Rural	Term Deposit	6,000,000	0.90%	365	22/07/2021	3.24%
NAB	Term Deposit	5,000,000	0.86%	365	29/07/2021	2.70%
NAB	Term Deposit	5,000,000	0.85%	364	6/08/2021	2.70%
CBA	Term Deposit	3,000,000	0.37%	172	17/08/2021	1.62%
NAB	Term Deposit	5,000,000	0.80%	365	26/08/2021	2.70%
NAB	Term Deposit	5,000,000	0.80%	364	27/08/2021	2.70%
BOQ	Term Deposit	5,000,000	0.75%	364	27/08/2021	2.70%
MyState	Term Deposit	5,000,000	0.85%	364	3/09/2021	2.70%
BOQ	Term Deposit	5,000,000	0.75%	364	3/09/2021	2.70%
NAB	Term Deposit	3,000,000	0.73%	365	21/09/2021	1.62%
BDCU	Term Deposit	5,000,000	0.85%	365	24/09/2021	2.70%
BDCU	Term Deposit	5,000,000	0.85%	365	26/09/2021	2.70%
MyState	Term Deposit	5,000,000	0.80%	365	28/09/2021	2.70%
Auswide	Term Deposit	3,000,000	0.50%	300	6/10/2021	1.62%
AMP	Term Deposit	2,500,000	0.75%	330	19/10/2021	1.35%
AMP	Term Deposit	2,500,000	0.75%	343	2/11/2021	1.35%
AMP	Term Deposit	2,500,000	0.75%	332	12/11/2021	1.35%
Auswide	Term Deposit	5,000,000	0.50%	280	26/11/2021	2.70%
AMP	Term Deposit	2,500,000	0.75%	365	15/12/2021	1.35%
NAB	Term Deposit	3,000,000	0.40%	320	21/12/2021	1.62%
Auswide	Term Deposit	5,000,000	0.50%	364	7/01/2022	2.70%
CBA	Term Deposit	2,000,000	0.41%	364	18/02/2022	1.08%
CBA	Term Deposit	5,000,000	0.42%	365	23/02/2022	2.70%
NAB	Call Account	846,132	0.00%	NA	NA	0.46%
BDCU	Call Account	7,750,719	0.25%	NA	NA	4.19%
<b>Total Investments</b>		<b>\$185,096,851</b>				<b>100.00%</b>

**Institution Legend**

AMP - AMP Limited

ANZ - Australia &amp; New Zealand Banking Group

Auswide - Auswide Bank

BOQ - Bank of Queensland

BDCU - BDCU Alliance Bank

Bendigo - Bendigo &amp; Adelaide Bank

CBA - Commonwealth Bank of Australia

CUA - Credit Union Australia

IMB - IMB Bank

ING - ING Direct

Macquarie - Macquarie Bank Limited

ME - Members Equity Bank

MyState - MyState Bank

NAB - National Australia Bank

Newcastle - Newcastle Permanent Building Society

St George - St George Bank

WBC - Westpac Banking Corporation

Rural - Rural Bank





## Wingecarribee Shire Council Investment Report Summary

For the period ending 28 February 2021

### Policy Compliance

Council's Investment Policy provides clear direction for the diversification of Council's investment portfolio. This ensures credit and diversification risk is managed in accordance with the adopted risk management framework, as outlined in Council's Policy.

### Individual Institution Limits

A summary of investments placed by institution is as follows:

Institution	S&P Short Term Rating	Maximum %	Actual %	Invested \$	Supports Fossil Fuels	Policy Compliance
NAB	A1+	40%	33.42%	61,846,132	YES	YES
CBA	A1+	40%	5.40%	10,000,000	YES	YES
Macquarie	A1	25%	1.62%	3,000,000	YES	YES
AMP	A2	15%	5.40%	10,000,000	YES	YES
BOQ	A2	15%	11.08%	20,500,000	NO	YES
BDCU	A2	15%	14.99%	27,750,719	NO	YES
Rural Bank	A2	15%	3.24%	6,000,000	NO	YES
IMB	A2	15%	2.16%	4,000,000	NO	YES
MyState	A2	15%	8.10%	15,000,000	NO	YES
Auswide	A2	15%	14.59%	27,000,000	NO	YES
<b>Total</b>			<b>100.00%</b>	<b>185,096,851</b>		

### Portfolio Credit Limits

A summary of investments placed by credit limit is as follows:

S&P Short Term Rating	Maximum %	Actual %	Invested \$	Policy Compliance
A1+	100%	38.82%	71,846,132	YES
A1	80%	1.62%	3,000,000	YES
A2	60%	59.56%	110,250,719	YES
A3	20%	0.00%	0	YES
Govt	25%	0.00%	0	YES
<b>Total</b>		<b>100.00%</b>	<b>185,096,851</b>	



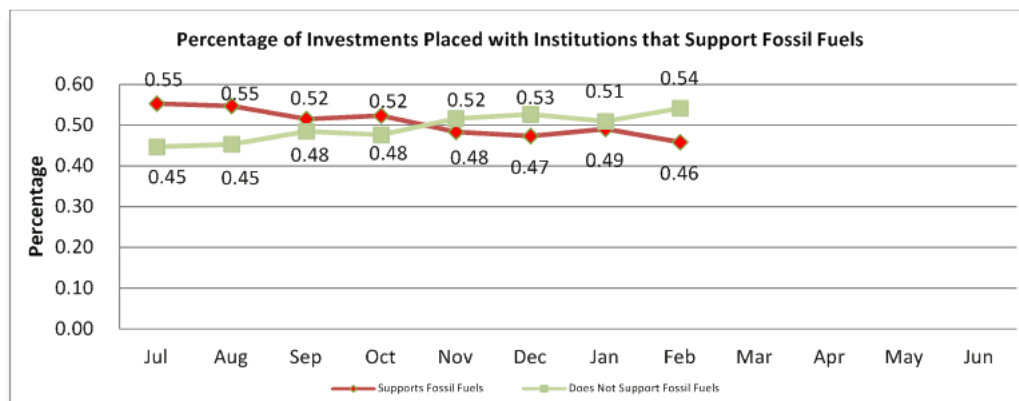
## Wingecarribee Shire Council Investment Report Summary

For the period ending 28 February 2021

### Non-Fossil Fuel Investment Preferencing

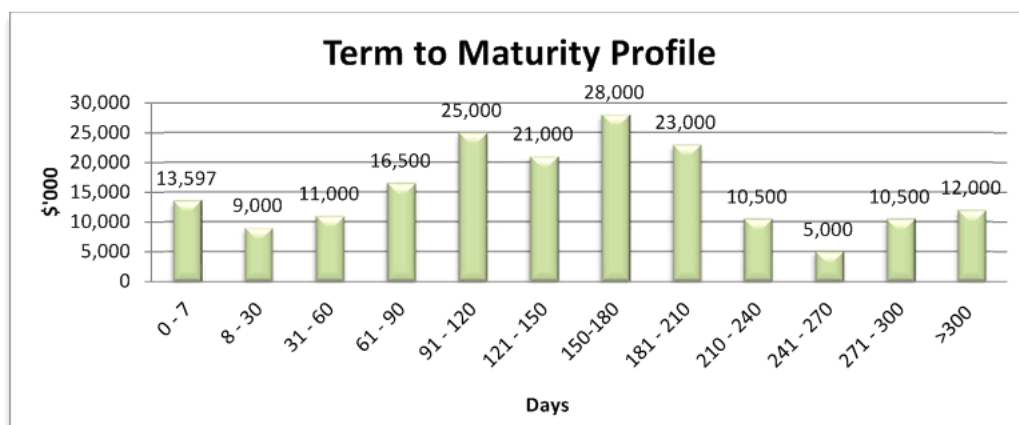
Council's adopted Investment Policy states a preference for placing funds with institutions that do not support the fossil fuel industry. The chart below identifies Council's percentage of investments placed with institutions that do not support the fossil fuel industry.

As investments mature Council will actively seek investments with institutions that do not support the fossil fuel industry, on the basis that they offer equivalent returns and are compliant with legislation and the objectives and parameters of the Investment Policy.



### Term to Maturity

Investments have been placed giving due consideration to Council's liquidity requirements. Sufficient Working Capital is available to ensure Council continues to meet its ongoing cash flow requirements for operational and capital expenditure.



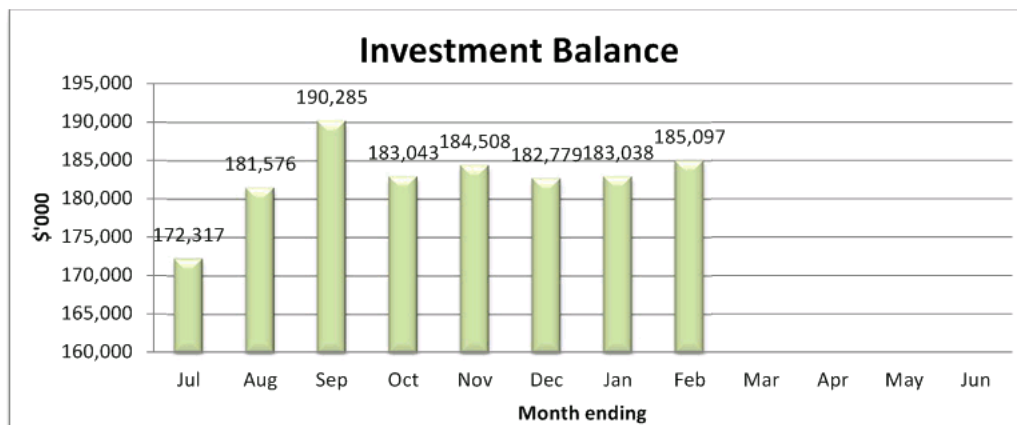


## Wingecarribee Shire Council Investment Report Summary

For the period ending 28 February 2021

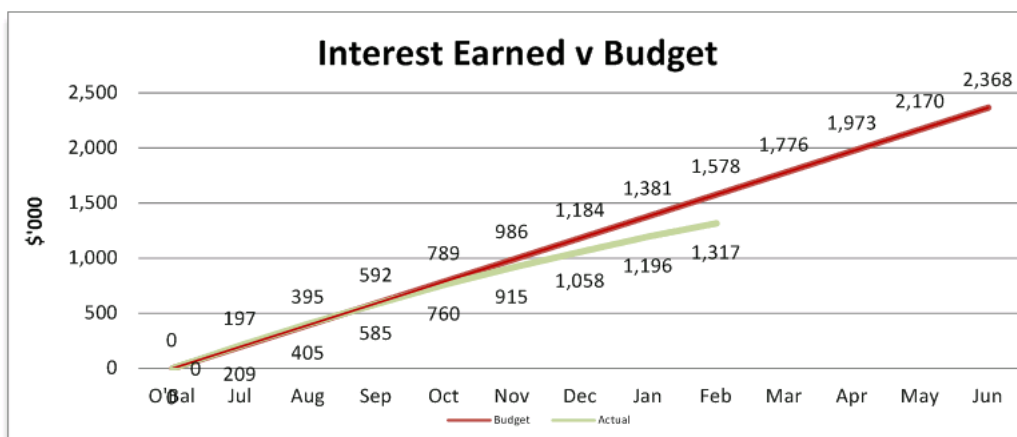
### Portfolio Performance

Council's investment balance at the end of February 2021 was \$185.097 million. This has increased by \$2.059 million since the end of January 2021. This increase was primarily due to the 3<sup>rd</sup> quarter rates instalment for 2020-21 and water instalment both being payable during the month.



### Interest Revenue

Due to decreasing interest rates being offered by financial institutions in this protracted low interest rate environment, Council's rate of return on investments is diminishing. Council continues to seek the best available returns while managing the investment portfolio in accordance with Council's investment policy.





## Wingecarribee Shire Council Investment Report Summary

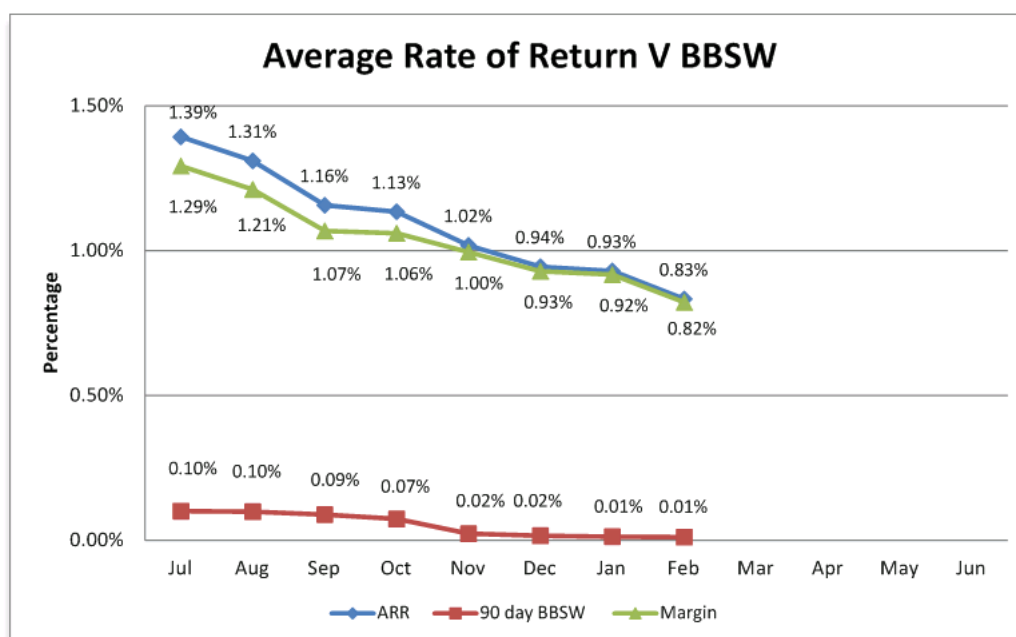
For the period ending 28 February 2021

### Performance against Benchmark

Council's investment portfolio is benchmarked against the 90 day Bank Bill Swap Rate (BBSW).

The average rate of return (ARR) achieved for February 2021 was 0.83% which is 0.1% lower than January 2021. The BBSW remained steady at 0.01%.

The margin above BBSW was 0.82% for February 2021 which shows Council continues to secure favourable interest rates on term deposits.



## 11.5 Drinking Water Quality Policy

Reference:	7741
Report Author:	Operations Technical Officer - Quality and Projects
Authoriser:	Group Manager Water & Sewer
Link to Community Strategic Plan:	Manage and plan for future water, sewer and stormwater infrastructure needs

### PURPOSE

This purpose of this report is to seek Council adoption of the Drinking Water Quality Policy (Policy).

This Policy is an essential component of Council's Drinking Water Management System (DWMS). The DWMS is a regulatory document that has been developed in conjunction with the Australian Drinking Water Guidelines (ADWG) framework and NSW Ministry of Health-Public Health Unit.

### RECOMMENDATION

**THAT Council adopt the Drinking Water Quality Policy provided in Attachment 1.**

### REPORT

#### **BACKGROUND**

The *NSW Public Health Act 2010* and *Public Health Regulation 2012* requires a supplier of drinking water to develop and adhere to a quality assurance program. This is otherwise known as a Drinking Water Management System (DWMS).

Council's DWMS was initially developed in 2014 in conjunction with NSW Health Guidelines for Drinking Water Management Systems. The Policy undergoes regular review as part of Council's commitment to the provision of drinking water to ensure it meets the strict requirements of NSW Health.

The DWMS contains twelve (12) elements which includes relevant policies, procedures and other supporting information for the safe supply of drinking water to residents and businesses in the Shire through our Water Treatment Plants and distribution network.

#### **REPORT**

One of the 12 elements of the DWMS is to have in place a Drinking Water Quality Policy that demonstrates Council's commitment to providing safe drinking water to the community.

Council adopted the Drinking Water Quality Policy in April 2015.

To ensure Council is achieving its regulatory and operational requirements, a review of this policy was conducted in the last quarter of 2020.



This policy was found to be compliant with the requirements of the ADWG and therefore no major amendments were required. Minor amendments have been made such as adopting the updated style guide template for Council Policies and some minor administrative changes.

A copy of the Drinking Water Quality Policy is provided as **Attachment 1**.

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## **COMMUNICATION AND CONSULTATION**

### **Community Engagement**

The Drinking Water Quality Policy has been developed and reviewed in accordance with the NSW legislative requirements and guidelines. Community Consultation is not considered appropriate given the legislative context of the Policy.

### **Internal Communication and Consultation**

Water and Sewer

Environment & Sustainability

Assets

### **External Communication and Consultation**

N/A

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## **SUSTAINABILITY ASSESSMENT**

- **Environment**

There are no environmental issues in relation to this report.

- **Social**

There are no broader social implication in relation to this report.

- **Broader Economic Implications**

There are no broader economic implications in relation to this report.

- **Culture**

There are no cultural issues in relation to this report.

- **Governance**

The adoption of the Drinking Water Quality Policy by Council will ensure compliance with legislative requirements and provide a positive direction for the DWMS as it is a key element of the quality assurance program.

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## **COUNCIL BUDGET IMPLICATIONS**

There are no direct budget implications related to the adoption of this Policy.

## **AGENDA FOR THE ORDINARY MEETING OF COUNCIL**

Wednesday 24 March 2021

### **REPORT ACTING DEPUTY GENERAL MANAGER OPERATIONS FINANCE AND RISK**



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#### **RELATED COUNCIL POLICY**

Water Extraction Policy

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#### **CONCLUSION**

The Drinking Water Quality Policy has been developed to demonstrate Council's commitment to supply safe drinking water to the community through its treatment plants and distribution network. The Policy has been developed and reviewed to support Council's DWMS in line with legislative requirements.

It is recommended that Council adopts the Drinking Water Quality Policy as attached to this report.

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#### **ATTACHMENTS**

1. Drinking Water Quality Policy

Richard Mooney

**Acting Deputy General Manager Operations Finance and Risk**

Thursday 18 March 2021

## Drinking Water Quality Policy

### Places

**Manage and plan for future water, sewer and stormwater infrastructure needs.**

Document Type	Council Policy
Document Reference No.	[Governance to insert]
Version No.	[Governance to insert]
Council File Reference	7741
Adoption Date	[Governance to insert]
Resolution Number	[Governance to insert]
Document Owner	Group Manager Water and Sewer
Responsible Branch	Water and Sewer
Responsible Business Unit	Operations, Finance and Risk
Review Schedule	Every 4 years
Review Date	[Governance to insert]



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## 1. Objectives

The objectives of this Policy are:

- to confirm Council's commitment to the supply of safe drinking water to the community
- to support Wingecarribee Shire Council's Drinking Water Management System (DWMS).

## 2. Policy Statement

A clean, safe and reliable water supply is essential to the health and wellbeing of residents and visitors to the Wingecarribee Shire.

Wingecarribee Shire Council ('Council') is committed to the effective and professional management of its drinking water supply systems and will take all reasonable steps to ensure the reliable supply of safe, high-quality drinking water.

Council will achieve this by implementing processes and procedures that address the twelve (12) elements of the Framework for the Management of Drinking Water Quality, as published in the National Health and Medical Research Council's Australian Drinking Water Guidelines, and any other obligations required by legislation and regulations.

To achieve its obligations, Council in partnership with relevant stakeholders and agencies will:

- maintain and regularly review the multi-barrier health approach for drinking water supply to ensure the consistent delivery of a safe, reliable, high quality product
- use a risk-based systems management approach whereby potential threats to drinking water quality are identified, managed and minimised
- systematically monitor the quality of water in its operational and distribution networks and maintain effective reporting systems to provide timely and relevant information that promotes confidence in the Wingecarribee Shire's water supply
- maintain and regularly review appropriate contingency plans, incident reporting and response capabilities, and ensure relevant staff are trained in incident response protocols
- maintain two-way communication avenues with the community to keep consumers informed of drinking water management matters
- maintain an active and informed participation in relevant consultative processes with industry, professional associations, government departments and agencies, particularly NSW Health and Water NSW
- identify staff training needs and deliver this training to ensure the ongoing professional development and knowledge of current industry practices
- participate as required in the development of industry regulations and guidelines, relevant to the supply of healthy drinking water and the broader water cycle
- develop and maintain documented procedures for all aspects of drinking water quality supply and management, including maintaining timely records to be used to identify short and long term trends
- implement a document control system to ensure current versions of procedure documentation are always in use and ensure staff are trained in the requirements of the procedures
- establish accountable and effective processes for regular internal and external auditing of all necessary aspects of our water supply operations
- ensure senior management periodically review, and report to Council's Executive, the effectiveness of the DWMS and evaluate the need for change in consultation with other stakeholders and in relation to:

- changing industry standards,
  - improved technologies,
  - changed operational and reporting requirements in the governing regulations and legislation, and
  - observing both short and long term trends in drinking water quality and the supply system.
- aim to achieve and communicate the objective of this Policy and drinking water quality issues to all staff and the community
  - report on water quality to consumers, regulatory authorities and stakeholders as required.

### 3. Scope

This Policy applies to Council staff, contractors, partnering organisations and anyone else involved in the delivery of drinking water to the Wingecarribee Shire.

### 4. Responsibilities

Responsibilities for the implementation of this Policy are shared as follows.

#### 4.1 Councillors

Councillors shall:

- lead the community in their understanding of and compliance with, this Policy.

#### 4.2 Executive

The Executive shall:

- implement the Policy; and
- lead staff in their understanding of, and compliance with, this Policy.

#### 4.3 Group Manager Water and Sewer

The Group Manager Water and Sewer shall:

- implement and maintain this Policy;
- provide guidance to Councillors, Executive and other Council staff as to the content and implementation of this Policy;
- ensure the timely review of this Policy; and
- conduct investigations into alleged non-compliance with this Policy.

#### 4.4 Group Managers and Managers

Group Manager and Managers shall:

- provide guidance to Council staff within their respective branches as to the content and implementation of this Policy, seeking guidance from the policy owner as required;
- implement this Policy by directing relevant staff;
- lead staff in their understanding of and compliance with this Policy.

#### 4.5 Council staff

Council staff shall:

- comply with this Policy

### 5. Performance Measures

The success of this Policy will be measured by:

- Customer Satisfaction
- Compliance with Australian Drinking Water Guidelines
- Delivery of operational procedures to mitigate business risk.

### 6. Definitions

**ADWG** Australian Drinking Water Guidelines

**DWMS** Drinking Water Management System

### 7. Related Material

#### 7.1 Related Legislation

The following legislative materials are related to this Policy:

- Australian Drinking Water Guidelines (ADWG)
- *Public Health Act 2010*
- *Public Health Regulation 2012*
- *Water Management Act 2000*

#### 7.2 Related Policies, Procedures and General Manager Practice Notes

The following policies and related documents are related to this Policy:

- Drinking Water Management System
- Water Extraction Policy (MN 46/19)

### 8. Non-compliance with this Policy

Non-compliance with this Policy should be reported to the Group Manager Water and Sewer who will investigate and determine the appropriate course of action.

### 9. Document Control

#### 9.1 Version Control

Version	Adoption Date	Notes
1.0	April 2015	Original policy.



1.1	May 2018	Routine review of document with minor edits.
1.2	February 2021	Routine review of document with minor edits due to format changes.

## 10. Attachments

There are no attachments to this Policy.

Approved by:

WINGECARRIBEE SHIRE COUNCIL

[Governance to insert adoption date]



## 12 CORPORATE STRATEGY AND DEVELOPMENT SERVICES

### 12.1 Establishment of a Local Planning Panel

Reference:	5602/19
Report Author:	Deputy General Manager Corporate, Strategy and Development Services
Authoriser:	Deputy General Manager Corporate, Strategy and Development Services
Link to Community Strategic Plan:	An enhanced culture of positive leadership, accountability and ethical governance that guides well informed decisions to advance agreed community priorities

#### PURPOSE

The Purpose of this report is to put forward the establishment of a Local Planning Panel covering Wingecarribee Shire in accordance with the framework established under Part 2, Division 2.5 of the *Environmental Planning and Assessment Act*, 1979 and administered through the Department of Planning Industry and Environment.

#### RECOMMENDATION

1. **THAT** a Local Planning Panel (LPP) be established for Wingecarribee Shire Council in accordance with Part 2, Division 2.5, Section 2.17 of the *Environmental Planning and Assessment Act* 1979 to consider:
  - a) All development applications ordinarily referred to Council for a decision and applications and matters required to be reported to a LPP as prescribed in the *Local Planning Panel Direction – Development Applications and Applications to Modify Development Consents* in Attachment 1.
  - b) All Planning Proposals and make recommendations to the Council with regard to the merits.
2. **THAT** the Operation of the Wingecarribee Shire Council LPP be in accordance with the Local Planning Panels Direction – Operational Procedures as approved by the Minister for Planning and Public Open Spaces.
3. **THAT** the Acting General Manager, in consultation with the Interim Administrator, determine the membership of the Wingecarribee Shire Council LPP.
4. **THAT** the Acting General Manager notify the Department of Planning Industry and Environment of the Council decision to establish a LPP for Wingecarribee Shire Council and the nominated Chair and Alternate Chair as required.
5. **THAT** until a Local Planning Panel is formally established by the Minister for Planning and Public Spaces, an Interim Advisory Planning Assessment Panel consisting of the following members be appointed to make recommendations on Development Applications required to be determined by Council all Planning Proposals and other planning matters as set out in Schedule 1 of Attachment 1 to this report.
  - Julie Walsh (Chair)

- Michael Mantei (Alternate Chair)
  - Alf Lester (Independent Expert)
  - Larissa Ozog (Independent Expert)
  - Scott Barwick (Independent Expert)
  - Heather Warton (Independent Expert)
  - Carl Petersen (Community Representative)
  - Jim Gilvarry (Community Representative)
6. **THAT** remuneration of the Interim Advisory Planning Assessment Panel Members be in accordance with the current *Remuneration Determination* for LPPs as prescribed by the Minister for Planning under the *Environmental Planning and Assessment Act, 1979*.

## REPORT

Local Planning Panels (LPP), formerly known as Independent Hearing and Assessment Panels or IHAPS, are panels of independent experts that determine development applications on behalf of Council and provide advice on other planning matters, including planning proposals.

Under the *Environmental Planning and Assessment Act 1979*, Local Planning Panels are currently mandatory for all Sydney councils, Wollongong City Council and Central Coast Council. Other NSW Regional and Rural Councils such as Wingecarribee Shire Council are not mandated through legislation to have a LPP in place. Notwithstanding, Councils which are not mandated may seek to constitute a Local Planning Panel its Local Government Area under the *Environmental Planning and Assessment Act*.

Panels are put in place so the process of assessment and determination of development applications (DAs) with a high corruption risk, sensitivity or strategic importance is transparent and accountable and to provide an independent forum for stakeholders (applicants, the community and objectors) to present and discuss issues relating to development applications, planning proposals and other planning related matters such as development control plans.

It is noted that Wingecarribee Shire Council is already a member of a Regional Planning Panel, *Southern Regional Planning Panel (SRPP)*. Local Planning Panels have similar operational requirements. Development Applications reported to the SRPP are however defined by their regional significance of a value of \$30M and over for private developments and \$5M for Government or Council developments.

### **The Operation of Local Planning Panels**

The LPPs ensure increased probity and accountability in the planning system, safeguard against corruption and lead to better planning outcomes. LPPs make decisions on sensitive, complex and high-value DAs that come before councils thereby replacing the Council in determining developments that exceed the staff delegation, review planning proposals and other planning related policies. Council staff, under delegation, will still determine the more straight forward DAs being the vast majority of DAs received by Council.

## AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 24 March 2021

### REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY AND DEVELOPMENT SERVICES



The Panel meetings consist of 4 members comprising a chair appointed by the Minister, two independent experts appointed by council from a Minister endorsed pool of independent, qualified people, plus a community representative.

Panel chairs are required to have expertise in law or government and public administration and are selected from the endorsed list approved by the Minister for Planning and Public Spaces. The Minister approves the appointment of the Chair and Alternate Chair. Independent expert members are required to have expertise in one or more of the following fields: planning, architecture, heritage, the environment, urban design, economics, traffic and transport, law, engineering, tourism, or government and public administration. Like Panel Chairs, independent expert members are also selected from the listing endorsed by the Minister for Planning and Public Spaces.

Community representatives appointed to a LPP are not required to have planning expertise. The role of the community representative is to ensure that local insights and knowledge are considered as part of the panel's decision-making.

Councillors, property developers and real estate agents are ineligible to be panel members as this undermines the objective of having DAs determined by independent experts, depoliticising the assessment process.

The referral criteria for development applications, planning proposals and other planning related matters has been set by the Minister for Planning and Public Spaces. The categories of development referred to the LPP is set out in the *Local Planning Panels Direction – Development Applications and Applications to Modify Development Consents* made by the Minister for Planning and Public Spaces and included as **Attachment 1** to this report. In effect, the LPP makes the determination of the application. However, in relation to Planning Proposals and other planning related matters, they are reported to the LPP and the LPP makes a recommendation to Council with regard to the merit of the Proposal and then the Council makes the determination. In other words, the LPP cannot determine a Planning Proposal.

Members of the LPP are subject to a Code of Conduct, lodgement of an annual pecuniary interests declaration and Operational Procedures which have been established by Government.

A number of procedural processes have to be undertaken with the Department of Planning Industry and Environment before a LPP is formally put in place for Council. Therefore, it is proposed to establish an Interim Advisory Planning Assessment Panel to consider planning related matters prior to a resolution of Council being made.

The first meeting of the Interim Advisory Planning Assessment Panel for Wingecarribee Shire Council has been set for 7 April 2021. This will enable the Panel's recommendations to be put to and determined by the Interim Administrator for the April Ordinary Meeting of Council. Panel meetings will then be scheduled monthly to occur the week prior to the Ordinary Meeting of Council. The Interim Advisory Planning Assessment Panel will consist of a Chair, Alternate Chair, 4 independent experts and 2 community representatives. Each meeting will proceed with 4 members. The arrangements in place for the Interim Advisory Planning Assessment Panel will continue until the Wingecarribee Shire Council LPP is ratified through DPIE.

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## **COMMUNICATION AND CONSULTATION**

### **Community Engagement**

No Community Engagement has been undertaken in regard to this matter.

### **Internal Communication and Consultation**

The matter has been discussed between Council's Executive and the Interim Administrator.

### **External Communication and Consultation**

Staff have liaised with the Department of Planning Industry and Environment (DPIE). It is noted that DPIE is currently in the process of re-appointing Chairs and Independent Experts to existing LPPs which will be effective from 1 July 2021 for a 3-year term. Upon the resolution to establish a Wingecarribee Shire Council LPP, Council will be included in the new 3-year term.

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## **SUSTAINABILITY ASSESSMENT**

- **Environment**

There are no environmental issues in relation to this report.

- **Social**

There are no social issues in relation to this report.

- **Broader Economic Implications**

There are no broader economic implications in relation to this report.

- **Culture**

There are no cultural issues in relation to this report.

- **Governance**

There are no governance issues in relation to this report.

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## **COUNCIL BUDGET IMPLICATIONS**

The members of the Local Planning Panel are remunerated at a set rate for each meeting plus a per hour rate for business that is undertaken outside of the meetings in accordance with the *Remuneration Determination* by the Minister for Planning prescribed under the *Environmental Planning and Assessment Act, 1979*. The rate is inclusive of all the work a panel member does for a meeting, including preparation, site visits, the meeting itself and any deliberation and voting by the panel on matters considered at the meeting once the meeting is closed.

At this point in time, Council has no budget allocation for such remuneration. This cost will be considered as part of the March Quarterly budget review and the preparation of the 2021/2022 Financial Year Budget.



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## **RELATED COUNCIL POLICY**

There are no related Council Policies.

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## **CONCLUSION**

Local Planning Panels and formally Independent Hearing and Assessment Panels have been in existence in a number of NSW Councils for many years. Based on the mandatory operation of LPPs in Metropolitan Sydney, Wollongong and Central Coast, a review of the LPP model found it rigorous and strikes a balance between offering strong procedural checks and balances without hindering efficient panel operation or impacting on the overall functioning of the planning system.

The Shire is experiencing significant increased interest in development and as such the introduction of a Local Planning Panel is timely to ensure developments likely to have a significant wider community interest are determined by a qualified Panel.

Until a Local Planning Panel is formally established, an Independent Advisory Planning Assessment Panel is recommended to be established to review planning matters and make recommendations on Development Applications required to be determined by Council, all Planning Proposals and any other planning matters as required.

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## **ATTACHMENTS**

1. Local Planning Panels Direction - Development Applications and Applications to Modify Development Consents

## 12.1 Establishment of a Local Planning Panel

ATTACHMENT 1 Local Planning Panels Direction - Development  
Applications and Applications to Modify Development ConsentsLOCAL PLANNING PANELS DIRECTION – DEVELOPMENT APPLICATIONS AND  
APPLICATIONS TO MODIFY DEVELOPMENT CONSENTS

I, the Minister for Planning and Public Spaces, give the following direction under section 9.1 of the *Environmental Planning and Assessment Act 1979*.

Minister for Planning and Public Spaces

Dated: 30-06-2020.

**Objective**

The objective of this direction is to identify the development applications and applications to modify development consents that are to be determined by local planning panels on behalf of councils.

**Application**

This direction applies to councils in the Greater Sydney Region, Wollongong and Central Coast. It also applies to any other council that constitutes a local planning panel under the *Environmental Planning and Assessment Act 1979* (Act).

**Interpretation**

A word or expression used in this direction has the same meaning as it has in the standard local environmental plan prescribed by the *Standard Instrument (Local Environmental Plans) Order 2006* made under the Act, unless it is otherwise defined in this direction.

**Direction**

1. Local planning panels of councils in the areas identified in the Table below are to determine development applications for development of a kind specified in the corresponding Schedule to this direction.

Table

Council	Development
Bayside, Blue Mountains, Burwood, Camden, Campbelltown, Canada Bay, Georges River, Hawkesbury, Hornsby, Hunters Hill, Ku-ring-gai, Lane Cove, Mosman, North Sydney, Randwick, Ryde, Strathfield, Waverley, Willoughby, Wollondilly, Woollahra, and any other council that constitutes a local planning panel under the EP&A Act	Schedule 1
Blacktown, Canterbury-Bankstown, Central Coast, Cumberland, Fairfield, Inner West, Liverpool, Northern Beaches, Parramatta, Penrith, Sutherland, The Hills, Wollongong	Schedule 2
City of Sydney	Schedule 3

## 12.1 Establishment of a Local Planning Panel

ATTACHMENT 1 Local Planning Panels Direction - Development  
Applications and Applications to Modify Development Consents

2. Local planning panels are to determine applications under section 4.55(2) of the Act for the modification of development consents granted by the panel that:
  - propose amendments to a condition of development consent recommended in the council assessment report but which was amended by the panel, or
  - propose amendments to a condition of development consent that was not included in the council assessment report but which was added by the panel, or
  - meet the criteria for development applications set out in the Schedules to this direction relating to conflict of interest, contentious development or departure from development standards.

Note: Councils in the areas identified in the Table to this direction are generally precluded from exercising consent authority functions by operation of section 4.8(2) of the Act. This means councils should make arrangements for the determination of all other modification applications under section 4.55(2), as well as sections 4.55(1) and (1A) of the Act, by council staff. Councils should also make arrangements for the determination of modification applications under section 4.56 of the Act by either the local planning panel or council staff.

This direction takes effect on 1 August 2020 and applies to development applications and applications to modify development consents made but not determined before 1 August 2020.

## SCHEDULE 1

## 1. Conflict of interest

Development for which the applicant or land owner is:

- (a) the council,
- (b) a councillor,
- (c) a member of council staff who is principally involved in the exercise of council's functions under the *Environmental Planning and Assessment Act 1979*,
- (d) a member of Parliament (either the Parliament of New South Wales or Parliament of the Commonwealth), or
- (e) a relative (within the meaning of the *Local Government Act 1993*) of a person referred to in (b) to (d).

but not development for the following purposes:

- (a) internal alterations and additions to any building that is not a heritage item,
- (b) advertising signage,
- (c) maintenance and restoration of a heritage item, or
- (d) minor building structures projecting from the building facade over public land (such as awnings, verandas, bay windows, flagpoles, pipes and services, and sun shading devices).

## 2. Contentious development

Development that:

## 12.1 Establishment of a Local Planning Panel

ATTACHMENT 1 Local Planning Panels Direction - Development  
Applications and Applications to Modify Development Consents

- (a) in the case of a council having an approved submissions policy – is the subject of the number of submissions set by that policy, or
- (b) in any other case – is the subject of 10 or more unique submissions by way of objection.

An **approved submissions policy** is a policy prepared by the council and approved by the Secretary of the Department of Planning, Industry and Environment which details the circumstances in which a local planning panel or council staff should exercise the consent authority functions of the council, based on the number and nature of submissions received about development.

A **unique submission** means a submission which is in substance unique, distinctive or unlike any other submission. It does not mean a petition or any submission that contains the same or substantially the same text. Separate unique submissions may be made in relation to the same issue. One individual, or one household, could potentially submit multiple unique submissions.

### 3. Departure from development standards

Development that contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

Note: If the Secretary allows concurrence to be assumed by council staff for contravening development standards, the panel can delegate these applications to council staff to determine.

### 4. Sensitive development

- (a) Designated development.
- (b) Development to which *State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development* applies.
- (c) Development involving the demolition of a heritage item.
- (d) Development for the purposes of new licensed premises, that will require one of the following liquor licences:
  - (i) a club licence under the *Registered Clubs Act 1976*,
  - (ii) a hotel (general bar) licence under the *Liquor Act 2007*, or
  - (iii) an on-premises licence for public entertainment venues under the *Liquor Act 2007*.
- (e) Development for the purpose of sex services premises and restricted premises.
- (f) Development applications for which the developer has offered to enter into a planning agreement.

12.1 Establishment of a Local Planning Panel

ATTACHMENT 1 Local Planning Panels Direction - Development  
Applications and Applications to Modify Development Consents



SCHEDULE 2

1. Conflict of interest

Development for which the applicant or land owner is:

- (a) the council,
- (b) a councillor,
- (c) a member of council staff who is principally involved in the exercise of council's functions under the *Environmental Planning and Assessment Act 1979*,
- (d) a member of Parliament (either the Parliament of New South Wales or Parliament of the Commonwealth), or
- (e) a relative (within the meaning of the *Local Government Act 1993*) of a person referred to in (b) to (d).

but not development for the following purposes which requires:

- (a) internal alterations and additions to any building that is not a heritage item,
- (b) advertising signage,
- (c) maintenance and restoration of a heritage item, or
- (d) minor building structures projecting from the building facade over public land (such as awnings, verandas, bay windows, flagpoles, pipes and services, and sun shading devices).

2. Contentious development

Development that:

- (a) in the case of a council having an approved submissions policy – is the subject of the number of submissions set by that policy, or
- (b) in any other case – is the subject of 10 or more unique submissions by way of objection.

An **approved submissions policy** is a policy prepared by the council and approved by the Secretary of the Department of Planning, Industry and Environment which details the circumstances in which a local planning panel or council staff should exercise the consent authority functions of the council, based on the number or nature of submissions received about development.

A **unique submission** means a submission which is in substance unique, distinctive or unlike any other submission. It does not mean a petition or any submission that contains the same or substantially the same text. Separate unique submissions may be made in relation to the same issue. One individual, or one household, could potentially submit multiple unique submissions.

3. Departure from development standards

Development that contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

Note: If the Secretary allows concurrence to be assumed by council staff for contravening development standards, the panel can delegate these applications to council staff to determine.



12.1 Establishment of a Local Planning Panel

ATTACHMENT 1 Local Planning Panels Direction - Development  
Applications and Applications to Modify Development Consents



4. Sensitive development

- (a) Designated development.
- (b) Development to which *State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development* applies and is 4 or more storeys in height.
- (c) Development involving the demolition of a heritage item.
- (d) Development for the purposes of new licensed premises, that will require one of the following liquor licences:
  - (i) a club licence under the *Registered Clubs Act 1976*,
  - (ii) a hotel (general bar) licence under the *Liquor Act 2007*, or
  - (iii) an on-premises licence for public entertainment venues under the *Liquor Act 2007*.
- (e) Development for the purpose of sex services premises and restricted premises.
- (f) Development applications for which the developer has offered to enter into a planning agreement.

## 12.2 Review of the Urban Backyard Burning of Vegetation Policy

Reference:	5450/28.6
Report Author:	Environmental Policy Officer
Authoriser:	Manager Environment and Sustainability
Link to Community	
Strategic Plan:	Work collaboratively to reduce pollution and its impact on our environment

### PURPOSE

A scheduled review of the Urban Backyard Burning of Vegetation Policy has been undertaken. This report seeks adoption of the updated Policy at **Attachment 1**.

### RECOMMENDATION

**THAT the draft Urban Backyard Burning of Vegetation Policy at Attachment 1 be adopted.**

### REPORT

#### **BACKGROUND**

In 2018, new arrangements came into effect for backyard burning under Council's Urban Backyard Burning of Vegetation Policy. As part of developing the new arrangements, a policy review was scheduled following the first two years of implementation to understand how the new arrangements were working.

The Policy contains a number of criteria that need to be met in order to be able to burn, including property size, burning only dead and dry vegetation, obtaining any relevant permits and following the RFS Standards for Pile Burning.

#### **REPORT**

A scheduled review of the Urban Backyard Burning Policy has been undertaken. Information from complaints or incidents received have been reviewed along with feedback from Council's customer service team, rangers, Rural Fire Services and, Fire and Rescue.

The number of complaints and incidents that Council received from 2018-2020 was compared with 2012-14. There are several factors that would influence changes in the number of incidents over time, including the recent drought limiting vegetation growth and increased fire awareness from the 2019/20 bushfires. Therefore, the analysis of incidents should be seen as a snapshot of incidents and the impact of backyard burning on the community.

A summary of the policy review was provided at a councillor briefing held on 24 February 2021.

Council's customer service staff and rangers reported that backyard burning complaints have not increased in recent years and are at a low level (compared to other issues). This is matched by a 36 percent reduction in the number of incidents in 2018-20 compared to

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2012-14. The introduction of new backyard burning arrangements may have reduced complaints compared to the previous arrangements.

Use of Council's website and interactive map continues to increase, and this is likely to reflect increased community awareness of backyard burning criteria.

The dominant reasons for complaints relate to excessive smoke and concern about the material being burnt, that is, either green or wet vegetation or materials other than vegetation. A small number of complaints continue to be received relating to burning of waste from development activities.

RFS and Fire and Rescue identified that the current arrangements are being understood by the community and no changes were required.

Future awareness programs could focus on the availability of additional organics waste services, materials being burnt, pile size and the risks of unattended fires.

Given the reduction in complaints received about backyard burning and feedback from RFS and Fire and Rescue, it is recommended that the backyard burning criteria remain the same and the Policy at **Attachment 1** be adopted.

The Policy has been updated to Council's new policy template. Minor edits have been made for clarity and to include the new RFS online notification tool.

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## COMMUNICATION AND CONSULTATION

### Community Engagement

Feedback from Rural Fire Services and Fire and Rescue was sought and has been taken in to consideration in the review of the Policy.

### Internal Communication and Consultation

The review of the Urban Backyard Burning of Vegetation Policy involved staff from relevant areas including Customer Service, Regulatory Services, Natural Resource Projects, and Corporate Strategy and Governance.

### External Communication and Consultation

Community consultation has not been undertaken nor recommended. As the updates to the Policy are not position changes, public consultation on the Policy is not considered necessary.

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## SUSTAINABILITY ASSESSMENT

- **Environment**

Maintaining the existing backyard burning arrangements will continue to limit the impact of backyard burning on local air quality.

- **Social**

There are no social issues in relation to this report.

- **Broader Economic Implications**

There are no broader economic implications in relation to this report.

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- **Culture**

There are no cultural issues in relation to this report.

- **Governance**

There are no governance issues in relation to this report.

#### **COUNCIL BUDGET IMPLICATIONS**

There are no budget implications in relation to this report.

#### **RELATED COUNCIL POLICY**

Not applicable

#### **OPTIONS**

The options available to Council are:

##### **Option 1**

THAT the Urban Backyard Burning of Vegetation Policy at **Attachment 1** be adopted.

##### **Option 2**

THAT further work is undertaken prior to readoption of the Policy.

Option No. 1 is the recommended option to this report.

#### **CONCLUSION**

The Urban Backyard Burning of Vegetation Policy has been reviewed. Minor edits have been made to reflect Council's updated policy template and for clarity. It is recommended that the reviewed Policy at **Attachment 1** is adopted.

#### **ATTACHMENTS**

1. Draft Urban Backyard Burning of Vegetation Policy

# Urban Backyard Burning of Vegetation Policy

## Environment

**Goal 4.1 Wingecarribee's distinct and diverse natural environment is protected and enhanced**

Document Type	Council Policy
Document Reference No.	[Governance to insert]
Version No.	4
Council File Reference	5450/28.6
Adoption Date	[Governance to insert]
Resolution Number	[Governance to insert]
Document Owner	Manager Environment and Sustainability
Responsible Branch	Environment and Sustainability
Responsible Business Unit	Sustainability Services
Review Schedule	Four years
Review Date	[Governance to insert]



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## 1. Objectives

The objectives of this Policy are to:

- regulate when, where and how burning of vegetation from property maintenance can occur in a way that protects air quality and amenity;
- promote alternatives for disposal of garden vegetation through re-use, composting, mulching, using Council's kerbside organic waste service or transporting to the Resource Recovery Centre; and
- ensure compliance with the *Protection of the Environment Operations (Clean Air) Regulation 2010*.

## 2. Policy Statement

Burning in the open, backyard burning, is controlled by the *Protection of the Environment Operations (Clean Air) Regulation 2010* (the Regulation). Part 2, Schedule 8 of the Regulation allows Wingecarribee Shire Council (Council) to grant approval for burning in the open in certain circumstances.

Under the Regulation, when providing an approval to burn Council is required to consider:

- the feasibility of alternative disposal methods such as recycling;
- the impact on regional and local air quality and amenity;
- any opinions of the Environment Protection Authority; and
- any opinions of public that may be affected by the approval to burn.

Council is committed to maintaining air quality and amenity by minimising fine particulate air pollution. Burning of vegetation from property maintenance contributes to air pollution and impacts community amenity. There are alternative, preferred methods for disposing of vegetation available including:

- using the kerbside organics waste collection;
- using dried vegetation in internal wood heaters;
- mulching or composting; and
- taking the material to the Resource Recovery Centre for mulching.

To protect air quality and amenity, there are conditions under which burning of dead and dry vegetation for property maintenance may be carried out. These conditions are part of Council's general terms of approval for the regulation of burning under the Regulation.

Council will publish a Notice of Approval in the local newspapers which states the conditions of the open burning approval.

### 2.1 Open Burning Approval

This Policy and approval does not cover or apply to the following situations:

- Burning of vegetation for bush fire hazard reduction. For this activity a hazard reduction certificate is required from NSW Rural Fire Service.
- Burning of vegetation resulting from land clearance. Development consent is required for the clearing of native vegetation and the disposal method which can be obtained from Council.
- Burning of vegetation that has been cleared for commercial development or building construction. Development consent is required which can be obtained from Council.
- Burning of any native vegetation that comprises an endangered ecological community or habitat for threatened species. Assessment and approval is required under the *Rural Fires Act 1997*.
- The use of internal wood heaters. The Regulation restricts wood heater standards and requires that there is not excessive smoke.
- Section 12(4) of the Regulation lists activities which do not require Council approval. This includes activities such as barbeques; camping; burning vegetation during agricultural operations, which includes burning agricultural clearing (other than for construction), stubble, orchard prunings, diseased crops, weeds or pest animal habitats on farms, or pasture for regenerative purposes.

However, there is still a requirement for these activities to be done in a way that minimises air pollution including taking into account the impacts of smoke on any person, wind, weather, suitability of materials to be burnt and the length of the burn.

There are criteria for when and where burning can occur, the type of materials that can be burnt and how burning occurs. Conditional approval to burn dead and dry vegetation is given to owners, occupiers and managers of land within the Wingecarribee Shire Local Government Area (LGA) where each of the following burning approval conditions is met:

1. Burning must not occur during a Total Fire Ban or on No Burn Days as declared by the NSW Rural Fire Service or the Environment Protection Authority.
2. Burning is approved on properties with an individual area of 4000 square metres and above, provided the property is not zoned medium density (R3).

A map of properties that are approved to burn dead and dry vegetation can be accessed on Council's website.

3. A permit to light a fire must be obtained from the relevant fire authority for the location of the fire where required in line with the *Rural Fires Act 1997*.
  - a. All conditions on a Fire Permit must be adhered to before, during and after the fire.
4. Burning must be carried out in a way that will prevent or minimise air pollution and the impact of smoke on neighbours and traffic. Actions to prevent and minimise air pollution include:
  - a. regular use of alternative disposal methods, such as using the green organics bin; and
  - b. taking into account the wind direction, weather conditions and length of time the burn will take.
5. The vegetation must be from the property on which the fire is lit.

6. Materials that are prohibited to be burnt under the *Protection of the Environment Operations (Clean Air) Regulation 2010* include tyres, coated wire, paint containers and residues, solvent containers and residues and timber treated with CCA or PCP.
7. At least 24 hours verbal or written notice must be given to neighbours and fire authorities before the burning commences. A standard neighbor written notice is available from Council's website. Properties in RFS zones may use the RFS online notification form.
8. Burning is to be carried out in accordance with the NSW Rural Fire Service *Standards for Pile Burning* which can be accessed from Council's website. This includes, but is not limited to:
  - a. only one pile is to be burnt at a time;
  - b. burning is not permitted within 4.5 metres of any combustible material; and
  - c. the material to be burnt is dead and dry vegetation with a diameter of less than 15 centimeters.
9. A responsible adult must be present at the fire, from the time the fire is lit until the fire is fully extinguished and have sufficient firefighting resources immediately available to extinguish the fire.

Residents on property types not covered by the conditional approval may apply to Council for approval to burn on a case by case basis. Approval may be given in exceptional circumstances and is subject to the burning conditions in a written notice of approval provided by Council.

### 3. Scope

This policy relates to:

- Burning of vegetation from property maintenance.
- Owners, occupiers or managers of land within the Wingecarribee local government area.

This policy does not apply to:

- agencies which have approval to undertake burning under the *Rural Fires Act 1997*;
- burning of vegetation for bush fire hazard reduction;
- burning of vegetation resulting from land clearance;
- burning of vegetation which has been cleared for commercial development or building construction; and
- burning of any native vegetation that comprises an endangered ecological community or habitat for threatened species.

### 4. Responsibilities

Responsibilities for the implementation of this Policy are shared as follows.

#### 4.1 Councillors

Councillors shall:



- provide leadership in the protection of air quality and amenity in Wingecarribee shire; and
- ensure the policy meets Council's obligations under the Regulation.

#### 4.2 Executive

The Executive shall integrate the Policy into business services across departments and ensure adequate resourcing is available for implementation.

#### 4.3 Manager Environment and Sustainability

The Manager Environment and Sustainability shall:

- provide guidance to Councillors, Executive and other Council staff as to the content and implementation of this Policy;
- ensure the timely review of this Policy including consideration of any new waste services; and
- provide the community with information to support compliance with the Policy.

#### 4.4 Group Manager Planning, Development and Regulatory Services

The Group Manager Planning, Development and Regulatory Services shall:

- provide the community with information to support compliance with the Policy.
- investigate burning complaints and infringements.

#### 4.5 Group Managers and Managers

Group Manager and Managers shall provide guidance to Council staff within their respective branches as to the content and implementation of this Policy, seeking guidance from the policy owner as required.

#### 4.6 Council staff

Council staff shall implement this Policy.

### 5. Performance Measures

The success of this Policy will be measured by:

- increased understanding by the residents of their rights and responsibilities in relation to backyard burning;
- reduced number of community complaints from backyard burning activities;
- reduced number of caution and infringement notices issued by regulatory staff; and
- Increased use of the kerbside green waste collection service from April to September.

### 6. Definitions

<b>Bush Fire Danger Period</b>	The Bush Fire Danger Period is a statutory period that runs from 1 October to 31 March each year as in section 81 and 82 of the <i>Rural Fires Act</i> (1997). During the Bush Fire Danger Period additional restrictions on fires apply. The start and
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end dates can be adjusted by the relevant authority depending on seasonal conditions.

## 7. Related Material

### 7.1 Related Legislation

The following legislative materials are related to this Policy:

- *Protection of the Environment Operations Act 2000;*
- *Protection of the Environment Operations (Clean Air) Regulation 2010; and*
- *Rural Fires Act 1997.*

## 8. Non-compliance with this Policy

It is an offence under the Regulation to burn except in accordance with this Policy and the notice of approval. Penalty notices under the Regulation may apply.

## 9. Document Control

### 9.1 Version Control

Version	Adoption Date	Notes
4.0	[insert date on which version was adopted]	

### 9.2 Superseded Documents

The following documents are superseded by this Policy:

Document Title	Adoption Date	Notes
Urban Backyard Burning of Vegetation Policy v.3.1	[insert date on which document was adopted]	[describe reasons for superseding the document]
Urban Backyard Burning of Vegetating Policy v.3.0	[insert date on which document was adopted]	[describe reasons for superseding the document]

## 10. Attachments

There are no attachments to this Policy.



Approved by:

WINGECARRIBEE SHIRE COUNCIL

[Governance to insert adoption date]

DRAFT

## 12.3 Update of the Asbestos Management Policy

Reference:	5450/28.3
Report Author:	Environmental Policy Officer
Authoriser:	Manager Environment and Sustainability
Link to Community Strategic Plan:	Work collaboratively to reduce pollution and its impact on our environment

### PURPOSE

Council's Asbestos Management Policy has been reviewed. This report seeks readoption of the updated Policy at **Attachment 1**.

### RECOMMENDATION

**THAT the draft Asbestos Management Policy at Attachment 1 be adopted AND THAT the Asbestos Guide at Attachment 2 be noted.**

### REPORT

#### **BACKGROUND**

A scheduled review of Council's Asbestos Management Policy has been undertaken.

Council's Asbestos Management Policy is based on the Office of Local Government *Model Asbestos Policy for NSW Councils* (2015) (the Model Policy). The Model Policy largely provides publicly available information for the community on asbestos and outlines the role of different agencies. In this way the Asbestos Management Policy differs from most other policies which are shorter and more targeted.

Council's Asbestos Management Policy was last updated in 2018. The Policy has been reviewed for currency.

The Policy is supported by the Asbestos Guide which provides public information and resources on asbestos. No changes were made to the Asbestos Guide apart from moving the information to the new Council template.

Council also has an internal Asbestos Removal Procedure and specific Safe Work Method Statements which describe work procedures for particular activities.

Over the past two years Council's systems for asbestos management have been updated including:

- An update of Council's Asbestos Register for easier access to information and
- An update to the Asbestos Management Plan, covering buildings, roads and water and sewer infrastructure.

#### **REPORT**

The review of Council's Asbestos Management Policy identified updates resulting largely from the change to Council's policy template. The updated Policy is at **Attachment 1**

As the updates to the Policy are primarily administrative rather than position changes, public consultation on the updated policy is not necessary and therefore not recommended.

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## **COMMUNICATION AND CONSULTATION**

### **Community Engagement**

No community engagement has been undertaken for this review. As the updates to the policy are administrative rather than position changes, public consultation on the updated policy is not necessary and therefore not recommended.

### **Internal Communication and Consultation**

The review of the Asbestos Management Policy involved staff from relevant areas including the Manager Development Assessment, Asset Coordinator Parks and Building, Workplace Systems Coordinator, Corporate Strategy and Governance.

### **External Communication and Consultation**

No external consultation was needed as part of the policy review.

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## **SUSTAINABILITY ASSESSMENT**

- **Environment**

The Asbestos Management Policy and Asbestos Guide provide information for the community to assist in managing asbestos and may have a positive impact on the environment.

- **Social**

There are no social issues in relation to this report.

- **Broader Economic Implications**

There are no broader economic implications in relation to this report.

- **Culture**

There are no cultural issues in relation to this report.

- **Governance**

The Council's Asbestos Management Policy is based on and consistent with, the Office of Local Government Model Asbestos Policy for New South Wales Councils (2015).

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## **COUNCIL BUDGET IMPLICATIONS**

The updates to the Policy do not have any additional budget implications.

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## **RELATED COUNCIL POLICY**

Not applicable

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#### OPTIONS

The recommended option available to Council is:

THAT the Asbestos Management Policy at **Attachment 1** be adopted AND THAT the Asbestos Guide at **Attachment 2** be noted.

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#### CONCLUSION

The Asbestos Management Policy has been reviewed. The Asbestos Management Policy is based on the Office of Local Government's Model Asbestos Policy for NSW Councils. Amendments have been made to reflect Council's updated policy template. It is recommended that the updated Policy at **Attachment 1** is adopted.

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#### ATTACHMENTS

1. Draft Asbestos Management Policy
2. Asbestos Guide



# Asbestos Management Policy

## Environment

### 4.1 Wingecarribee's distinct and diverse natural environment is protected and enhanced

Document Type	Council Policy
Document Reference No.	[Governance to insert]
Version No.	[Governance to insert]
Council File Reference	5450/28.3; 104/7
Adoption Date	[Governance to insert]
Resolution Number [if applicable]	[Governance to insert]
Document Owner	Manager Environment and Sustainability
Responsible Branch	Environment and Sustainability
Responsible Business Unit	Sustainability Services
Review Schedule	Four years
Review Date	[Governance to insert]

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## 1. Objectives

The objectives of this Policy are to:

- outline the role of Wingecarribee Shire Council (Council) and other organisations in managing and regulating asbestos; and
- provide a framework for managing asbestos within Council's operations.

## 2. Policy Statement

Council acknowledges the serious health hazard presented by exposure to asbestos.

### 2.1 Council's roles and responsibilities

#### Regulatory Responsibilities

Council has regulatory responsibilities under the following legislation and maintains policies and standards where Council is the appropriate regulatory or planning authority:

- Contaminated Land Management Act 1997;
- Demolition Work Code of Practice 2016;
- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- Local Government Act 1993;
- 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 (Exempt and Complying Development Codes) 2008 ; and
- State Environmental Planning Policy No. 55 – Remediation of Land.

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

The circumstances in which Council has a regulatory role in the safe management of asbestos are listed in Table 1, below.

**Table 1: Circumstances in which Council has a regulatory role in managing asbestos**

Circumstance	Council's role
Recording asbestos sites and contaminated land	<ul style="list-style-type: none"><li>○ Record on planning certificates issued under section 10.7(2) of the <i>Environmental Planning and Assessment Act 1979</i> contaminated land information prescribed under the <i>Contaminated Land Management Act 1997</i>, <i>Environmental Planning and Assessment Act 1979</i> and applicable regulations.</li><li>○ Record known asbestos contamination at Council workplaces in Council's Asbestos Register and related systems.</li><li>○ Notify stakeholders of land use planning policy requirements relating to contamination.</li><li>○ Regulate contaminated land that is not declared 'significantly</li></ul>

	contaminated' under the <i>Contaminated Land Management Act 1997</i> (excluding oversight of removal or remediation work which is the role of SafeWork NSW).
<b>Development assessment</b>	<ul style="list-style-type: none"> <li>○ Assess development applications for approval under the <i>Environmental Planning and Assessment Act 1979</i>.</li> <li>○ Regularly update and review suitable conditions of consent for renovations, alterations, additions, demolitions or other development requiring consent which may involve the disturbance of asbestos or asbestos-containing materials.</li> <li>○ Ensure compliance with development consent conditions.</li> <li>○ Impose suitable conditions as part of certain consents relating to development involving friable and non-friable asbestos material under relevant legislation and planning codes.</li> </ul>
<b>Demolition</b>	<ul style="list-style-type: none"> <li>○ Approve demolition under the <i>Environmental Planning and Assessment Act 1979</i>.</li> <li>○ Approve development as complying development under the <i>State Environmental Planning Policy (Exempt and Complying Development Codes) 2008</i>.</li> </ul>
<b>Emergencies and incidents</b>	Regulate the clean-up of asbestos waste following emergencies where sites are handed over to 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> .
<b>Naturally occurring asbestos</b>	<ul style="list-style-type: none"> <li>○ Council is not aware of any naturally occurring asbestos in the local government area. Mapping of naturally occurring asbestos in NSW can be found at <a href="#">SafeWork NSW</a>. This information is indicative only.</li> <li>○ Where naturally occurring asbestos is found, verify compliance with environmental planning and assessment legislation for development applications that could disturb naturally occurring asbestos.</li> <li>○ Prepare an asbestos management plan for Council workplaces or road works which occur on land containing naturally occurring asbestos.</li> </ul>

#### Responsibilities to staff

Council is committed to fulfilling its responsibilities to workers and contractors under the *Work Health and Safety Act 2011* and *Work Health and Safety Regulation 2017* and maintaining a safe work environment through its:

- general responsibilities;
- education, training and information for workers;
- health monitoring for workers; and
- procedures for identifying and managing asbestos-containing materials in Council premises.

Council's internal procedure, WSC009-00 Asbestos Management and Removal, outlines Council's responsibilities



to workers and provides further information on asbestos management procedures.

#### **Identifying and recording asbestos hazards in the Council workplace**

Council sites that are known to have asbestos are recorded on Council's Asbestos Register and related systems.

The Asbestos Register is within Council's Asset Management Systems kept at the workplace. The Asbestos Register is maintained to ensure information in the Register is up to date. The Asbestos Register is accessible, reviewed, revised and otherwise managed in accordance with clauses 425-428 of the *Work Health and Safety Regulation 2017*.

Council has an Asbestos Management Plan for buildings, roads and water and sewer assets. Council also maintains geographic information system mapping for the management of roads and water and sewer assets that relate to asbestos.

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 provided a copy of the Asbestos Register or the relevant asbestos building report for the asset, containing details of the asbestos at the site.

If naturally occurring asbestos is discovered in the Wingecarribee Shire local government area, Council will develop risk controls, an asbestos management plan in relation to the naturally occurring asbestos in the Council workplace and provide guidance materials where necessary.

#### **Educating residents**

Council assists residents to access appropriate information relating to asbestos management. The [Asbestos Guide](#) has information and hyperlinks relating to:

- Prohibition on the use and re-use of asbestos containing materials;
- Requirements relating to development, land management, waste management and disposal;
- Risks of exposure to asbestos;
- Safe management of asbestos containing materials; and
- Safe removal and disposal of minor quantities of asbestos containing materials.

#### **Managing land**

##### **Public land**

Council is responsible for managing public land. This may include land contaminated with asbestos as outlined in the Asbestos Guide.

#### **Planning certificates - Section 10.7 (2)**

Council provides information prescribed under the *Environmental Planning and Assessment Act 1979*, *Environmental Planning and Assessment Regulation 2000* and the *Contaminated Land Management Act 1997* in planning certificates issued under section 10.7(2) of the *Environmental Planning and Assessment Act 1979*. That is, information on land that is significantly contaminated, under a management or maintenance order, where a site audit statement applies, presence of loose fill asbestos, or where a Council policy restricts the land use due to of contamination risk.

#### **Planning certificates - Section 10.7 (2)**

When Council receives a request for a planning certificate under section 10.7(5) of the *Environmental Planning*



and Assessment Act 1979, Council provides information on whether there are any development consents from the past two years.

Additional information relating to a property may be available under the *Government Information (Public Access) Act 2009*. Further information is available at [Access to Information Held by Council](#).

### Managing asbestos waste

Information on waste facilities that are licensed to accept asbestos waste can be found on the NSW Environment Protection Authority's (EPA) [website](#). More information is provided in the Asbestos Guide.

Council has standard work procedures for receiving identified asbestos from customers at the Resource Recovery Centre and for green waste contamination. More information on transporting waste to the Resource Recovery Centre is found in the Asbestos Guide.

Where Council is the appropriate regulatory authority, Council is responsible for meeting obligations under relevant legislation by:

- 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, stored, transported or disposed of in an unsatisfactory manner, under the *Protection of the Environment Operations Act 1997*; and
- issuing penalty infringement notices for improper transport of asbestos, under the *Protection of the Environment Operations Act 1997*.

Council may also issue an Order 21 in accordance with Council's Local Orders Policy (Order 21) under the *Local Government Act 1993*.

### Other stakeholders involved in managing asbestos

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

The Asbestos Guide includes details of other agencies involved in managing asbestos.

### Complaints and investigations

Complaints and enquiries regarding a workplace should be directed to [SafeWork NSW](#).

Complaints and enquiries regarding licensed premises under the *Protection of the Environment Operations Act 1997* should be directed to the [EPA](#).

Complaints about Council operations in relation to asbestos may be directed to the [EPA](#). Complaints about Council conduct may also be directed to the [NSW Ombudsman](#).

Complaints and enquiries about incidents in public places and private properties may be directed to [Council](#). Council will respond to complaints and enquiries regarding:

- Council's requirements in relation to development, land management and waste management;
- Derelict buildings and land not in a safe or healthy condition;
- General asbestos safety issues (which will be referred to the appropriate government authority);
- Illegal dumping;

- Safe removal and disposal of minor quantities of asbestos materials; and
- Unsafe work at a residential property conducted by a homeowner or tenant.

### 3. Scope

This Policy applies to the management of friable, non-friable (bonded) and naturally occurring asbestos in the Wingecarribee Shire within Council's jurisdiction.

This Policy outlines Council's commitment and responsibilities in managing asbestos. The Asbestos Guide provides information for the community on:

- Council's approach to sites contaminated by asbestos, emergencies or incidents and naturally occurring asbestos
- general advice for residents on renovating homes that may contain asbestos and conditions of consent
- Council's development approval process for developments that may involve asbestos
- waste management and regulation procedures for asbestos waste in the local government area
- sources of further information.

For specific advice, individuals are encouraged to contact Council or the appropriate organisation.

Council's internal procedure Asbestos Management and Removal WSC009-90, along with other internal procedures, provides information for Council employees, contractors and volunteers in relation to workplace health and safety.

This Policy does not provide detail on specific procedures. Practical guidance on how to manage risks associated with asbestos materials can be found in:

- *How to manage and control asbestos in the workplace* available at [SafeWork NSW](#);
- *How to safely remove asbestos*, available at [SafeWork NSW](#); and
- the guidance material listed in the Asbestos Guide.

This Policy and the related Asbestos Guide are based on 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 circumstances and liability will not be accepted for losses incurred as a result of reliance on this Policy or the WSC Asbestos Guide.

### 4. Responsibilities

Responsibilities for the implementation of this Policy are shared as follows.

#### 4.1 Councillors

Councillors shall provide leadership and guidance to the community in complying with and understanding legislative requirements, this Policy and the Asbestos Guide.

#### 4.2 Executive

The Executive shall:



- implement this Policy;
- provide leadership and guidance to Council staff in complying with and understanding legislative requirements, this Policy and the Asbestos Guide; and
- integrate systems to safely manage asbestos within Councils' responsibilities.

#### **4.3 Manager Environment and Sustainability**

The Manager Environment and Sustainability shall:

- provide guidance to Councillors, Executive and other Council staff as to the content of this Policy; and
- ensure the timely review of this Policy.

#### **4.4 Manager Organisational Development**

The Manager Organisational Development shall:

- develop procedures and systems that meet the requirements of the *Work Health and Safety Act 2011* and safe management of asbestos; and
- conduct investigations into internal Council-related alleged non-compliance with this Policy and relevant work health and safety policies, general manager practice notes, procedures or other systems.

#### **4.5 Group Manager Planning, Development and Regulatory Services**

The Group Manager Planning, Development and Regulatory Services shall implement systems in accordance with this Policy and relevant legislation to meet the requirements of the *Environmental Planning and Assessment Act 1979*, *Contaminated Land Management Act 1997* and applicable State Environmental Planning Policies.

#### **4.6 Manager Assets**

The Manager Assets shall maintain and update Council's Asbestos Register and Asbestos Management Plan.

#### **4.7 Group Managers and Managers**

Group Manager and Managers shall:

- provide guidance to Council staff within their respective branches as to the content and implementation of this Policy, seeking guidance from the policy owner as required; and
- report any breaches of this Policy that are considered an environmental incident in accordance with Council's Incident Notification and Reporting Procedure.

#### **4.8 Council staff**


Council staff shall implement this Policy and related procedures, systems and the Asbestos Management Plan to safely manage asbestos within Council operations.

### **5. Performance Measures**

The success of this Policy will be measured by compliance with Council's Asbestos Management and Removal Procedure and associated documents within Council operations.

### **6. Definitions**

In this Policy, the following definitions apply:



<b>asbestos</b>	the asbestiform varieties of mineral silicates belonging to the serpentine or amphibole groups of rock forming minerals including the following: <ul style="list-style-type: none"><li>(a) actinolite asbestos;</li><li>(b) grunerite (or amosite) asbestos (brown);</li><li>(c) anthophyllite asbestos;</li><li>(d) chrysotile asbestos (white);</li><li>(e) crocidolite asbestos (blue);</li><li>(f) tremolite asbestos; and</li><li>(g) a mixture that contains one or more of the minerals referred to above.</li></ul>
<b>asbestos containing material term</b>	any material or thing that, as part of its design, contains asbestos.
<b>friable asbestos</b>	material that: <ul style="list-style-type: none"><li>(a) is in a powder form or that can be crumbled, pulverised or reduced to a powder by hand pressure when dry; and</li><li>(b) contains asbestos.</li></ul>
<b>naturally occurring asbestos</b>	the natural geological occurrence of asbestos minerals found in association with geological deposits including rock, sediment or soil.
<b>non-friable asbestos</b>	material containing asbestos that is not friable asbestos, including material containing asbestos fibres reinforced with a bonding compound.

## 7. Related Material

### 7.1 Related legislation

The following legislative materials are related to this Policy:

- o *Contaminated Land Management Act 1997*;
- o *Demolition Work Code of Practice 2016*;
- o *Environmental Planning and Assessment Act 1979*;
- o *Environmental Planning and Assessment Regulation 2000*;
- o *Government Information (Public Access) Act 2009*;
- o *Government Information (Public Access) Regulation 2018*;
- o *Local Government Act 1993*;
- o *Protection of the Environment Operations (General) Regulation 2009*;
- o *Protection of the Environment Operations (Waste) Regulation 2014*;
- o *Protection of the Environment Operations Act 1997*;
- o *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* ;
- o *State Environmental Planning Policy No. 55 – Remediation of Land*;
- o *Work Health and Safety Act 2011*; and
- o *Work Health and Safety Regulation 2017*.

### 7.2 Related documents



The following documents are related to this Policy:

- Asbestos Management and Removal Procedure;
- Local Orders Policy;
- Asbestos Guide.

## 8. Non-compliance with this Policy

Non-compliance by Council with this Policy should be reported to Manager Organisational Development who will investigate and determine the appropriate course of action.

Non-compliance with this Policy that is considered an environmental incident under Council's Incident Notification and Reporting Procedure are reported in accordance with that procedure.

## 9. Document Control [Governance to insert]

### 9.1 Version control

Version	Adoption Date	Notes
1.0	10 July 2013	Nil
2.0	23 May 2018	Nil
3.0 (this version)	[insert date on which version was adopted]	Update of template, amendments to the Responsibilities and Related Legislation sections and amendments to wording throughout document

### 9.2 Superseded documents

The following documents are superseded by this Policy:

Document Title	Adoption Date	Notes
Asbestos Management Policy, version 2.0	23 May 2018 (MN198/19)	Policy scheduled for review in 2020
Asbestos Guide – Information for the community, version 1.0	23 May 2018 (MN198/19)	Guide scheduled for review in 2020

## 10. Attachments

There are no attachments to this Policy.

Approved by:

WINGECARRIBEE SHIRE COUNCIL

[Governance to insert adoption date]



# Asbestos Guide

## Information for the Community

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#### Disclaimer

This Asbestos Guide (Guide) is based on the model *Asbestos Policy for NSW Councils* developed by the Heads of Asbestos Coordinator Authorities to promote a consistent local government approach to asbestos management across New South Wales.

This Guide 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 document.

## 1. Introduction

Wingecarribee Shire Council (Council) has prepared this Guide to provide information for the public on:

- Council's approach to sites contaminated by asbestos, emergencies or incidents and naturally occurring asbestos
- general advice for residents on renovating homes that may contain asbestos
- Council's development approval process for developments that may involve asbestos
- waste management and regulation procedures for asbestos waste in the local government area
- where further information can be found.

This Guide should be read in conjunction with Council's Asbestos Management Policy.

This Guide 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* (ISBN 978-0-642-33316-2) available from [SafeWork NSW](#).
- *Code of practice on how to safely remove asbestos* (ISBN 978-0-642-33318-6) available from [SafeWork NSW](#).

Additional guidance material is listed in Appendix B. For specific advice, individuals are encouraged to contact Council or the appropriate organisation.

### 1.1 Asbestos generally

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 contain asbestos.

Where material containing asbestos is in a non-friable form (that is, cannot be crushed by hand into a powder), undisturbed and painted or otherwise sealed, it may remain safely in place. However, where asbestos containing material is broken, damaged, disturbed or mishandled, fibres can become loose and airborne, posing a risk to health. Breathing in dust containing asbestos fibres can cause asbestosis, lung cancer and mesothelioma.

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.

### 1.2 Council's role in asbestos management

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 Wingecarribee local government area (LGA); and
- workers (including employees and other persons such as contractors) in Council workplaces.



Council's legislative functions for minimising the risks posed by asbestos apply in various circumstances 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); and
- waste management and regulation.

### 1.3 Providing advice for home owners, renovators and developers

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

The key points are below:

- Before any renovation, maintenance or demolition work is carried out, any asbestos or asbestos containing materials should be identified.
- 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 Chapter 6.
- 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 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, as SafeWork NSW regulates asbestos removal by workers (refer to Chapter 6). Contact details for SafeWork NSW are provided in Appendix E.

## 2. Definitions

Key definitions are provided in Appendix C.

## 3. Naturally occurring asbestos

There is potential for asbestos to be found as a naturally occurring mineral. 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.

Council is not aware of any naturally occurring asbestos in the Wingecarribee LGA. Mapping of naturally occurring asbestos in NSW can be found on the SafeWork NSW website at [Naturally Occurring Asbestos](#). This information is indicative only.

Council will aim to prevent the exposure of workers and the public to any naturally occurring asbestos that is discovered in the Council workplace. If naturally occurring asbestos is discovered in the Wingecarribee LGA, Council will develop risk controls, an asbestos management plan in relation to the naturally occurring asbestos in the Council workplace and provide guidance materials where necessary.

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.

## 4. 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. Emergencies or incidents can arise from natural hazards, or from accidental or deliberate human activities including criminal activity. This can create site contamination issues and potentially expose emergency service workers and the wider public to asbestos.

### 4.1 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. Council may support other lead agencies including Fire and Rescue NSW, the NSW Environment Protection Authority (EPA) and NSW Health. If the emergency or incident occurs at a workplace, SafeWork is the lead agency. Council will determine an appropriate response depending on the nature of the situation, or as requested by emergency services.

Council may issue a clean-up, prevention, cost compliance or penalty infringement notice (refer to Chapter 5). Alternatively, Council may act under the *Environmental Planning and Assessment Act 1979*.

Actions Council may take in response to an emergency or incident where asbestos containing materials may be involved include the following:

- Seeking advice from an occupational hygienist on the likely level of risk and appropriate controls required.
- Liaising with or consulting the appropriate agencies.
- Informing emergency personnel of any hazards known to Council as soon as practicable.
- Following the *Code of practice on how to safely remove asbestos*.
- Ensuring that any Council workers attending the site have appropriate training and are wearing appropriate personal protective equipment.
- Excluding the public from the site.
- Informing the public of the potential sources of exposure to asbestos, health risks and emergency



management response.

- Minimising the risks posed by any remaining structures.
- Addressing the risks posed by disturbed asbestos containing materials by engaging a licensed removalist (for a Council workplace) or issuing a clean-up or prevention notice to ensure asbestos containing materials are removed for disposal.
- Ensuring that the site is kept damp at all times or sprayed with polyvinyl acetate (PVA) glue (particularly where friable asbestos is present).

*Note: 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.*

- Ensuring 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.
- Making an application to the NSW Department Planning, Industry and Environment via the Emergency Pollution and Orphan Waste Clean-Up Program to assist with the cost of measures to remove, disperse or mitigate serious pollution when those measures need to be taken immediately.

#### 4.2 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 may consider advising those in neighbouring properties to:

- avoid unnecessary outdoor activity and refrain from putting any laundry outside during the clean-up;
- close all external doors and windows and stay indoors during the clean-up;
- consider avoiding using air conditioners that introduce air from outside into the home during the clean-up;
- dispose of any laundry that may have been contaminated with asbestos as asbestos waste after the clean-up;
- use a low-pressure hose on a spray configuration to remove visible dust from pathways after the clean-up;
- wipe dusty surfaces with a damp cloth and bag and dispose of the cloth as asbestos waste after the clean-up; and
- any other measures recommended by an occupational hygienist following assessment of the situation.

## 5. 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. 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.

### 5.1 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 under Part 4.2 of the *Protection of the Environment Operations Act 1997*, 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*.

The issue of clean-up notices is subject to the provisions of Part 4.2 of the *Protection of the Environment Operations Act 1997*.

Council may also issue prevention notices to ensure good environmental practice under Part 4.3 of the *Protection of the Environment Operations Act 1997*. If a person does not comply with a prevention notice, 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 keeps records of tasks undertaken, the time 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 required 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*.

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.

## 5.2 Finding out if land is contaminated

### Planning certificates - section 10.7(2)

Council provides information on planning certificates issued under section 10.7(2) of the *Environmental Planning and Assessment Act 1979*. The information included in such a certificate is prescribed by the *Environmental Planning and Assessment Act 1979*, *Environmental Planning and Assessment Regulation 2000* and the *Contaminated Land Management Act 1997*. This information includes information about land that is:

- significantly contaminated;
- under a management or maintenance order;
- where a site audit statement;
- loose fill asbestos is present; or
- where a Council policy restricts land use due to contamination risk.

### Planning certificates - section 10.7(5)

When Council receives a request for a planning certificate containing additional information under section

10.7(5) of the *Environmental Planning and Assessment Act 1979*, Council reviews the relevant property records for the past two years and provides information on development consents issued within that time.

Council has adopted this approach for the following reasons:

- Council records may not disclose land uses that may have resulted in land contamination that were established illegally or have existing use rights.
- Council records regarding contamination issues are dynamic and will change over time as land is investigated, remediated and validated.

Members of the public may also wish to request access to information relating to particular properties under the *Government Information (Public Access) Act 2009*. Additional information is available on Council's website at [Access to Information Held by Council](#).

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

### 5.3 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 (see section 60 of the *Contaminated Land Management Act 1997*). Circumstances where this is required are explained in the [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 Wingecarribee LGA as required under section 59 of the *Contaminated Land Management Act 1997*.

### 5.4 Derelict buildings and unsafe or unhealthy premises or lands

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. For example, Council may do the following:

- Issue a clean-up notice or prevention notice and compliance cost notice under the *Protection of the Environment Operations Act 1997*.
- Issue an order under section 124 of the *Local Government Act 1993* (Local Order) in accordance with that Act and Council's Local Orders Policy (Order Number 21).
- 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 Division 9.3 and Schedule 5 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 Division 9.3 of and Schedule 5 to the





*Environmental Planning and Assessment Act 1979*). If a person fails to comply with the terms of an order, Council may act 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, SafeWork is the lead agency responsible for ensuring that asbestos is removed by appropriately licensed removalists.

## 6. Identifying and removing asbestos, refurbishments and demolitions

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

A general guide to the likelihood of asbestos presence based on building age is provided in Appendix A.

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. "Competent person" is defined by the *Work Health and Safety Regulation 2017*. 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 2017* 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.

### 6.1 Removing asbestos at domestic premises

If development is undertaken by contractors, as is the case with many home renovations, the work is considered to be at a workplace and is regulated by SafeWork under the *Work Health and Safety Act 2011* and *Work Health and Safety Regulation 2017*. 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 licences are outlined below and summarised in the table in Appendix K. SafeWork Australia 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 encourages residents to consider engaging a licensed asbestos removal contractor.

All asbestos removal should be undertaken in accordance with the *Code of practice on how to safely remove asbestos*.

If residential premises are also a workplace, the licensed asbestos removalist must inform the following persons before licensed asbestos removal work is carried out:

- the person who commissioned the work;
- a person conducting a business or undertaking at the workplace;
- the owner and occupier of the residential premises; and
- anyone occupying premises in the immediate vicinity of the workplace (as described in section 467 of the *Work Health and Safety Regulation 2017*).

In certain circumstances, a premise may be used for both residential and commercial purposes and is therefore classified as a workplace. All licensed asbestos removal must be:

- supervised by a supervisor whose details are provided to SafeWork NSW;
- notified to SafeWork NSW at least five days prior to the work commencing.

Requirements for the transport and disposal of asbestos waste are covered in Chapter 7.

## 6.2 Removing asbestos at workplaces

The *Work Health and Safety Regulation 2017* specifies requirements for demolition and refurbishment at a workplace with structures or plants constructed or installed before 31 December 2003. SafeWork Australia is the lead agency for regulating the safe management of asbestos at workplaces.

## 6.3 Obtaining approval for demolition

Demolition work is classified as high-risk construction work by the *Work Health and Safety Regulation 2017* and demolition licenses are required for some demolition work. The NSW [Demolition Work Code of Practice 2015](#) provides practical guidance on how to manage the risks associated with the demolition of buildings and structures.



Demolition can require development consent, be complying development or be exempt development. Applicants need to enquire to Council as to whether and what type of approval is required. In most circumstances demolition of a structure requires development consent or a complying development certificate.

Where a development application is required, Council's standard conditions may be applied to ensure that asbestos is safely managed.

A wide range of development, including residential, industrial and commercial development, can be approved for demolition as complying development under the Demolition Code of the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*. The *Environmental Planning and Assessment Regulation 2000* also provides mandatory conditions for complying development certificate applications which may apply.

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.

## 7. Managing asbestos as a waste

It is illegal to dispose of asbestos waste in domestic waste bins or to recycle, reuse, bury or illegally dump asbestos waste.

Asbestos must not be placed in general waste skip bins. 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 illegal disposal 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.

### 7.1 Responsibilities for asbestos waste management

The handling and, where appropriate, temporary storage of asbestos waste at worksites is regulated by SafeWork 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 five tonnes of asbestos waste, brought from off-site, are stored at any time. All other sites where asbestos waste is stored, typically those that are non-work sites, are regulated by local councils.

### 7.2 Handling asbestos waste for disposal

The SafeWork NSW *Code of practice on how to safely remove asbestos* provides details on waste containment and disposal and controls applicable to all types of asbestos removal.

### 7.3 Transporting asbestos waste

The following requirements apply to the transport of asbestos waste, as set out by clause 78 of the *Protection*



*of the Environment Operations (Waste) Regulation 2014:*

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

The transport of asbestos waste in New South Wales exceeding 100 kilograms in weight or 10 square metres of asbestos sheeting must be recorded from the place of generation to its final destination. A waste tracking system is administered by the EPA for this purpose. 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 [Tracking asbestos waste using WasteLocate](#).

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.

Asbestos waste that is transported interstate must be tracked in accordance with the *Protection of the Environment Operations (Waste) Regulation 2014*.

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 (see section 143 of the *Protection of the Environment Operations Act 1997*). Penalty notices may be issued for up to \$7,500 (to individuals) and \$15,000 (to corporations). The maximum penalty applicable to the unlawful transporting and depositing of asbestos waste under section 143 of the *Protection of the Environment Operations Act 1997* is a fine of up to \$500,000 (for individuals) and \$2,000,000 (for corporations).

#### **7.4 Disposing of asbestos waste at waste facilities**

Individuals are advised to contact waste disposal facilities beforehand to find out whether asbestos is accepted and any requirements for delivering asbestos to the waste facility or landfill.

Waste facilities which accept asbestos waste are listed on the EPA website at [Facilities that accept household asbestos](#).

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; and
- 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.

Failure to comply with the above matters may constitute an offence, with maximum penalties of up to a \$44,000 fine for corporations and up to \$22,000 for individuals.

### 7.5 Council's Resource Recovery Centre and asbestos waste

Council's Resource Recovery Centre (RRC) accepts asbestos waste in certain circumstances. Information relating to the RRC and asbestos waste, disposal, rejection, clean-up fees, contact details are available on Council's website [Resource Recovery Centre](#).

Contact the RRC prior to transporting any asbestos waste to ensure the load will be accepted. Any product suspected of being asbestos will be treated as asbestos unless the customer can provide proof that it is not asbestos. This includes fibreboard or fibrous cement.

Asbestos brought to the RRC must be declared and packaged in the following way:

- Where there is under 20 kilograms of asbestos waste, the asbestos can be double-bagged in approved asbestos bags. These bags are available for purchase from the RRC.
- Where there is more than 20 kilograms of asbestos waste, it must be placed in a Hazi-bag. Hazi-bags are available for purchase from the RRC.

Further information regarding the disposal of asbestos at the RRC is provided at [RRC Conditions - Asbestos](#).

When asbestos is brought to the RRC, the name of the person, contact details and where the asbestos was from is recorded. Even if the asbestos is being transported to the RRC, if the amount of waste exceeds 100 kilograms in weight or an area of more than 10 square metres, the WasteLocate system must be used as set out above at Chapter 7.3.

### 7.6 Situations in which asbestos waste may be rejected from waste facilities

Asbestos waste may be rejected from a waste facility (including the RRC) if the waste is:

- not correctly packaged for delivery and disposal;
- not disclosed by the transporter as being asbestos or asbestos containing materials; and
- 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; and
- 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, for example, 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 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*; or
- issue a penalty infringement notice for improper transport of asbestos under the *Protection of the Environment Operations Act 1997*.

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 2014*).

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. The maximum penalty applicable to the unlawful transporting and depositing of asbestos waste under section 143 of the *Protection of the Environment Operations Act 1997* is a fine of up to \$500,000 (for individuals) and \$2,000,000 (for corporations).

If Council suspects that there is a risk of illegal dumping of rejected waste, the RRC will inform Council's Rangers. 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 of.

### 7.7 Illegal dumping of asbestos waste

Illegal dumping is the unlawful deposit of waste onto land, i.e. 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 \$7500 for individuals or \$15000 for corporations;
- prosecution for pollution of land involving fines of up to:
  - \$2 million and \$120,000 for each day the offence continues (for a corporation); or
  - \$500,000 and \$60,000 for each day the offence continues (for an individual)
 (see section 142A of the *Protection of the Environment Operations Act 1997*); or
- prosecution for a tier 1 offence under Part 5.2 of the *Protection of the Environment Operations Act 1997* involving penalties of up to:
  - a maximum fine of \$5 million where the offence is committed wilfully or \$2 million where the

- offence is committed negligently (for a corporation); or
- a maximum fine of \$1 million and/or seven years' imprisonment where the offence is committed wilfully or \$500,000 and/or four years' imprisonment where the offence is committed negligently (for an individual).

The responsibility for cleaning up illegally dumped waste lies with the person or body 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 to 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.

Council has an illegal dumping strategy available online at [Illegal Dumping](#) which outlines Council's approach illegal dumping.

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.

## 8. Development Assessment

### 8.1 Council's process for changing land use

Council recognises the need to exercise care when land use zones are proposed to be change, when 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 Chapter 5.

### 8.2 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*. This includes alterations and additions to residential development, which may include internal work and 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 (exempt development).

Development consent may not be required to maintain an existing structure in certain circumstances. 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.

### Responsibilities for approving development

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

Council or the JRPP may impose conditions of development consent and a waste disposal policy 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 Chapter 6.

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*.

### 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*.

This means that there is no ability for Council or a private certifier to impose safeguards for the handling of asbestos through conditions of 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* (SafeWork NSW).

### Complying development

Clause 136E of the *Environmental Planning and Assessment Regulation 2000* 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 a detailed description of the development, and appropriate building work plans and specifications, such as 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* (SafeWork NSW). In instances where asbestos removal is less than 10 square metres of non-friable asbestos and not from a place of work, then SafeWork would not be the agency responsible for regulating this activity. Concerns or complaints may be directed to Council as outlined in Chapter 9.

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 clause 467 of the *Work Health and Safety Regulation 2017* as noted in Chapter 6 of this Guide.

### 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 also undertake a site inspection as part of the DA assessment.

### Pre-development application advice regarding asbestos

Council's pre-DA service enables prospective applicants to discuss asbestos-related issues with Council prior to lodging a DA, if the issue is raised. 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.

## 8.3 Development compliance and enforcement

### Responsibilities for compliance and enforcement

Development controls rely on information being provided and checked by the principal certifying authority which may be either the 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. Council will not always be the principal certifying authority.

When Council is not nominated as the principal certifying authority for a complying development certificate or

construction certificate, Council may not have any knowledge of any asbestos matters. Accordingly, coordination of compliance and enforcement actions between 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 Council 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; and
- matters that are not preconditions to the issue of an occupation or subdivision certificate.

### Compliance strategies

Illegal works include:

- works that are undertaken without a required development consent or complying development certificate; and
- 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 section 124 of the *Local Government Act 1993* 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*.

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.

## 9. 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 buildings and premise of land not in a safe or healthy condition;
- general asbestos safety issues (which will be referred to the appropriate government authority);
- illegal dumping;
- safe removal and disposal of minor quantities of asbestos materials; and
- 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.

## 10. 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 may request 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; and
- act on advice from Council to minimise risks from asbestos.



## 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 Environmental Health Standing Committee (enHealth), Asbestos: A guide for householders and the general public, Australian Health Protection Principal Committee, Canberra, 2013 (available on [the Australian Government Department of Health website at Asbestos: A guide for householders and the general public](#)).

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 (phone 131050) 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.

#### 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. Council is not aware of any naturally occurring asbestos in Wingecarribee Shire Council local government area. Mapping of naturally occurring asbestos in NSW can be found at [SafeWork NSW website](#).

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; and
- road construction and road works.

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.

#### **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; and
- 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:

- backyard garden sheds, carports, garages and dog kennels;
- electrical meter boards;
- imitation brick cladding;



- lining under eaves;
- exterior wall and roof materials (flat, patterned or corrugated asbestos sheeting);
- insulation materials in heaters and stoves;
- interior walls and sheeting;
- sheet materials in wet areas (bathroom, toilet and laundry walls, ceilings and floors); and
- 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 e.g. irons, whitegoods;
- gable ends;
- outbuildings;
- ridge capping;
- swimming pools – reinforcing marble swimming pools; and
- ventilators – internal and external.

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

#### **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; and
- yarns and textiles e.g. fire blankets.

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

#### **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.

#### *Situations where asbestos contamination may occur*

Situations where asbestos contamination may occur include:

- industrial land, e.g. 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 e.g. 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, e.g. 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); and
- 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 one metre of the surface).

#### *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 EPA has details of sites that have been nominated as significantly contaminated on its public register at: [List of notified sites](#).



If land is contaminated but not determined to be significant enough to warrant regulation, the *Contaminated Land Management Act 1997* does not apply. In such cases the provisions within relevant 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 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;
- checking, removing or replacing ceiling insulation which contains asbestos;
- 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; and
- checking, removing or replacing ceiling insulation which contains asbestos.

Council could inadvertently disturb asbestos through activities such as:

- above mentioned activities;
- asset and building maintenance;
- certifying;
- inspections of sites and premises;
- transport and disposal of illegally dumped materials; and
- 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; and
- 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; and
- 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 cases, 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

### Aboriginal communities

*Illegal dumping prevention and clean-up. Handbook for Aboriginal communities*, 2008 (EPA)  
[www.epa.nsw.gov.au/publications/illegaldumping/080425-aboriginal-communities](http://www.epa.nsw.gov.au/publications/illegaldumping/080425-aboriginal-communities).

### Asbestos contractors

For a listing of asbestos removal contractors in your area, refer to your local telephone directory or the Yellow Pages [www.yellowpages.com.au](http://www.yellowpages.com.au) or contact the Asbestos Removal Contractors Association NSW (ARCA) at [www.arcansw.asn.au](http://www.arcansw.asn.au).

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

### Asbestos waste

Advice about safely disposing of household asbestos waste can be found at: [Dealing with household asbestos](#).

An asbestos waste disposal facility search function is available on the [Asbestos Safety and Eradication Agency website](#).

*Crackdown on Illegal Dumping: A Handbook for Local Government*, 2007 (EPA)  
[www.epa.nsw.gov.au/publications/illegaldumping/080045-illegal-dumping](http://www.epa.nsw.gov.au/publications/illegaldumping/080045-illegal-dumping)

[Illegally Dumped Asbestos Clean-up Program \(IDACUP\)](#): Council may become involved in clean-up activities of illegally dumped asbestos waste. Where the responsible party is unknown, unavailable, unwilling (despite a legal obligation to do so) or unable to pay for the clean-up within the timeframe required to avoid or at least minimise harm to the environment or public health, Council may apply for funding under the IDACUP.

Regional Illegal Dumping (RID) Squads are regionally based teams that specialise in dealing with illegal dumping. The Squads are funded by the EPA and member local councils who opt to work together and pool resources to tackle illegal dumping.

[RIDonline](#) is a state-wide illegal dumping database and reporting tool to assist councils and the EPA develop a comprehensive picture of the extent of illegal dumping in NSW. Members of the community can assist by reporting illegal dumping online through the RIDonline App, available for the public to download.

For more information on illegal dumping and safely disposing of asbestos waste visit the [EPA website](#).

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

### Contaminated land

*Guidelines on the duty to report contamination under the Contaminated Land Management Act 1997*, 2015 (EPA). [www.epa.nsw.gov.au/resources/clm/150164-report-land-contamination-guidelines.pdf](http://www.epa.nsw.gov.au/resources/clm/150164-report-land-contamination-guidelines.pdf)

*Managing land contamination: Planning Guidelines SEPP 55 – Remediation of land*, 1998 (Department of Planning and Environment and EPA). [www.epa.nsw.gov.au/your-environment/contaminated-land](http://www.epa.nsw.gov.au/your-environment/contaminated-land)

#### Emergency management

[NSW Asbestos Emergency Plan: Hazardous Materials sub plan](#). The NSW Asbestos Emergency sub-plan details the specific arrangements for the coordinated funding and management of asbestos debris during and following a larger scale emergency, being an event that requires a significant and coordinated response, where the presence of asbestos containing material in the community poses a significant risk to public health and safety.

#### Environmental risk assessment

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

#### Health

[Asbestos and health risks fact sheet](#), 2007 (NSW Health). Further advice concerning the health risks of asbestos can be obtained from your local public health unit.

#### Renovation and development

[Asbestos: A guide for householders and the general public](#), Environmental Health Standing Committee (enHealth), Australian Health Protection Principal Committee, Canberra, 2013

Asbestos Awareness website (Asbestos Education Committee)

[www.asbestosawareness.com.au](http://www.asbestosawareness.com.au)

#### Practical guidance

[Code of practice on how to manage and control asbestos in the workplace](#) published by SafeWork NSW

[Code of practice on how to safely remove asbestos](#) published by SafeWork NSW

#### Tenants

[Tenants rights Fact sheet 26 Asbestos and lead](#), 2010 (Tenants NSW)

## Appendix C – Definitions

The terms used in the Policy and this Guide 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;
- *Code of practice on how to safely remove asbestos* (published by SafeWork 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*;
- *Work Health and Safety Act 2011*; and
- *Work Health and Safety Regulation 2017*.

**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; and
- (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 2017*, 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:

- (a) work involving the removal of asbestos or asbestos containing material, or
- (b) 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 2017*. 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:

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

**complying development** is a fast track, ten 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.

**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:





- (a) the dismantling of formwork, falsework, or other structures designed or used to provide support, access or containment during construction work, or
- (b) the removal of power, light or telecommunication poles.

**development** means:

- (a) the use of land
- (b) the subdivision of land
- (c) the erection of a building
- (d) the carrying out of a work
- (e) the demolition of a building or work
- (f) 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**, or otherwise known as a land use 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:

- (a) the Ambulance Service of NSW
- (b) Fire and Rescue NSW
- (c) the NSW Rural Fire Service
- (d) the NSW Police Force
- (e) the State Emergency Service
- (f) the NSW Volunteer Rescue Association Inc
- (g) the NSW Mines Rescue Brigade established under the *Coal Industry Act 2001*
- (h) 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:

- (a) is in a powder form or that can be crumbled, pulverised or reduced to a powder by hand pressure when dry
- (b) 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:

- (a) not involved in the removal of the asbestos
- (b) 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:

- (a) to carry out air monitoring during Class A asbestos removal work
- (b) to carry out clearance inspections of Class A asbestos removal work
- (c) to issue clearance certificates in relation to Class A asbestos removal work, or
  - (i) in the case of an asbestos removal licence – the person conducting the business or undertaking to whom the licence is granted, or
  - (ii) 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 2017* 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 *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:

- (a) is less than three micrometres wide
- (b) more than five micrometres long
- (c) has a length to width ratio of more than 3:1.

**specified VET course** means:

- (a) in relation to Class A asbestos removal work – the following VET courses:
  - (i) remove non-friable asbestos
  - (ii) remove friable asbestos, or
- (b) in relation to Class B asbestos removal work – the VET course Remove non-friable asbestos, or
- (c) in relation to the supervision of asbestos removal work – the VET course Supervise asbestos removal, or
- (d) 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:

- (a) buildings, masts, towers, framework, pipelines, transport infrastructure and underground works (shafts or tunnels)
- (b) any component of a structure
- (c) part of a structure
- (d) 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:

- (a) an employee, or
- (b) a contractor or subcontractor, or
- (c) an employee of a contractor or subcontractor, or
- (d) an employee of a labour hire company who has been assigned to work in the person's business or undertaking, or
- (e) an outworker, or
- (f) an apprentice or trainee, or
- (g) a student gaining work experience, or
- (h) a volunteer, or 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
ACM	Asbestos Containing Material
ARA	Appropriate Regulatory Authority
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
RRC	Council's Resource Recovery Centre
SEPP	State Environmental Planning Policy
VET	Vocational Education and Training



## Appendix E – Relevant contacts

For enquiries relating to development applications or similar processes or asbestos information [contact Council](#).

### Asbestos-related disease organisations (non-exhaustive)

#### Asbestos Diseases Foundation Australia Inc

Phone: 02 9637 8759

Helpline: 1800 006 196

Website: [www.adfa.org.au](http://www.adfa.org.au)

#### Asbestos Diseases Research Institute

Phone: 02 9767 9800

Email: [info@adri.org.au](mailto:info@adri.org.au)

Website: [www.adri.org.au](http://www.adri.org.au)

#### Australian Institute of Occupational Hygienists Inc.

Phone: 03 9338 1635

Email: [admin@aioh.org.au](mailto:admin@aioh.org.au)

Website: [www.aioh.org.au](http://www.aioh.org.au)

#### Workers' Compensation (Dust Diseases) Authority (iCare)

Phone: 02 8223 6600

Toll Free: 1800 550 027

Email: [DDAenquiries@icare.nsw.gov.au](mailto:DDAenquiries@icare.nsw.gov.au)

Website: [www.icare.nsw.gov.au](http://www.icare.nsw.gov.au)

#### NSW Environment Protection Authority (EPA)

Phone: 02 9995 5000

Environment line: 13 15 55

Email: [info@epa.nsw.gov.au](mailto:info@epa.nsw.gov.au)

Website: [www.epa.nsw.gov.au](http://www.epa.nsw.gov.au)

#### 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](http://www.yellowpages.com.au) or contact the Asbestos Removal Contractors Association NSW:

Email: [email@arcansw.asn.au](mailto:email@arcansw.asn.au)

Website: [www.arcansw.asn.au](http://www.arcansw.asn.au)

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



**Civil Contractors Federation (CCF)**

Phone: 02 9009 4000

Email: [ccfnsw@ccfnsw.com](mailto:ccfnsw@ccfnsw.com)

Website: [www.ccfnsw.com/](http://www.ccfnsw.com/)

**Local Government NSW**

Phone: 02 9242 4000

Email: [lgnsw@lgnsw.org.au](mailto:lgnsw@lgnsw.org.au)

Website: [www.lgnsw.org.au](http://www.lgnsw.org.au)

**NSW Ombudsman**

Phone: 02 9286 1000

Toll free (outside Sydney metro): 1800 451 524

Email: [nswombo@ombo.nsw.gov.au](mailto:nswombo@ombo.nsw.gov.au)

Website: [www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au)

**Training providers (non-exhaustive)**

**TAFE NSW**

Phone: 131 601

Website: [www.tafensw.edu.au](http://www.tafensw.edu.au)

**Housing Industry Association (HIA)**

Phone: 02 9978 3333

Website: [www.hia.com.au/](http://www.hia.com.au/)

**Local Government Training Institute**

Phone: 02 4922 2333

Website: [www.lgti.com.au](http://www.lgti.com.au)

**Master Builders Association (MBA)**

Phone: 02 8586 3521

Website: [www.masterbuilders.com.au](http://www.masterbuilders.com.au)

**SafeWork NSW**

SafeWork NSW Information Centre Phone: 13 10 50

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

Website: [www.safework.nsw.gov.au](http://www.safework.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.

Council's Resource Recovery Centre (RRC) accepts asbestos waste under certain circumstances. Information relating to the RRC and asbestos waste, disposal, rejection and clean-up fees, and contact details are available on Council's [website](#). Please contact the RRC prior to transporting any asbestos waste to ensure the load will be accepted.

### 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: Facilities that accept household asbestos.

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 no. WC03841)
- *Contaminated Land Management Act 1997*
- *Code of practice on how to manage and control asbestos in the workplace*, available from SafeWork NSW
- *Code of practice on how to safely remove asbestos*, available from SafeWork NSW
- *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*
- *Work Health and Safety Act 2011*
- *Work Health and Safety Regulation 2017*
- *Workers' Compensation (Dust Diseases) Act 1942*

### Other information

- *Asbestos in soil and aggregate Position Paper* (SafeWork NSW).
- *Naturally occurring Asbestos Fact Sheet* (SafeWork NSW)
- *Management of asbestos, recycled construction and demolition works* (SafeWork NSW)



## Appendix H – Agencies roles and responsibilities

### NSW organisations

#### New South Wales Department of Planning, Industry and Environment (DPIE)

The DPIE's 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 regulations).

Whilst the DPIE 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 (i.e. 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 Geological Survey of NSW teams of field geologists, geophysicists, mineral geoscientists and palaeontologists and geospatial specialists produce a range of maps. Geological mapping records the distribution of rock types and location of structures at or near the Earth's surface. The maps have applications to land use assessment, engineering construction, environmental management and natural hazard risk assessment.

The Geological Survey of NSW prepared the state-wide mapping of naturally occurring asbestos (NOA) in NSW for the Heads of Asbestos Coordination Authorities.

#### Workers' Compensation (Dust Diseases) Authority also known as iCare dust disease care

The Dust Diseases Authority 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 DDA'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.





#### **NSW Environment Protection Authority (EPA)**

The 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*. Clauses 77 to 81 of the *Protection of the Environment Operations (Waste) Regulation 2014* set out the special requirements relating to the transportation and disposal of asbestos waste.

The 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 Maritime Services 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.

The 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 SafeWork NSW with senior officials from:

- Department of Planning, Industry and Environment
- Dust Diseases Authority iCare
- NSW Environment Protection Authority
- Local Government NSW
- Ministry of Health
- Resilience NSW
- Office of Local Government.

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.safework.nsw.gov.au](http://www.safework.nsw.gov.au).

#### **Local Government NSW (LGNSW)**

LGNSW is the peak body for local councils in NSW. LGNSW represents all NSW general-purpose councils, special-purpose county councils and the NSW Aboriginal Land Council.

LGNSW is a credible, professional organisation facilitating the development of an effective community-based system of local government in NSW. LGNSW represents the views of councils to the State and Federal



Governments, provides industrial relations and specialist services to councils and promotes NSW councils to the community.

In 2012, LGNSW commenced a project funded by SafeWork NSW to assist councils to adopt and implement a model asbestos policy. The project is outlined at: [www.lgnsw.org.au](http://www.lgnsw.org.au).

#### **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. 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.

#### **NSW Fair Trading and the Building Professionals Board (BPB)**

NSW Fair Trading safeguards the rights of all consumers and advises business and traders on fair and ethical practice. NSW Fair Trading provides services directly to individuals and businesses to create a fair, safe and equitable marketplace.

NSW Fair Trading is establishing a Loose-Fill Asbestos Implementation Taskforce responsible for overseeing and implementing the NSW Government Voluntary Purchase and Demolition Program for properties containing loose-fill asbestos insulation. The Loose-Fill Asbestos Implementation Taskforce will be in place until work is completed on the purchase and demolition of all properties that choose to participate in the Program.

NSW Fair Trading providing practical advice and educational programs to assist certifying authorities (private and council) in carrying out their role and certifies and audits both private and council certifiers.

#### **Office of Local Government**

The Office of Local Government is responsible for local government across NSW. The Office's organisational purpose is to 'Strengthen Local Government' and its organisational outcome is 'Fit for the future councils leading strong communities'.

The Office has a policy, legislative, investigative and program focus in matters ranging from local government finance, infrastructure, governance, performance, collaboration and community engagement. The Office strives to work collaboratively with the local government sector and is the key adviser to the State Government on local government matters.

#### **SafeWork 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:

### National organisations

#### Asbestos Safety and Eradication Agency

The Asbestos Safety and Eradication Agency was established in 2013 to provide a national focus on asbestos issues which go beyond workplace safety to encompass environmental and public health issues. The Agency's objective is to eliminate asbestos-related disease in Australia.

The Agency has broad functions under its legislation, including:

- reporting on the implementation of the National Strategic Plan on Asbestos Awareness and Management (NSP); reviewing and amending the NSP as required and promoting the NSP
- providing advice to the Minister about asbestos safety
- liaising with all levels of government, agencies or bodies about the implementation of the NSP; as well as asbestos safety in general; and
- commissioning, monitoring and promoting research about asbestos safety.

The Agency administers the National Asbestos Exposure Register which was created to record the details of members of the community who may have been exposed to asbestos. Registration forms are online at [www.asbestossafety.gov.au/national-asbestos-exposure-register](http://www.asbestossafety.gov.au/national-asbestos-exposure-register).

The Agency also maintains a national database for asbestos disposal facilities, which members of the public can search to identify their nearest facility that accepts asbestos waste, available online at [www.asbestossafety.gov.au/search-disposal-facilities](http://www.asbestossafety.gov.au/search-disposal-facilities)

Councils interested in finding out more about the agency, updating information listed on the disposal database, or receiving information, flyers or brochures for distribution within the LGA should contact the agency at [enquiries@asbestossafety.gov.au](mailto:enquiries@asbestossafety.gov.au).

#### 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](http://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](http://www.health.gov.au/internet/main/publishing.nsf/content/ohp-environ-enhealth-committee.htm)

#### **SafeWork Australia**

SafeWork 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@swa.gov.au](mailto:info@swa.gov.au)

Website: [www.safeworkaustralia.gov.au](http://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.

### Emergency management

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

### Naturally occurring asbestos



## 12.3 Update of the Asbestos Management Policy

### ATTACHMENT 2 Asbestos Guide



Scenario	Lead organisation	Other regulators
Naturally occurring but will be disturbed due to a work process including remediation work	SafeWork NSW	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	NSW Department of Planning, Industry and Environment	Local council  EPA ( <i>Protection of the Environment Operations Act 1997</i> , 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 (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	NSW Department of Planning, Industry and Environment  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"> <li>• identification</li> <li>• in situ management</li> <li>• removal requirements</li> <li>• disposal requirements</li> </ul>	Local council  Private Certifiers	SafeWork NSW  EPA

12.3 Update of the Asbestos Management Policy  
ATTACHMENT 2 Asbestos Guide



Site contaminated due to past uses	Local council	SafeWork NSW EPA
Licensed removal work required	SafeWork 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)	N/A
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, planning certificate and development application process)
Waste going to landfill site	EPA (advice)	Local council (if managing licensed landfill)
Waste to be transported interstate	EPA	N/A
Waste for export	Department of Home Affairs	SafeWork NSW Department of Education, Skills and Employment

### Workplaces

Scenario	Lead organisation	Other regulators
Asbestos installed/supplied after 2003 (illegally)	SafeWork NSW	N/A
Risks to the health of workers	SafeWork NSW	N/A
Asbestos management and asbestos going to be removed	SafeWork NSW NSW Department of Planning, Industry and Environment (mine sites)	N/A
Risks to the health of the public from worksites	SafeWork NSW (Risks to workers) Local council (Risks to the wider public) Department of Planning, Industry and Environment ( <i>Environmental Planning and Assessment Act</i> 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 'fribrolite' from 1917
Cement roofing / lining slates	Imported goods supplied from 1903 Locally made 'fribrolite' from 1917
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 asbestos	Available up until 1960s
Asbestos containing paper backing for linoleum	Available up until 1960s
'Durasbestos' asbestos cement products	Available up until 1960s
'Tilex' marbled decorative wall panels	Available from early 1960s
'Tilex' weave pattern decorative wall panels	Available from early 1960s
'Hardiflex' sheeting	Available from 1960s – 1981
'Versilux' building board	Available from 1960s – 1982
'Hardiplank' and 'Hardigrain' woodgrain sheeting	Available from mid 1970s – 1981
Loose-fill, fluffy asbestos ceiling insulation	During the 1960s and 1970s, pure loose-fill asbestos was sold as ceiling insulation for residential and commercial premises. A Canberra-based company known as 'Mr Fluffy' installed insulation in at least 1,000 homes in the ACT and is also understood to have installed insulation into homes in NSW.

### 12.3 Update of the Asbestos Management Policy

#### ATTACHMENT 2 Asbestos Guide



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

#### Sources:

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

NSW Taskforce Report: *Loose-Fill Asbestos Insulation in NSW Homes* (2015) <https://www.asbestossafety.gov.au> (accessed October, 2015).

#### 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

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), [www2.health.vic.gov.au/public-health/environmental-health/environmental-health-in-the-home/asbestos-in-the-home](http://www2.health.vic.gov.au/public-health/environmental-health/environmental-health-in-the-home/asbestos-in-the-home).



## 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"> <li>any amount of friable asbestos or asbestos containing material</li> <li>any amount of asbestos containing dust</li> <li>any amount of non-friable asbestos or asbestos containing material.</li> </ul>
Class B	<p>Can remove:</p> <ul style="list-style-type: none"> <li>any amount of non-friable asbestos or asbestos containing material  <b>Note:</b> A Class B licence is required for removal of more than 10 m<sup>2</sup> of non-friable asbestos or asbestos containing material but the licence holder can also remove up to 10m<sup>2</sup> of non-friable asbestos or asbestos containing material.</li> <li>asbestos containing dust associated with the removal of non-friable asbestos or asbestos containing material.  <b>Note:</b> A Class B licence is required for removal of asbestos containing dust associated with the removal of more than 10 m<sup>2</sup> of non-friable asbestos or asbestos containing material but the licence holder can also remove asbestos containing dust associated with removal of up to 10m<sup>2</sup> of non-friable asbestos or asbestos containing material.</li> </ul>
No licence required	<p>Can remove:</p> <ul style="list-style-type: none"> <li>up to 10m<sup>2</sup> of non-friable asbestos or asbestos containing material</li> <li>asbestos containing dust that is:               <ul style="list-style-type: none"> <li>associated with the removal of less than 10 m<sup>2</sup> of non-friable asbestos or asbestos containing material</li> <li>not associated with the removal of friable or non-friable asbestos and is only a minor contamination.</li> </ul> </li> </ul>

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



## Appendix L – Map

A map of naturally occurring asbestos is found on the [SafeWork website](#).

## 12.4 2021 National General Assembly of Local Government

Reference:	203/1, 200, 202
Report Author:	PA for Mayor
Authoriser:	Group Manager Corporate and Community
Link to Community	
Strategic Plan:	An enhanced culture of positive leadership, accountability and ethical governance that guides well informed decisions to advance agreed community priorities

### PURPOSE

The purpose of this report is to seek authorisation for attendance at the 2021 National General Assembly (NGA) of Local Government to be held at the National Convention Centre in Canberra between 20 – 23 June 2021.

In addition, any proposed motions for the NGA prepared by Council's Interim Administrator, Mr Viv May PSM, will be tabled at the 24 March 2021 Ordinary Council Meeting, prior to forwarding them to the Australian Local Government Association Board by Friday 26 March 2021.

### RECOMMENDATION

1. **THAT Council authorise the attendance at the 2021 National General Assembly of Local Government to be held from 20 to 23 June 2021 in Canberra as follows:**
  - a. Interim Administrator or the Mayor, depending on the duration of the Suspension Order issued to Wingecarribee Shire Council
  - b. General Manager (or delegate).
2. **THAT any proposed motions from Council for the 2021 National General Assembly of Local Government be tabled by the Interim Administrator and endorsed by Council at the 24 March 2021 Ordinary Council Meeting, prior to forwarding them to the Australian Local Government Association Board by 26 March 2021.**

### REPORT

#### **BACKGROUND**

Council has previously resolved that "the Mayor of the day and one (1) other Councillor and the General Manager or delegate (as an observer) attend future National General Assemblies" (see MN 26/09).

Subsequently, on 12 March 2021 the Minister for Local Government, The Hon. Shelley Elizabeth Hancock MP ('the Minister'), issued a Suspension Order to Wingecarribee Shire Council by way of an order published in the Government Gazette under section 438I of the *Local Government Act 1993* ('the Act').

Under section 438M of the Act, the Suspension Order issued by the Minister also appointed Mr Viv May PSM as interim administrator of Council for the period during which Council is suspended by the Order. During the period of this appointment, Mr Viv May PSM has the following functions of Council:

## AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 24 March 2021

### REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY AND DEVELOPMENT SERVICES



- To perform the role and function of the governing body of Council under the Act and any other Act.
- To exercise the role of the governing body and councillors identified in sections 223, 232 and 226 of the Act.

### **REPORT**

The 2021 NGA is to be held in Canberra from 20 to 23 June 2021 and a determination is required on who will be attending the Assembly.

Any proposed motions for the NGA prepared by Council's Interim Administrator, Mr Viv May PSM, are required to be tabled and endorsed at the 24 March 2021 Ordinary Council Meeting, prior to forwarding them to the Australian Local Government Association Board by Friday 26 March 2021.

A discussion paper has been prepared by ALGA to provide guidance to Council for the development of motions for debate. The paper provides an overview of policy areas which are being developed by ALGA and require consideration. Councils are encouraged by ALGA to submit motions on these policy areas.

To be eligible for inclusion in the NGA Business Papers, and subsequent debate on the floors of the NGA, motions must meet the following criteria:

1. Be relevant to the work of local government nationally;
2. Not be focussed on a specific location or region – unless the project has national implications. Councils will be asked to justify why its motion has strategic national importance and should be discussed at a national conference;
3. Be consistent with the themes of the NGA;
4. Complement or build on the policy objectives of its state and territory local government association;
5. Be submitted by a council which is a financial member of its state or territory local government association;
6. Propose a clear action and outcome ie: call on the Australian Government to do something;
7. Be a new motion that has not already been debated at an NGA in the preceding two years; and
8. Not be advanced on behalf of external third parties that may seek to use the NGA to apply pressure to Board members, or to gain national political exposure for positions that are not directly relevant to the work, of or in the national interests of, local government.

### **COUNCIL BUDGET IMPLICATIONS**

Council's 2020/2021 Budget makes provision for attendance at state and national local government forums

### **.ATTACHMENTS**

There are no attachments to this report.

## 12.5 Amendment to Code of Meeting Practice and Committee Structure

Reference:	100/3
Report Author:	Group Manager Corporate and Community
Authoriser:	Deputy General Manager Corporate, Strategy and Development Services
Link to Community Strategic Plan:	An enhanced culture of positive leadership, accountability and ethical governance that guides well informed decisions to advance agreed community priorities

### PURPOSE

The purpose of this report is to amend Council's:

- Code of Meeting Practice to alter Council meeting frequency from twice monthly to once monthly.
- Committee structure be amended to dissolve Council Finance Committee and that business previously considered by the Finance Committee will be considered at the Ordinary Meetings of Council.

### RECOMMENDATION

1. **THAT** Council's Code of Meeting Practice be amended from two Ordinary meetings of the Council a month to one Ordinary Meeting of the Council a month **AND THAT** Ordinary meeting of the Council be held on the second Wednesday of the month, except of January when no meeting will be held
2. **THAT** Council meetings for the remainder of the 2021 calendar year be held as follows:
  - 14 April 2021
  - 12 May 2021
  - 9 June 2021
  - 14 July 2021
  - 11 August 2021
  - 13 October 2021
  - 10 November 2021
  - 8 December 2021
3. **THAT** Council's Finance Committee be dissolved effective immediately and business previously considered at the Finance Committee now be considered at the Ordinary meeting of the Council **AND THAT** Council's Committee Structure and Committee Manual be amended to remove the dissolved Finance Committee.



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## **REPORT**

### **BACKGROUND**

#### **Code of Meeting Practice**

Council's Code of Meeting Practice (Meeting Code) was adopted on 12 June 2019 (MN 271/19). It was developed based on the Model Code of Meeting Practice for Local Councils in NSW (Model Meeting Code), prescribed under section 360(1) of the *Local Government Act 1993* (the Act) and clause 232 of the *Local Government (General) Regulation 2005* (the Regulation). The Model Meeting Code sets out mandatory provisions that a council must include in its code of meeting practice, as well as several non-mandatory provisions that a council may, but is not required to include.

#### **Committee Structure and Committee Manual 2016-2021**

Council last adopted its Committee Structure and Committee Manual 2016-2021 (the Manual) on 10 June 2020. The Manual provides the governance framework for Committees and the terms of reference for each Committee. Since 2016 Council's committee structure has included Council committees, advisory committees, community reference groups, sunset working groups and external committees.

## **REPORT**

#### **Code of Meeting Practice**

Council's Code of Meeting Practice, clause 3.1 specifies the timing of Ordinary meeting of the Council, this includes meeting frequency, time, date and place of its ordinary meetings. The adopted Code of Meeting Practice stipulates:

*"Ordinary meetings of the Council will be held on the on the second and fourth Wednesdays of each month between February and November, and on the second Wednesday of December. No meetings shall be held in January. Meetings will commence at 3.30 pm."*

With the establishment of a Local Planning Panel which will deal with development applications on behalf of Council and provide advice on other planning matters, including planning proposals, it is proposed the frequency of Ordinary meetings of Council be amended. Previously Council meeting agendas have included numerous reports on development applications and planning advice matters as such it is considered appropriate that Ordinary Meetings of Council be held monthly rather than twice monthly. Reducing the frequency of Ordinary Meetings of Council will not impact on the business of Council being considered in a timely and efficient manner.

Section 362(2) of the Local Government Act 1993 states:

*"If the council decides to amend its draft code, it may publicly exhibit the amended draft in accordance with this Division or, if the council is of the opinion that the amendments are not substantial, it may adopt the amended draft code without public exhibition as its code of meeting practice."*

Given that a Local Planning Panel is being established to deal with development applications and other planning advice matters, the amendment to the Code of Meeting Practice is not considered significant and as such is not recommended that the amended Code be placed on exhibition.

## **Committee Structure and Committee Manual**

Council's Finance Committee provides:

*'advice to Council on financial matters affecting the organisation. The Committee will also ensure that Council funds are allocated prudently, sustainably and in line with Council's Integrated Planning and Reporting Framework'.*

The Finance Committee is a 'committee of the whole' for procedural improvement and taking into consideration the new monthly meeting schedule is proposed that the Committee be disbanded.

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## **COMMUNICATION AND CONSULTATION**

### **Community Engagement**

Nil

### **Internal Communication and Consultation**

Executive

### **External Communication and Consultation**

Nil

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## **SUSTAINABILITY ASSESSMENT**

- **Environment**

There are no environmental issues in relation to this report.

- **Social**

There are no social issues in relation to this report.

- **Broader Economic Implications**

There are no broader economic implications in relation to this report.

- **Culture**

There are no cultural issues in relation to this report.

- **Governance**

Council must ensure that its Meeting Code complies with the Act and the Regulation by incorporating the mandatory provisions of the Model Meeting Code. Changing the frequency of meetings from twice a month to once a month is consistent with these mandatory provisions.

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## **COUNCIL BUDGET IMPLICATIONS**

There are no budget implications as a result of this report.

## AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 24 March 2021

### REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY AND DEVELOPMENT SERVICES



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#### RELATED COUNCIL POLICY

Nil

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#### OPTIONS

1. **THAT** Council's Code of Meeting Practice be amended from two Ordinary meetings of the Council a month to one Ordinary Meeting of the Council a month **AND THAT** Ordinary meeting of the Council be held on second Wednesday of the month, except for January when no meeting will be held.
2. **THAT** Council meetings for the remainder of the 2021 calendar year be held as follows:
  - 14 April 2021
  - 12 May 2021
  - 9 June 2021
  - 14 July 2021
  - 11 August 2021
  - 13 October 2021
  - 10 November 2021
  - 8 December 2021
3. **THAT** Council's Finance Committee be dissolved effective immediately and business previously considered at the Finance Committee now be considered at the Ordinary meeting of the Council **AND THAT** Council's Committee Structure and Committee Manual be amended to remove the dissolved Finance Committee.

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#### ATTACHMENTS

There are no attachments to this report.

## 12.6 Amendment to Payment of Expenses and Facilities for the Mayor and Councillors Policy

Reference:	101/6
Report Author:	Group Manager Corporate and Community
Authoriser:	Deputy General Manager Corporate, Strategy and Development Services
Link to Community Strategic Plan:	An enhanced culture of positive leadership, accountability and ethical governance that guides well informed decisions to advance agreed community priorities

### PURPOSE

The purpose of this report is to extend the Payment of Expenses and Facilities for the Mayor and Councillors Policy (the Policy) to the Interim Administrator and amend the Policy to include the provision for a car for the Mayor or Administrator.

### RECOMMENDATION

**THAT the amended Payment of Expenses and Facilities for the Mayor and Councillors Policy be placed on public exhibition for a period of 28 days.**

### REPORT

#### **BACKGROUND**

Council adopted its Payment of Expenses and Provision of Facilities for the Mayor and Councillors Policy in August 2017. The Policy was prepared in accordance with the *Local Government Act 1993* (the Act), *Local Government (General) Regulation 2005*, 2009 Guidelines for the Payment of Expenses and the Provision of Facilities for Mayors and Councillors in NSW and the 2017 Better Practice template provided by the Office of Local Government.

The policy enables the reasonable and appropriate reimbursement of expenses and provision of facilities to Councillors to help them undertake their civic duties and ensures accountability and transparency. The Policy also seeks to align Councillor expenses and facilities with community expectations.

#### **REPORT**

On 12 March 2021, the Minister for Local Government, The Hon. Shelley Hancock, MP (the Minister) suspended Wingecarribee Shire Council and appointed Mr Viv May (PSM) as Interim Administrator for a period of three (3) months.

In accordance with the Order issued by the Minister, the Interim Administrator has the following functions:

- Performance the role and function of the governing body of the Council under the Act and any other Act.
- Exercise the role of the governing body and councillors identified in sections 223, 232 and 226 of the Act.

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As the Interim Administrator is performing the role of the Mayor and the Councillors, it is appropriate that the Payment of Expenses and Provision of Facilities for the Mayor and Councillors Policy be extended to the Interim Administrator.

It is proposed that the Policy be amended to include the provision of a council vehicle and fuel card for the Mayor or Interim Administrator. The provision of a motor vehicle for the Mayor or Interim Administrator is consistent with the guidelines issued by the OLG which include as follows:

*Provision of a motor vehicle Generally, a fully serviced and maintained vehicle, including a fuel card, should be provided for the sole use of the mayor. The type of motor vehicle and all conditions of use should be specified in the policy.*

*Councillors, including the mayor, should only obtain incidental private benefit from the provision of a motor vehicle for official use unless the policy specifically provides for private use and has a mechanism in place for a payment to be made for that private use. This mechanism should be outlined in a council's expenses and facilities policy.*

It is recommended that the following provisions from the Better Practice Template provided by the OLG be incorporated into section 9 'Additional facilities for the Mayor' of Council's Policy:

*Council will provide to the mayor a maintained vehicle to a similar standard of other council vehicles, with a fuel card. The vehicle will be supplied for use on business, professional development and attendance at the mayor's office.*

*The mayor must keep a log book setting out the date, distance and purpose of all travel. This must include any travel for private benefit. The log book must be submitted to council on a monthly basis.*

*The mayoral allowance will be reduced to cover the cost of any private travel recorded in the log book, calculated on a per kilometre basis by the rate set by the Local Government (State) Award.*

*A parking space at council's offices will be reserved for the mayor's council-issued vehicle for use on official business, professional development and attendance at the mayor's office.*

In addition, it is proposed that a new section be included in the Policy titled "Interim Administrator Expenses" which states that reasonable cost of accommodation be covered for the Interim Administrator while appointed by the Minister for Local Government in accordance with section 438M of the Act.

Section 253(1) of the Act requires that:

*'A council must give public notice of its intention to adopt or amend a policy for the payment of expenses or provision of facilities allowing at least 28 days for the making of public submissions.'*

As such it is proposed that amended Policy be placed on public exhibition for 28 days and any submissions be considered and reported back to Council.



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## **COMMUNICATION AND CONSULTATION**

### **Community Engagement**

Section 253(1) requires that must give public notice of its intention to adopt or amend a policy for the payment of expenses or provision of facilities allowing at least 28 days for the making of public submissions.

### **Internal Communication and Consultation**

Nil

### **External Communication and Consultation**

Notice of the public exhibition period will be provided on Council's website.

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## **SUSTAINABILITY ASSESSMENT**

- **Environment**

There are no environmental issues in relation to this report.

- **Social**

There are no social issues in relation to this report.

- **Broader Economic Implications**

There are no broader economic implications in relation to this report.

- **Culture**

There are no cultural issues in relation to this report.

- **Governance**

Section 253(1) of the Act requires that must give public notice of its intention to adopt or amend a policy for the payment of expenses or provision of facilities allowing at least 28 days for the making of public submissions.

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## **COUNCIL BUDGET IMPLICATIONS**

Changes to the Payment of Expenses and Facilities for the Mayor and Councillors Policy will be considered and included at the next quarterly review of the 2020/21 budget and also taken into consideration in the development of the 2021/22 Budget and four-year forward estimates.

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## **RELATED COUNCIL POLICY**

Nil

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## **OPTIONS**

The option available to Council is to endorse the draft Payment of Expenses and Facilities for the Mayor and Councillors Policy for 28 day public exhibition period. This would enable

## **AGENDA FOR THE ORDINARY MEETING OF COUNCIL**

Wednesday 24 March 2021

### **REPORT DEPUTY GENERAL MANAGER CORPORATE, STRATEGY AND DEVELOPMENT SERVICES**



Council to meet its legislative requirements while also ensuring that Council has sufficient time to consider community feedback prior to the final adoption of the Policy.

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#### **ATTACHMENTS**

There are no attachments to this report.

Mark Pepping

**Deputy General Manager Corporate, Strategy and Development Services**

Thursday 18 March 2021

## 13 GENERAL MANAGER

### 13.1 Legal Report

Reference:	107/22
Report Author:	General Counsel
Authoriser:	Group Manager Corporate and Community
Link to Community Strategic Plan:	An enhanced culture of positive leadership, accountability and ethical governance that guides well informed decisions to advance agreed community priorities

#### PURPOSE

The purpose of this report is to update Council on the status of legal proceedings reported at the ordinary meeting of Council on 24 February 2021.

#### RECOMMENDATION

1. **THAT** the information relating to ongoing legal costs in Attachment 1 to the report be noted.
2. **THAT** the status of the legal proceedings involving Council be considered in Closed Council – Item 19.1.

*This report is confidential in accordance with section 10A(2) of the Local Government Act 1993, under section 10A(2)(g) as it contains advice concerning litigation, or advice as comprises a discussion of this matter, that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.*

**Note:** The Council, or a committee of the Council, may allow member of the public to make representations to or at a meeting, before any part of the meeting is closed to the public, as to whether that part of the meeting should be closed (15.9 – Code of Meeting Practice).

*Where the matter has been identified in the agenda of the meeting under clauses 3.21 as a matter that is likely to be considered when the meeting is closed to the public, in order to make representations under clause 15.9, members of the public must first make an application to the Council in the approved form. Applications must be received by close of business (4.30pm) two (2) business days prior to the meeting at which the matter is to be considered (15.11 – Code of Meeting Practice).*

#### REPORT

##### **BACKGROUND**

This report updates the current status and costs paid in February 2021 for legal proceedings involving Council in the Land and Environment Court, including those matters completed since the last report to Council.

## AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 24 March 2021

### REPORT GENERAL MANAGER



## **REPORT**

On 17 April 2013, Council resolved: ***THAT** the legal costs as detailed in the Legal Affairs Report be made public in the Business Paper on an ongoing basis.*

The report on the status of legal affairs involving Council contains information and advice that is privileged on the grounds of legal professional privilege and contains information that, if disclosed, could confer a commercial advantage on parties with whom Council is conducting business (including opposing parties in litigation). Therefore, it is recommended that the report be considered by Council in Closed Committee pursuant to section 10A(2)(g) of the *Local Government Act 1993*.

For the purpose of preserving privacy, some matters in **Attachment 1** may be described in general terms. **If a Councillor has a specific enquiry regarding the costs reported, they should raise it in Closed Council.**

### **Consultants' Fees**

At the Council meeting on 8 March 2017, Council resolved that the Legal Affairs Report include a separate column for fees paid to consultants in legal proceedings. Consultants are engaged in all cases concerning development consents in the Land and Environment Court as the Court requires the parties to provide expert evidence to assist in the determination of the issues in the case.

These consultants prepare reports for the Court and give evidence if the matter goes to hearing on such matters as site density, building layout, traffic, drainage, noise, light and any other relevant issue.

The consultants are always engaged by the external law firm acting for Council.

Usually, their fees are paid by the law firm and recouped from Council through an invoice from the law firm. In that case, the consultants' fees have been included in the monthly Legal Costs report to Council.

There were consultants' fees for legal proceedings paid in February 2021 – refer to **Attachment 1**.

## **COMMUNICATION AND CONSULTATION**

### **Community Engagement**

Nil

### **Internal Communication and Consultation**

Staff and management provide information, as required, to assist the progress of the matters reported.

### **External Communication and Consultation**

Solicitors from Council's Legal Panel provide advice and conduct legal proceedings on Council's behalf.

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## **SUSTAINABILITY ASSESSMENT**

- **Environment**

There are no environmental issues in relation to this report. However, some legal proceedings may deal with unauthorised works or activities which have had or could have an environmental impact.

- **Social**

There are no social issues in relation to this report.

- **Broader Economic Implications**

There are no broader economic implications in relation to this report.

- **Culture**

There are no cultural issues in relation to this report.

- **Governance**

There is a strong community expectation in relation to enforcement and compliance actions by Council. Actions taken are in line with Council's Compliance and Enforcement Policy.

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## **RELATED COUNCIL POLICY**

Council's Compliance and Enforcement Policy.

## **ATTACHMENTS**

1. Legal Costs February 2021





Fees Recovered - February 2021

Attachment 1

Legal Matter	Legal Expenditure	Consultant Expenditure	Legal Expenditure	Consultant Expenditure	Total Expenditure
	Feb-21	Feb-21	Year to Date (YTD)	Year to Date (YTD)	Life to Date (LTD)
Kieran Thomas Zube Cordeaux Street Willow Vale		-	\$2,960	-	\$2,960
Feldkirchen	-	-	\$3,570	-	\$3,570
Old Hume Highway Mittagong		-	\$6,072	-	\$6,072
Jenny Stock		-		-	
Greenhills Road Werai		-	\$41,811	-	\$90,513
Mittagong Central Developments Station Street Mittagong		-	\$115,420	-	\$160,951
Lasovase		-		-	
Myra Vale Road Wildes Meadow		-	\$2,305	-	\$74,574
Reulie Land Co Pty Ltd at Myra Vale Rd, Wildes Meadow		-		-	
ERF Hospice	-	-	\$69,642	-	\$139,535
Edward Street Bowral			\$18,916	-	\$35,852
Bowral Garage Development	-			-	
Bong Bong Street Bowral		-	\$7,781	-	\$21,009
Woodbine Park Nominees		-		-	
Wombeyan Caves Road High Range				-	
Total Expenditure	\$0	\$0	\$268,477	\$0	\$535,036

Note: This report includes proceedings where legal and/or consultancy costs have been incurred in the 2020/21 Financial Year. It is important to note that the figure reported to the Finance Committee on a quarterly basis is projected expenditure for the entire financial year. The figure reported to the Finance Committee also includes non-development related legal expenditure.

Fees Recovered – February 2021

Legal Matter	Fees Recovered Feb-21	Fees Recovered YTD	Fees Recovered LTD
O'Shanassy	\$ 750.00	\$4,964	\$24,442
Garry Turland	-	\$20,000	\$25,000
Michael Brown Planning	\$ 80,000	\$148,500	\$148,500
Total Recovery	\$80,750	\$173,464	\$197,942

Notes:  
O'Shanassy - \$93,500 penalty (OSR recovery) plus Council has been awarded by the Supreme Court of NSW a costs order of \$379,000 plus \$4,999.23 being Council's costs in order to undertake the costs assessment.

## 13.2 Resignation of Councillor Garry Turland

Reference:	101
Report Author:	Coordinator Corporate Strategy and Governance
Authoriser:	Group Manager Corporate and Community
Link to Community Strategic Plan:	An enhanced culture of positive leadership, accountability and ethical governance that guides well informed decisions to advance agreed community priorities

### PURPOSE

The purpose of this report is to acknowledge the resignation of Councillor Garry Turland and thank him for his contributions to the Wingecarribee Shire since being elected as Councillor in 2012 and again in 2016.

### RECOMMENDATION

**THAT Council acknowledge the resignation of Councillor Garry Turland on 12 March 2021 and thank him for his contributions to the Wingecarribee Shire since being elected as a Councillor in 2012 and again in 2016.**

### REPORT

On 12 March 2021 at 1.51pm, Councillor Garry Turland tendered his resignation from the position of Councillor, effective immediately.

Councillor Turland is thanked for his contributions to the Wingecarribee Shire since being elected as a Councillor in 2012 and again in 2016, including serving as Deputy Mayor from September 2018 to September 2020.

### ATTACHMENTS

There are no attachments to this report.

John Burgess  
**Acting General Manager**  
Thursday 18 March 2021

## 18 NOTICES OF MOTION

### 18.1 Notice of Motion 2/2021 Recruitment of General Manager

Reference:	100/4
Report Author:	Administration Officer (Meetings)
Authoriser:	Group Manager Corporate and Community
Link to Community	
Strategic Plan:	An enhanced culture of positive leadership, accountability and ethical governance that guides well informed decisions to advance agreed community priorities

#### PURPOSE

Councillor Scandrett has given notice that it is his intention to move the following motion at the Ordinary Meeting of Council on 24 March 2021:

**THIS ITEM WAS MOVED FROM 24 FEBRUARY 2021 MEETING**

**THIS ITEM WAS MOVED FROM 10 MARCH 2021 MEETING**

#### RECOMMENDATION

**Submitted for determination.**

THAT the recruitment process for the new General Manager be suspended so as to be business for the new Council which is to be elected on September 4.

## **18.2 Notice of Motion 3/2021 Traffic and Parking Study Funston Street, Bowral**

Reference:	100/4
Report Author:	Administration Officer (Meetings)
Authoriser:	Group Manager Corporate and Community
Link to Community	
Strategic Plan:	An enhanced culture of positive leadership, accountability and ethical governance that guides well informed decisions to advance agreed community priorities

### **PURPOSE**

Councillor Scandrett has given notice that it is his intention to move the following motion at the Ordinary Meeting of Council on 24 March 2021:

**THIS ITEM WAS MOVED FROM 24 FEBRUARY 2021 MEETING**

**THIS ITEM WAS MOVED FROM 10 MARCH 2021 MEETING**

### **RECOMMENDATION**

**Submitted for determination.**

THAT Council accept the offer by the applicant to conduct a traffic and parking study into Funston Street and surrounding streets to be funded by the applicant, such study to be promptly reported to Council.

### 18.3 Notice of Motion 4/2021 Mittagong Playhouse and Bowral Memorial Hall Projects Community and Stakeholder Meeting

Reference:	100/4
Report Author:	Administration Officer (Meetings)
Authoriser:	Group Manager Corporate and Community
Link to Community Strategic Plan:	An enhanced culture of positive leadership, accountability and ethical governance that guides well informed decisions to advance agreed community priorities

#### PURPOSE

Councillor Turland has given notice that it is his intention to move the following motion at the Ordinary Meeting of Council on 24 March 2021:

**THIS ITEM WAS MOVED FROM 24 FEBRUARY 2021 MEETING**

**THIS ITEM WAS MOVED FROM 10 MARCH 2021 MEETING**

#### RECOMMENDATION

**Submitted for determination.**

THAT Council hold a community and stake holders meeting on the Mittagong Playhouse and the Bowral Memorial Hall Projects;

- The meeting is to be held on site with councillors, council staff, the architect, the community and stakeholders;
- The meeting is to be after working hours;
- The purpose is to engage with all users groups and to address their concerns re. the redevelopment of the Hall for the best use and budget.



## 19. CLOSED COUNCIL

### MOVING INTO CLOSED SESSION

Section 10A of the *Local Government Act 1993*, empowers Council and Committees of which all the members are Councillors to close a part of a meeting in certain circumstances in accordance with the requirements of the Act, and relevant Regulations and Guidelines.

Subject to the provisions of Section 10 of the Act, so much of a meeting may be closed as comprises certain information as outlined in Section 10A(2).

However, the Act also contains the following provisions qualifying the use of Section 10A(2).

#### Section 10B

1. *[Time spent closed to be minimised]* A meeting is not to remain closed during the discussion of anything referred to in section 10A(2):
  - a. Except for so much of the discussion as is necessary to preserve the relevant confidentiality, privilege or security, and
  - b. If the matter concerned is a matter other than a personnel matter concerning particular individuals, the personal hardship of a resident or ratepayer or a trade secret unless the council or committee concerned is satisfied that discussion of the matter in an open meeting would, on balance, be contrary to the public interest.
2. *[Qualification of 10A(2)(g)]* A meeting is not to be closed during the receipt and consideration of information or advice referred to in section 10A(2)(g) unless the advice concerns legal matters that:
  - a. are substantial issues relating to a matter in which the council or committee is involved, and
  - b. are clearly identified in the advice, and
  - d. are fully discussed in that advice.
3. *[Qualification of 10A(3)]* If a meeting is closed during the discussion of a motion to close another part of the meeting to the public (as referred to in section 10A(3)), the consideration of the motion must not include any consideration of the matter or information to be discussed in that other part of the meeting (other than consideration of whether the matter concerned is a matter referred to in section 10A(2)).
4. *[Irrelevant matters]* For the purpose of determining whether the discussion of a matter in an open meeting would be contrary to the public interest, it is irrelevant that:
  - a. a person may misinterpret or misunderstand the discussion, or
  - b. the discussion of the matter may:
    - (i) cause embarrassment to the council or committee concerned, or to Councillors or to employees of the council, or
    - (ii) cause a loss of confidence in the council or committee.

Attention is also drawn to provisions contained in Part 15 of Council's Code of Meeting Practice.

Section 10B(5) of the Act requires that council have regard to these guidelines when considering resolving into Closed Session.

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## RECOMMENDATION

1. **THAT** Council moves into Closed Council in accordance with the requirements of Section 10A(2) of the *Local Government Act 1993* as addressed below to consider the following reports that are confidential for the reasons specified below:

### 19.1 Legal Report - Closed Council

#### Relevant Legal Provisions

This report is referred to Closed Committee in accordance with s10A(2) of the Local Government Act, 1993, under clause 10A(2)(g) as it contains advice concerning litigation, or advice as comprises a discussion of this matter, that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege and the Council considers that it would be on balance contrary to the public interest to consider this information in Open Council.

#### Brief description

The purpose of this report is to update Council on the status of legal proceedings reported to Council at the meeting of 24 February 2021.

2. **THAT** the minutes of the Closed Council part of the meeting (being the Council's resolution) be made public.

John Burgess  
**Acting General Manager**

Thursday 18 March 2021