

# Filling Policy

## Purpose

The purpose of the policy is to provide guidance for the submission and assessment of Development Applications involving the importation of fill for various activities including but not limited to, gully rehabilitation and internal access roads.

## Scope

The policy applies to all Development Applications involving filling but does not extend to quarry remediation submitted in accordance with the Yass Local Environmental Plan 2013 (Yass Valley LEP 2013) and Yass Local Environmental Plan (Parkwood) (2020).

## Definitions

| Term                                    | Meaning   |
|---|---|
| <b>Earthworks</b>                       | Defined in the <i>Yass Valley LEP 2013</i> as excavation or filling.  |
| <b>Environmental protection works</b>   | Defined in the <i>Yass Valley LEP 2013</i> as works associated with the rehabilitation of land towards its natural state or any work to protect land from environmental degradation, and includes bush regeneration works, wetland protection works, erosion protection works, dune restoration works and the like, but does not include coastal protection works.  |
| <b>Excavated natural material (ENM)</b> | <p>Defined in the <i>Protection of the Environment Operations (Waste) Regulation 2014 – Excavated Natural Material Resource Recovery Exemption 2014</i> as naturally occurring rock and soil (including but not limited to materials such as sandstone, shale, clay and soil) that has:</p> <ul style="list-style-type: none"> <li>(a) been excavated from the ground, and</li> <li>(b) contains at least 98% (by weight) natural material, and</li> <li>(c) does not meet the definition of Virgin Excavated Natural Material in the Act.</li> </ul> <p>Excavated natural material does not include material located in a hotspot; that has been processed; or that contains asbestos, Acid Sulfate Soils (ASS), Potential Acid Sulfate Soils (PASS) or sulfidic ores.</p> |
| <b>Fill</b>                             | <p>Defined in the <i>Yass Valley LEP 2013</i> as the depositing of soil, rock other similar extractive material obtained from the same or another site, but does not include:</p> <ul style="list-style-type: none"> <li>(a) the depositing of topsoil or feature rock imported to the site that is intended for use in garden landscaping, turf or garden bed</li> </ul>   |

|   |   |
|---|---|
|   | <p>establishment or top dressing of lawns and that does not significantly alter the shape, natural form or drainage of the land, or</p> <p>(b) the use of land as a waste disposal facility.</p>  |
| <b>Internal access road</b>                     | Means a private road or driveway providing access within or through a property, but does not include a public road.   |
| <b>Virgin excavated natural material (VENM)</b> | <p>Defined in the <i>Protection of the Environment Operations Act 1997</i> as natural material (such as clay, gravel, sand, soil or rock fines):</p> <ul style="list-style-type: none"> <li>that has been excavated or quarried from areas that are not contaminated with manufactured chemicals or process residues, as a result of industrial, commercial, mining or agricultural activities, and</li> <li>does not contain any sulfidic ores or soils or any other waste.</li> </ul> |
| <b>Waste</b>                                    | Anything left over or superfluous as excess material, by-products etc, not of use for the work in hand or having served a purpose and no longer of use, or rejected as useless, or worthless or refuse (Ref: Macquarie Dictionary Online).  |
| <b>Waste Disposal Facility</b>                  | Defined in the <i>Yass Valley LEP 2013</i> as a building or place used for the disposal of waste by landfill, incineration or other means, including such works or activities as recycling, resource recovery and other resource management activities, energy generation from gases, leachate management, odour control and winning of extractive material to generate a void for disposal of waste to cover waste after its disposal.   |

It should be noted that a reference in this Policy to the *Yass Valley LEP 2013* is also a reference to the Yass Local Environmental Plan (Parkwood) 2020.

## Policy Principles

### Exempt Development

*State Environmental Planning Policy (Exempt and Complying Codes) 2008* prescribes filling and earthworks that can be undertaken as exempt development, subject to compliance with the development standards and any approval requirements under other legislation.

### Development without Consent

Environmental protection works is development permitted without consent in a number of zones under the *Yass Valley LEP 2013*. Where this work relates to erosion gully rehabilitation it is to be limited to the importation of no more than 100m<sup>3</sup> of fill and is undertaken in accordance with the 'Gully Erosion Assessment and Control Guide' prepared by the Local Land Services.

In order to determine if the works are permissible without consent, you must discuss the proposed works with Council and additional information may be requested to confirm the proposed works. Any information submitted in support of environmental protection works being permissible without development consent will be used to monitor the works as part of Council's compliance program.

Where development is permissible without consent, an assessment is required under Part 5 of the Environmental Planning and Assessment Act and may still require other approvals under other legislation eg Water Management Act, Roads Act or Local Government Act.

## **Development with Consent**

Clause 6.1(2)(b) *Yass Valley LEP 2013* states that development consent is required for earthworks unless the earthworks are ancillary to development that is permitted without consent under this Plan or to development which development consent has been given. Council may also consider fill material to be 'waste' and filling being characterised as a waste disposal facility, for example, top dressing of paddocks with material that is not suitable for the intended purpose/outcome.

## **Guiding Principles**

Council generally receives Development Applications for filling related to erosion gully rehabilitation and the construction of internal access roads.

### *Erosion Gully Rehabilitation*

Where filling is proposed as part of a proposal for erosion gully rehabilitation, the following guiding principles shall be taken into consideration when determining Development Applications:

- Erosion is an adverse environmental process and potentially impacts on both the natural and built environment, such as waterways and farm infrastructure. The availability of fill material may represent an appropriate reuse for improved environmental outcomes. However, the filling of erosion gullies does not always represent the most appropriate or effective option for rehabilitation.
- Professional advice in relation to the design of control works is to consider the available options for erosion gully rehabilitation and its effectiveness.
- The erosion gully rehabilitation plan should consider factors that include land capability, systems management (i.e. ongoing land management), the location of infrastructure, and temporary sediment and erosion control measures during the project.
- Impacts of the proposed development on the amenity of neighbouring properties must be considered.

### *Internal Access Roads*

The following guiding principles shall be taken into consideration when determining Development Applications for new or upgrade of internal access roads:

- Internal access roads for rural properties should be at a standard that reasonably provides safe, practical and physical access, having regard to the lawful use of the land, as well as site specific constraints (such as topography, native vegetation and bushfire hazard).
- Proposals for internal access road should provide clear detail of purpose, including for the infrastructure or development that they are servicing.
- The design standard for internal access roads should generally be no greater than the following:
  - (a) a maximum pavement width of 4.5 metres
  - (b) maximum height of 300mm above existing ground levels

A greater design standard may be supported where it is demonstrated as being necessary in association with the lawful use of the land.

- Internal access roads should generally follow the 'lay of the land' with significant filling to alter ground levels considered to be unacceptable.

Development Applications for the internal access driveways that represent an overdesign (i.e. beyond the standard identified above or not reasonably 'fit for purpose') will not be supported.

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## Information to Accompany Development Application

Information to accompany a Development Application for erosion gully rehabilitation and construction of internal access roads is included as *Appendix A* to this policy. These requirements may also be applied to other similar Development Applications.

## Assessment of Development Applications, Consideration of Impacts and Neighbour Notification

The assessment of Development Applications will be undertaken in accordance with the requirements of the *Environmental Planning & Assessment Act 1979*.

Neighbour notification will be undertaken, where required, in accordance with Council's *Community Engagement Strategy*.

Determination of Development Applications will be in accordance with Council's *Development Assessment and Decision Making Policy*.

## Standard Conditions of Development Consent

Standard conditions of Development Consent may include:

- A limitation on the maximum volume of material that can be imported.
- Appropriate sediment and erosion controls to be installed and maintained during the project until the proposed works have been stabilised.
- Reporting and record keeping, including details of heavy vehicle movements, material source, and project progression.
- Requirements to comply with the Traffic Management Plan.
- Requirements for site surveys throughout the project at appropriate intervals estimating quantities of fill that have been placed on the site.
- Evidence of material classification in accordance with NSW requirements.
- Required approvals from the ACT Government.
- Hours of operation for the project and maximum number of daily heavy vehicle movements.
- Dust management.
- An inspection regime to be undertaken by Council (if required).
- Completion of project certification.

Additional conditions of Development Consent may be required depending on the particular circumstances and characteristics of a proposal.

## Other Approvals

In addition to requiring Development Consent from Council, some proposals may require approval from other bodies or government agencies. This may include, for example, a controlled activity approval for works in a watercourse under the *Water Management Act 2000* issued by the Natural Resources Access Regulator.

## Heavy Haulage Contributions

Where required, heavy haulage contribution will be levied in accordance with Council's relevant contribution plan.

## Responsibilities & Review

Development Assessment Officers are required to take into account the provisions of this policy when assessing Development Applications that this policy relates to.

This Policy will be reviewed in 2022.

## References

This policy is to be read in conjunction with the following:

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| <b>Legislation</b><br><b>Policies and procedures</b> | <i>Environmental Planning &amp; Assessment Act 1979</i>                |
|  | <i>Environmental Planning &amp; Assessment Regulation 2000</i>         |
|  | <i>Protection of the Environment Operations Act 2000</i>               |
|  | <i>Water Management Act 2000</i>                                       |
|  | State Environmental Planning Policy (Exempt and Complying Development) |
|  | Heavy Haulage Contributions Plan                                       |
|  | Community Engagement Strategy  |
| Development Assessment and Decision Making Policy    |  |

## Approval History

| Stage    | Date              | Comment                     | MagiQ Reference |
|----------|-------------------|-----------------------------|-----------------|
| Original | 22 September 2021 | Approved by Council Min 187 | Doc ID 466397   |
|          |                   |                             |                 |
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## Ownership and Approval

| Responsibility | Role                              |
|----------------|-----------------------------------|
| Author         | Director Planning and Environment |
| Owner          | Manager Development Control       |
| Endorser       | EMT                               |
| Approver       | Council                           |
|                |                                   |

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## Appendix A – Information to Accompany a Development Application

### Erosion Gully Rehabilitation

The minimum information to accompany a Development Application for erosion gully rehabilitation is detailed below. Council may vary the requirements based on the Development Application submitted.

- Statement of Environmental Effects
- A site plan identifying the areas of work including works that may need to be undertaken to provide access through the development site, fencing, areas for stockpiling etc
- A Site and Soil Erosion Control Plan (or similar) prepared by a suitably experienced soil consultant. This must include an outline the purpose of the project, other options for rehabilitation, a step-by-step project plan for the completion of the works and management of environmental issues for the duration of the project
- A site survey of the area to be rehabilitated showing existing and proposed finished levels and an estimation of the volume of material required for the proposed works
- Details of the source of fill.
- A vegetation plan for the stabilisation of the work including fencing (if required) to prevent stock entering the area
- Evidence of due diligence being undertaken to determine whether the proposed activity could harm Aboriginal objects or declared Aboriginal place
- Details of the duration of the project
- An assessment of whether the proposal triggers entry into the *Biodiversity Offset Scheme* under the *Biodiversity Conservation Act 2016*
- A Traffic Management Plan including estimate on the number of heavy vehicle movements for the overall project and daily limits for vehicles visiting the site, proposed route for accessing the site (and the return trip), method of vehicle identification associated with the development

Additional information may be required depending on the particular circumstances and characteristics of a proposal and may include:

- Traffic impact assessment
- Noise impact assessment

### Internal Access Roads

The minimum information to accompany a Development Application for internal access roads is detailed below. Council may vary the requirements based on the Development Application submitted.

- Statement of Environmental Effects
- A site plan identifying the areas of work including works that may need to be undertaken to provide access through the development site, fencing, areas for stockpiling etc
- A site survey of the area where the internal access road is to be constructed showing existing and proposed finished levels and an estimation of the volume of material required for the proposed works
- A Site and Soil Erosion Control Plan (or similar) prepared by a suitably experienced soil consultant. This must include an outline the purpose of the project, a step-by-step project plan for the completion of the works and management of environmental issues for the duration of the project
- Details of the source of fill
- Dust management.
- Evidence of due diligence being undertaken to determine whether the proposed activity could harm Aboriginal objects or declared Aboriginal place
- Details of the duration of the project
- An assessment of whether the proposal triggers entry into the *Biodiversity Offset Scheme* under the *Biodiversity Conservation Act 2016*

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- A Traffic Management Plan including estimate on the number of heavy vehicle movements for the overall project and daily limits for vehicles visiting the site, proposed route for accessing the site (and the return trip), method of vehicle identification associated with the development
  - An indicative engineering detail (i.e. cross section) showing the pavement width and depth. For some proposals full engineering design drawings may be required
  - A statement outlining the need to the internal access road construction or upgrade, including the details of any infrastructure or development that it is proposed to service

Additional information may be required depending on the particular circumstances and characteristics of a proposal and may include:

- Traffic impact assessment
- Noise impact assessment