

Dumping of fill from the ACT on rural properties in the Yass Valley Council LGA

Purpose

To provide the ACT & Region Catchment Management Coordination Group with a briefing on potential issues arising from the movement of fill from construction sites within the ACT to NSW properties in surrounding Council areas; and to look at recommendations to potentially assist with the ongoing management of this issue.

Scope

This paper has been developed from information held by Yass Valley Council (YVC) on reported incidents, and information from residents on the movement of heavy vehicles carrying fill out of the ACT to the Yass Valley Council area.

Applicable legislation

The movement of clean fill from construction sites in the ACT to NSW is subject to legislative requirements in both areas. The key NSW legislation is:

- *Protection of the Environment Operations Act 1997*
- *Environmental Planning and Assessment Act 1979*
- *Water Management Act 2000*
- *State Environmental Planning Policy (Exempt & Complying Code) 2013*
- *Yass Valley Local Environmental Plan 2013*

Background

The ongoing development of residential and commercial sites within the ACT has led to a large volume of topsoil and other fill being moved from those sites to locations with the surrounding NSW Local Government Areas. This material is generally utilised to construct internal roads, fill erosion gullies or to undertake landform modifications.

This has caused a considerable increase in the number of complaints by residents in those areas affected regarding the volume of truck movements, the manner of driving by truck drivers, concerns over the content of the fill, and sediment and dust control measures being used on the properties that are receiving the material.

Since February 2015, there have been 61 recorded reports to YVC relating to the movements of this material. Numerous others have been made but not recorded as they relate to a matter already on file. Each site of an incident has often involved multiple site inspections to gather information or monitor activities for compliance.

Whilst there are numerous locations where small amounts of fill is taken, the key locations where large volumes of the material has been transported to are in close proximity to the ACT border, including:

- Wallaroo area
- Tallagandra Lane
- Nanima Road/Spring Range Road
- Kaveney's Rd / Dog Trap Road

Examples of the impacts this filling has is shown in the following photographs:



Photograph 1: Site Kaveney's Road Area



Photograph 2: Site Kaveney's Road Area – Material Utilised for Internal Roads



Photograph 3: Site Wallaroo Area



Photograph 4: Site Sutton Area

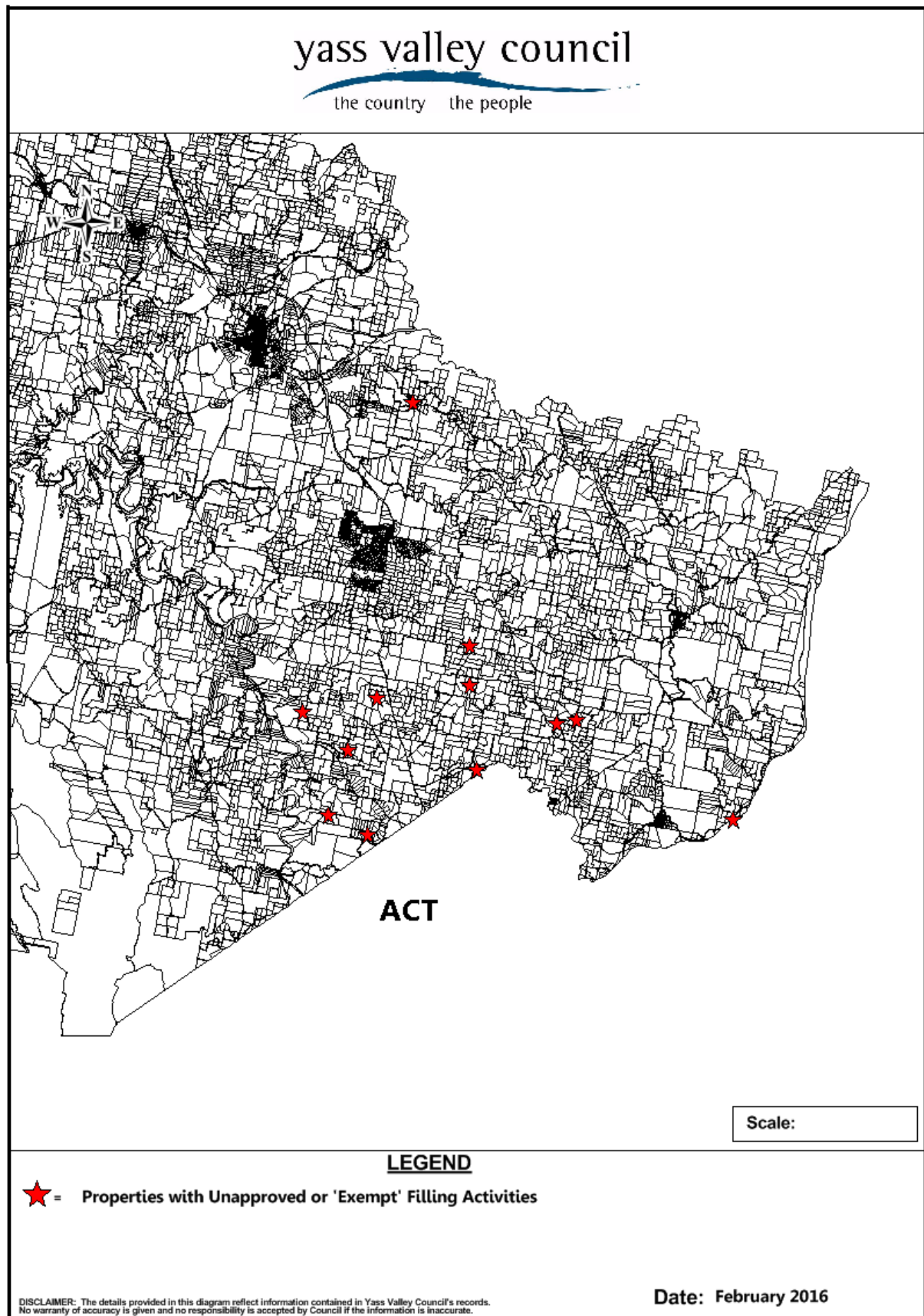


Photograph 5: Site Tallagandra Lane Area



Photograph 6: Site Old Federal Highway Area

Areas where incidents have been reported since February 2015 are detailed on the following map:



Current Process

The legislative provision being relied upon is the *SEPP (Exempt & Complying Code) 2013* which permits up to 600mm of clean fill to be placed on land without approval (refer Appendix 1).

An area of 10ha with 600mm of filling equals approximately 60,000 cubic metres of material or approximately 6,500 truck-loads (based on an average truck capacity of 9 cubic metres).

It is usually the increase in truck movements, not the filling itself, that leads to reports/complaints being lodged with Council.

Where a complaint is received, staff from Council's Environmental Services Section attend the location and conduct a site inspection. The following process is followed:

- Where the person undertaking the work provides a VENM Certificate and the fill is less than 600mm deep, a judgement call is made and the person requested to ensure sediment and dust control is in place. Where voluntary compliance is not undertaken, Orders have been made to ensure this is undertaken
- Where the fill is over 600mm deep, a Development Application (DA) is required. The person is advised that work cannot continue until the DA has been applied for and assessed. As part of a DA a sediment and erosion control plan (or equivalent) must be submitted. Consent conditions relating to a number of matters (i.e. hours, quantity limits, contributions toward road maintenance) may also be applied
- Incidents involving allegations of trucks being driven in a dangerous manner are reported directly to police
- Meetings are held with earthmoving operators to ensure their staff are briefed on a regular basis regarding their matter of driving
- South East Weight of Loads at Queanbeyan City Council have also been spoken with and conducted patrols of the area
- Incidents of a larger scale or near waterways have also been discussed with the Environment Protection Authority (EPA) & NSW Department of Primary Industries (DPI) – Water. Incidents involving environmentally sensitive land may also be reported to NSW Office of Environment & Heritage (OEH)
- Incidents involving filling on Crown Roads are reported to NSW DPI - Lands
- Where 'contaminated fill' which is a risk to the environment is identified, action has been taken (in conjunction with ACT agencies where appropriate) to stop the fill being transported into NSW. Further action has then been taken in the form of Clean Up Notices or other Orders being issued
- A number of sites which have clean fill have also had Orders issued to ensure prevention of damage to the environment regarding sediment control and dust suppression

Key Issues

The following are the key issues:

- Whilst VENM Certificates are provided upon request, it is often difficult to identifying the source location from where the fill has been collected
- There is concern that the sites do not have adequate sediment/erosion control in place

- The content of the material in relation to the potential for weed infestation is unknown. A number of areas in the ACT have high incidents of serrated tussock and other weeds which can easily be introduced to Yass Valley areas with the movement of the fill
- The movement of large numbers of trucks and the manner in which they are at times driven is also impacting on resident, other road users and Council roads. Incidents of drivers acting in a manner contrary to road rules, are reported to Police
- The movement of heavy vehicles laden with material results in a detrimental impact to Council's road infrastructure. The upkeep of rural road networks represents a substantial budgetary expenditure for Council
- The large volumes of dust caused by the truck movements on unsealed roads is also an ongoing complaint from residents
- Significant use of resources for monitoring of both 'exempt' activities and those where an approval has been granted
- Where approval is required, there is difficulty in justifying or imposing requirements or conditions given the amount of activity which is occurring largely as unregulated exempt development. For example, it is difficult to impose a requirement for a monetary contribution toward road impacts on a Development Consent for filling an erosion gully when there are other activities which involve a similar quantity of material occurring without these requirements
- It is considered that the occurrence of filling and these issues will be exacerbated with population increase and development in the both Canberra and the locality. This is particularly the case in the Yass Valley given the a recent decision to reduce the minimum lot size for rural land which will allow for further subdivision and development
- It is questionable as to the intention of the 600mm 'earthworks' provisions in the *Exempt & Complying Code* (i.e. whether it was ever intended to cover large scale earthworks)
- Contractors who are attempting to do the right thing and seek approvals or dispose of material at an approved site may be underquoted by other contractors who are just disposing of material on other rural land

Recommendations / Options

As the movement of material involves two jurisdictions a combined approach to dealing with the issue and managing the impacts is suggested i.e.

- Seek an amendment to *Statement Environmental Planning Policy (Exempt & Complying Codes) 2008* to provide clarity as to where and when earthworks are 'exempt development' or alternatively adjust the provisions which limit the volume that can be imported under an exemption to a quantity (tonnage or cubic metres) or area (hectares)
- Seek assistance from the ACT to:
 - Provide VENM Certificates
 - Nominate in Certificates the locations to where material is from and where it is being taken
 - Include in Certificates a contamination and weed declaration

Note: The NSW Roads & Maritime Services will not release material from their job sites to a third party until such time as there is an approval or acknowledgement from Council regarding the end destination and use.

Appendix 1 – SEPP Exempt & Complying Codes Extract

State Environmental Planning Policy (Exempt and Complying Development Codes) 2008

Current version for 27 November 2015 to date (accessed 6 April 2016 at 10:00)

[Part 2](#) > [Division 1](#) > [Subdivision 15](#)

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Subdivision 15 Earthworks, retaining walls and structural support

2.29 Specified development

Earthworks and the construction or installation of a retaining wall or other form of structural support is development specified for this code if it is not carried out, constructed or installed on or in a heritage item or a draft heritage item, on a flood control lot or in an environmentally sensitive area.

2.30 Development standards

The standards specified for that development are that the development must:

- (a) not be a cut or fill of more than 600mm below or above ground level (existing), and
- (b) be located at least 1m from each lot boundary, and
- (c) if it is carried out, constructed or installed in a heritage conservation area or a draft heritage conservation area—be located in the rear yard, and
- (d) be located at least 40m from a waterbody (natural), and
- (e) not redirect the flow of any surface water or ground water or cause sediment to be transported onto an adjoining property, and
- (f) if it is a retaining wall or structural support for excavation or fill, or a combination of both:
 - (i) be not be more than 600mm high, measured vertically from the base of the development to its uppermost portion, and
 - (ii) be separated from any retaining wall or other structural support on the site by at least 2m, measured horizontally, and
 - (iii) be located at least 1m from any registered easement, sewer main or water main, and
 - (iv) have adequate drainage lines connected to the existing stormwater drainage system for the site, and
- (g) if the fill is more than 150mm deep—not occupy more than 25% of the area of the lot, and
- (h) if the fill is imported to the site—be free of building and other demolition waste, and only contain virgin excavated natural material (VENM) as defined in Part 3 of Schedule 1 to the *Protection of the Environment Operations Act 1997*.

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