



Mildura Rural City Council

**PROTECTION OF COUNCIL ASSETS AND CONTROL OF BUILDING  
SITES  
LOCAL LAW NO. 5**

**October 2015**

## **PART 1 INTRODUCTION**

### **1. Title**

This Local Law Number 5 of the Mildura Rural City Council and shall be titled 'Protection of Council Assets and Control of Building Sites'.

### **2. Purpose of Local Law**

The Local Law is made for the purposes of:-

- (a) Providing for the peace, order and good Government of the Municipal District;
- (b) Protecting public assets vested in Council from damage, accelerated deterioration or abuse during the building process;
- (c) Providing a physical environment which aims to minimise hazards to health and safety of persons attending building sites and those adjacent, opposite or passing building sites;
- (d) Prohibiting, regulating and controlling the presence and disposal of refuse, rubbish and soil on and from building sites within the municipal district to reduce hazards to the environment and promote an environment where residents can enjoy a quality of life that meets the general expectations of the community;
- (e) Defining the standards to which persons engaged in building work should adhere; and
- (f) Education and inducing person involved in building work to act responsibly to reduce the extent and cost of infrastructure damage for the benefit of the wider community.

### **3. Authorising Provision**

This Local Law is made under section 111(1) of the *Local Government Act 1989*.

### **4. Commencement and Revocation**

This Local Law comes into operation on 28 January 2016 and ends on 28 January 2026.

### **5. Area of Operation**

This Local Law shall apply and have operation throughout the whole of the Municipal District.

## 6. Definitions

In this Local Law:

Authorised Officer	means a Council employee authorised by Council pursuant to section 224 of the Local Government Act 1989.
Builder	means the person in charge of carrying out any building work.
Builders refuse	includes any solid or liquid domestic or commercial waste, debris, or rubbish, and with out limiting the generality of the above, includes any glass, metal, plastic, paper, fabric, wood, food, vegetation, soil, sand, concrete, rocks any other waste material, substance or thing generated by or in connection with building work.
Building	includes any structure or building, whether temporary or permanent or any part of a building or structure, whether temporary or permanent and includes any swimming pool or spa.
Building site	means land upon which building work is being carried out or proposed to be carried out.
Building work	means work for or in connection with the construction, renovation, alteration, demolition, repair, relocation or removal of a building in addition to any landscaping or concreting.
Chief Executive Officer	means the person holding that position on a temporary or permanent basis.
Construction period	means the period in which building work is carried out.
Council	means the Mildura Rural City Council.
Council assets	includes drains, footpaths, nature strips, vehicle crossings, gutters, kerbs and channels to the road and any other asset for which Council is responsible for maintenance and or repair.
Land	includes any allotment capable of being disposed of separately.
Municipal district	means the municipal district of the Council.
Owner	in relation to a building means the owner of land on which the building is situated.
Penalty units	has the meaning attributed under the <i>Sentencing Act 1991</i> or any replacement legislation.
Refuse facility	means a suitable rubbish receptacle capable of restricting debris and other waste from leaving the building site.
Road	Includes a street, right of way, any land reserved or proclaimed as a street or road of way under the <i>Crown Land (Reserves) Act 1978</i> or the <i>Land Act 1958</i> ; a passage, a cul de sac, by-pass, a bridge or ford; a footpath, bicycle path or nature strip; any culvert, kerbing or other land or works forming part of the road.
Security bond	means a payment made to Council for the purposes of securing public assets and infrastructure from the cost of damage during building work.
Stormwater system	means stormwater system which provide for the conveyance of stormwater run-off including kerb and channel, open channels, underground pipe systems and natural waterways.
Temporary vehicle crossing	is a constructed form of wooden panels or other Council approved structure over a bed of sand, that extends from the boundary of a property over any public assets, such as footpaths, nature strips, kerbs and channels to the road and which is designed to prevent damage to the assets, caused by motor vehicles and materials entering and leaving the property, during the currency of building work.

Vehicle crossing	Is a bridge or crossing constructed over any footpath or channel next to a road to enable a person using the road to have access to land on the other side of the footpath or channel other than a temporary vehicle crossing.
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## Part 2 Asset Protection

### 7. Asset Protection

#### Asset Protection Permit

- 1) A person must not damage Council assets or cause those assets to be damaged.
- 2) A builder must ensure that no Council assets are damaged as a result of building work or any work associated or connected with building work including the delivery or removal of any material or the like from the building site.
- 3) For the protection of public assets vested in Council, a builder must obtain an Asset Protection Permit in all circumstances where entry to a building site from a road is to be from or may be from, any point other than a pre existing vehicle crossing.
- 4) An Asset Protection Permit may be issued by an authorised officer on completion of any application form and payment of the application fee and may contain such conditions as determined by the authorised officer.
- 5) The Asset Protection Permit may:
  - (a) allow a person to enter land from a road other than by a permanently constructed vehicle crossing;
  - (b) allow building materials or equipment to be deposited on land other than the land containing the building site in circumstances where in the opinion of the authorised officer the storage of such materials or equipment on the land containing the building site is not possible or practicable;
  - (c) allow a builders refuse facility to be placed on land other than the land containing the building site in circumstances where in the opinion of the authorised officer the placement of the builder's refuse facility on the land containing the building site is not possible or practical;
- 6) The Asset Protection Permit may be subject to such conditions for the protection of Council's assets and the safety of the persons or property as the issuing authorised officer determines including but not limited to:-
  - (a) Requiring that any or all Council assets damaged be repaired, replaced or re-instead within a specified time; and/or
  - (b) Requiring a temporary vehicle crossing to be installed to the satisfaction of a authorised officer before the commencement of any building work or delivery of materials or equipment to the building site and that any such temporary vehicle crossing be maintained until completion of the building work; and/or

- (c) Any other condition considered necessary.
- 7) An Asset Protection Permit expires on the date specified on the permit and if not specified, 12 months after the date of issue unless it is renewed.
- 8) The builder must ensure that:-
- (a) No entry to the building site takes place other than across a vehicle crossing or a temporary vehicle crossing.
  - (b) No building material or equipment are deposited on any land other than the land containing the building site without an Asset Protection Permit permitting same having been issued by an authorised officer.

#### Security Bond

- 9) Regardless of whether a building permit had been issued or is required, a builder:
- (a) Must notify Council in writing, of the proposed building work at least 7 days before building work commences; and
  - (b) May provide to Council written notice of any prior damage to any Council asset or part thereof at least 7 days prior to the commencement of any building work or the delivery of any equipment or building materials.
  - (c) Must notify Council in writing immediately on becoming aware of any damage to any Council asset as a result of the building work or work associated with the building work including the delivery or removal of materials or equipment.
  - (d) Must repair to the satisfaction of Council any damaged Council asset that was damaged as a result of the building work or any work associated with the building work including the delivery or removal of material or equipment.
- 10) Prior to the commencement of any building work and prior to the delivery of any building materials or equipment the builder shall provide to Council a security bond; such bond to be proportionate to the likely cost of repairing any potential damage to any Council Asset.
- 11) Upon completion of the building work, the amount of the security bond:-
- (a) May be retained by the Council to offset the costs of repairing any damage to Council assets; or
  - (b) May be refunded to the person who lodged it, upon receipt of a written request and upon Council's satisfaction that no damage has been caused, or that any damage caused has been repaired to Council's satisfaction.
  - (c) In the event that the Asset Protection Permit has expired and no repairs under (a) above or no refund under (b) above has been requested within 12 months of the completion of the building work or the issuing of the occupancy permit and or certificate of final inspection the security bond

becomes the property of Council absolutely and may be used by Council in any manner it sees fit.

- 12) For the purpose of determining whether any damage to a Council asset has been caused by a builder, a failure to provide notice under sub clause 9 (b) identifying specific damage will give rise to a presumption that the specific damage was caused by the builder and was as a result of or associated with the carrying out of building work.
- 13) It is a defence to a prosecution brought under clause 1 or 2 which relies on clause 12 above, for the builder to prove that the specific damage was not caused by or as a result of the building work or any work associated with the building work.

## **Part 3 Inspections**

### **8. *Inspections***

- 1) Council may determine if any when inspection of building sites for the purpose of this Local Law may be conducted. Inspections may be conducted at any reasonable time by an authorised officer.
- 2) If upon an inspection of a building site any authorised officer identifies any damage to a Council asset and forms the belief that the damage was caused as a result of building or work associated with building work the authorised officer may, in addition to the issuing of an infringement Notice or commencement of a prosecution, issue a Notice to Comply directing the owner, the builder or (if known) the person responsible for causing the damage to repair the asset to the satisfaction of Council within a specified time.

## **Part 4 Stormwater Protection**

### **9. *Stormwater Protection***

- 1) Where any building work is being carried out on any land, the owner and the builder must ensure that the site is developed and managed to prevent stormwater pollution, through the contamination of run-off by chemicals, sediment, animal wastes or gross pollutants. This includes adoption of measures to:-
  - (a) Minimise the amount of mud, dirt, sand, soil or stones deposited in the abutting roads or washed into the stormwater system; and
  - (b) Prevent building cleanup, wash down or other wastes being discharged offsite or allowed to enter the stormwater system.

## **Part 5 Control of Builder's Refuse**

### **10. Contamination of Refuse**

- 1) Where any building work is being carried out on any land, the builder must:-
  - (a) Provide a refuse facility for the purpose of disposal of builder's refuse and provided the facility contains all builder's refuse on the land to the satisfaction of Council, its size, design, and construction will be at the discretion of the builder.
  - (b) Place the reuse facility on the land and keep it in place (except for each such periods as are necessary to empty the facility) for the duration of the building works;
  - (c) Not place the reuse facility on any Council land, road or street without an Asset Protection Permit permitting same having been issued by Council;
  - (d) Empty the refuse facility whenever full and if necessary, provide a replacement facility during the emptying process.

### **11. Disposal of Builders Refuse**

- 1) During building work:-
  - (a) The builder must ensure that all builder's refuse, which requires containment is placed in the refuse facility referred to in clause 10; and
  - (b) The builder must ensure that builder's refuse is not deposited in, over or on any land other than in accordance with clause 10.
  - (c) The builder must not allow any builder's refuse to be deposited in or over any part of the stormwater system.

### **12. Removal of Builder's Refuse**

- 1) On any land where building work is being or has been carried out owner and builder must remove and lawfully dispose of all builder's refuse including, without limiting the generality of the above, the builder's refuse in the refuse facility referred to in Clause, within 7 days of completion of the building work or issue of an occupancy permit or certificate of practical completion, whichever occurs first.
- 2) The driver of any vehicle involved in placing or removing builder's refuse facilities must not access the building site other than by way of a vehicle crossing or temporary vehicle crossing.

### **13. Other Local Laws**

- 1) In addition to this Local Law (No.5) Council has other Local Laws which affect or may affect the operation of building sites within the municipality, in particular:
  - (a) L5.14, L5.15, and L5.17 Vehicle crossings-Local Law No. 2
  - (b) L7.1 Discharge of Water-Local Law No.2
  - (c) L7.25, L7.26, L7.27 and L7.28 Bulk Rubbish Containers-Local Law No.2
  - (d) L7.29, L7.30, L7.31, L7.32, L7.33 and L7.34 Occupation of Roads for Works-Local Law No.2
  - (e) L7.36 and L7.37 Substances from Vehicles-Local Law No.2
  - (f) L5.1 Safety of Land-Local Law No.3
  - (g) L6.1 and L6.2 Camping and Temporary Dwellings-Local Law No.3
  - (h) L9.1, L9.2 and L9.3 Hours of work, dilapidated buildings and builders sanitary conveniences-Local law No.3
- 2) Where another Local Law requires a permit or approval in respect of matters for which an Asset Protection Permit can be or has been issued, the Asset Protection Permit is deemed to be the permit or approval required in the other Local Law.

## **Part 7 Administration and Enforcement**

### **14. Fees, Charges and Costs**

- 1) Council may from time to time determine the fees and charges payable under this Local Law which may include an administrative fee or processing fee or charge.
- 2) The authorised officer may determine the amount of security bond required under this Local Law on a case by case basis but such security bond shall not exceed the reasonable estimate of the repair of possible damage to Council's assets.

### **15. Offences**

- 1) It is an offence against this Local Law:
  - (a) to fail to comply with any condition of a permit issued under this Local Law;
  - (b) to fail to comply with any provision of this Local Law.

## **16. Notice to Comply**

- 1) Where an authorised officer is of the opinion that any person has failed to comply with any requirement under this Local Law, he or she may serve a Notice to Comply in the form of Schedule 1 to this Local Law on the person, the owner, or the builder.
- 2) A Notice to Comply, issued in accordance with this Clause, must state the situation to be remedied, the date by which the situation must be remedied and may include the time of day by which the situation must be remedied.
- 3) An owner, builder or other person served with a Notice to Comply must carry out any work required in the Notice to Comply and remedy the situation as required by the Notice to Comply within the time period as stated in the Notice to Comply.
- 4) If an owner, builder or any other person served with a Notice to Comply fails to carry out any required in the Notice to Comply, Council may, in addition to any other action it may take, arrange the carrying out of the work by another person; or carry out the work itself and recover the cost of performing the work from the owner, builder or person as the case may be, as a debt due to the Council.
- 5) An owner, builder or any person served with a Notice to Comply may make representations to the Council about matters contained in the Notice to Comply.
- 6) The making of representations referred to in clause 5 above does not stay the operation of the Notice to Comply.

## **17. Power to Act in Urgent Circumstances**

- 1) The Chief Executive Officer or his/her delegate may, where an owner, builder or any other person has failed to comply with any requirements of the Local Law, take action considered necessary to prevent any danger to the environment or any nuisance arising, provided that:-
  - (a) In the opinion of the Chief Executive Officer or his/her delegate the circumstances are sufficiently urgent and that the time necessary, or potential difficulty in serving a Notice to Comply may place a person, animal, property or the environment at risk or in danger of detrimental effect;
  - (b) Details of the circumstances and of the remedial action taken are as soon as practicable forwarded to the owner, builder or other person as the case may be.
- 2) Action taken by Council under this Clause shall not extend beyond what is necessary to cause the immediate abatement or removal of the risk or danger involved.
- 3) Council will issue a Notice of Urgent Works in the form of Schedule 2 to the owner, builder or other person prior to the works being undertaken if practicable to do so or if not practicable to do so at that time as soon after the carrying out of the urgent action as practicable.
- 4) Council may, in addition to taking any other action or proceedings which Council may be entitled to take, recover from the person to whom the Notice to Comply

was served the costs of and incidental to the carrying out of the action under clause 1 above as a debt due to the Council.

## **18. Penalties**

Any person who contravenes or fails to comply with any provision of this Local Law or contravenes or fails to comply with a Notice to Comply shall be guilty of an offence and shall be liable for a penalty of 10 penalty units for the first offence and to a further 2 penalty units for each day after conviction for a second or subsequent offence shall be liable to 20 penalty units. An Infringement Notice may be issued in the form of Schedule 3 as an alternative to prosecution for the offences.

## **19. Giving of Information**

Any person apparently in charge of any building work or any owner, builder or other person on a building site, or other person who has delivered material or equipment to a building site, must give his or her name and address to an authorised officer when requested to do so.

## **20. Infringement Notices**

- 1) Where an authorised officer has reason to believe that a person is guilty of an offence or offences for which an Infringement Notice may be issued under this Local Law, the authorised officer may serve on that person an Infringement Notice in the form of Schedule 3.
- 2) The penalty fixed for an Infringement Notice under this Local Law is 2 penalty units.

## **21. How is payment to be made?**

Any person issued with an infringement Notice may pay the penalty indicated to the cashier at Rates Office of Mildura Rural City Council, 108 Madden Avenue, Mildura.

## **22. When must the penalty be paid?**

To avoid prosecution, the penalty indicated should be paid within 28 days from the date of the issue of the Infringement Notice.

## **23. Persons may disregard the Notice**

Any person issued with an Infringement Notice is entitled to disregard the Infringement Notice and defend the prosecution in court.

## **24. *Right to make representations***

- 1) Any person issued with an Infringement Notice may make a written representation to the authorised officer who issued the Infringement Notice within 28 days of the issue of the Infringement Notice.
- 2) The authorised officer must consider any written representations and any other relevant information brought to its or his or her attention within 28 days of the issue of the Infringement Notice to which it relates.
- 3) The authorised officer after considering any representation or other relevant information provided pursuant to this clause 23 may withdraw or amend the Infringement Notice.

## **25. *Withdrawing the Notice prior to prosecution***

- 1) Council may at any time prior to payment in full of the amount referred to in the Infringement Notice withdraw an Infringement Notice with a view to prosecuting for an offence.
- 2) Where an Infringement Notice has been partially paid and subsequently withdrawn, the person upon whom it was served is entitled to a refund of any payment, which that person has made on the Infringement Notice.

## **26. *Failure to comply with Notice***

In the event of the failure of a person served with an Infringement Notice to pay the amount specified within 28 days of the issue of the Infringement Notice or such further time as Council or the authorised officer may permit, Council may pursue the matter by prosecuting for an offence or by taking any steps which may be available for enforcing penalties by registration of Infringement Notices.

## **NOTIFICATION**

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The Resolution for making the Local Law was agreed by the Mildura Rural City Council on the 28<sup>th</sup> day of January 2016

Notices of the proposal to make this Local Law were published respectively in the: Pinnaroo Border Times, North West Express, Victoria Government Gazette and Mildura Weekly on the 16<sup>th</sup>, 17<sup>th</sup> and 18<sup>th</sup> day of December 2015.

Notices of the making of this Local Law where published respectively in the: Victoria Government Gazette and Mildura Weekly on the 4<sup>th</sup> and 5<sup>th</sup> day of February 2016.

A copy of this Local Law was forwarded to the Minister on the 5<sup>th</sup> day of February 2016.

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Local Law No 5 of the Mildura Rural City Council

**Schedule No.1**

**Notice to Comply**

To: (Name) \_\_\_\_\_

(Address)\_\_\_\_\_

The following constitutes a breach under Clause..... of Council's Local Law No 5

To remedy the breach you must carry out the following work, by\_\_\_\_\_

\_\_\_\_\_ Date (and time if desired)

Work to be undertaken

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

You should contact\_\_\_\_\_ (contact officer) at the Municipal Officers, between the hours of 8.30am and 5pm for any further information about this Notice.

If you fail to comply with this Notice you will be guilty of an offence and liable for payment of the penalty of \$..... For the first/second\* or subsequent offence and Council will process to carry out the work and you will be liable for the costs of carrying out that work.

Date\_\_\_\_\_ (insert date)

(Name of council officer) \_\_\_\_\_

Telephone No. \_\_\_\_\_

(Signature of council officer)\_\_\_\_\_

\*strike out whichever is not applicable

Local Law No 5 of the Mildura Rural City Council

## Schedule No.2

### Notice of Urgent Works

To: (Name) \_\_\_\_\_

(Address) \_\_\_\_\_

The following constitutes a breach under Clause.... of Council's Local Law No 5

To remedy the breach you must carry out the following work, by \_\_\_\_\_

\_\_\_\_\_ Date (and time if desired)

Work to be undertaken

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

You should contact \_\_\_\_\_ (contact officer) at the Municipal Officers, between the hours of 8.30am and 5pm for any further information about this Notice.

If you fail to comply with this Notice, Council will carry out repair works which are necessary to cause the immediate abatement or minimisation of the risk or danger and you will be charged for the cost of the works.

Date \_\_\_\_\_ (insert date)

(Name of Chief Executive Officer or his/her delegate) \_\_\_\_\_

Telephone No. \_\_\_\_\_

(Signature of Chief Executive Officer or his/her delegate) \_\_\_\_\_

Underseal to be affixed

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Local Law No 5 of the Mildura Rural City Council

**Schedule No.3**

**Infringement Notice**

Date of Notice \_\_\_\_\_ No. of Notice \_\_\_\_\_

TO:

Surname: \_\_\_\_\_

Other Names: \_\_\_\_\_

Address (if known): \_\_\_\_\_

\_\_\_\_\_

I, (full name of Council Officer) have reason to believe that you have committed an offence against Local Law no. (*insert relevant number*) of the Mildura Rural City Council as indicated below:

Clause	Nature of Infringement	Penalty Units

Date: \_\_\_\_\_

Time: \_\_\_\_\_

Location of alleged infringement: \_\_\_\_\_

\_\_\_\_\_

If you pay the penalty indicated within 28 days from the date of this notice at the Rates Office of Mildura Rural City Council, 108 Madden Avenue, Mildura, this matter will not be brought before a court.

You may elect to disregard this Notice and defend the prosecution in Court.



Mildura Rural City Council

**APPLICATION FORM  
ASSET PROTECTION PERMIT**

Owner's Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone No: \_\_\_\_\_ Contact Name: \_\_\_\_\_

Property Address at which building works are to be undertaken:

Street No: \_\_\_\_\_ Lot No: \_\_\_\_\_

Street Name: \_\_\_\_\_ Suburb: \_\_\_\_\_

Builder's Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone No: \_\_\_\_\_ Fax: \_\_\_\_\_ Mobile: \_\_\_\_\_

Type of Construction: \_\_\_\_\_

*e.g New Dwelling, Residential Additions, House Demolition/Removal, Unit/ Commercial Development*

Permit required for: temporary vehicle crossing/building materials-equipment outside allotment/refuse facility outside allotment

Signature of Builder: \_\_\_\_\_ Date: \_\_\_\_\_

Payee Name: \_\_\_\_\_

Asset Protection Permit	\$ _____
Security Deposit	\$ _____
Total Payable	\$ _____

**NOTES:**

Any damage attributed to removal/demolition or construction works which is not reinstated at the end of the building process will be carried out at the owner's expense and withdrawn from the security deposit and the balance refunded.

**Council Local Law No.5 requires building works are not to commence prior to the issue of this permit. Failure to comply with the Local Law may result in \$1000.00 fine.**