

2023

Local Law No. 5

Protection of Council Assets and
Control of Building Sites



Mildura Rural City Council

Table of Contents

| | |
|--|---|
| Part 1 Introduction | 2 |
| Part 2 Asset Protection | 4 |
| Part 3 Stormwater Protection | 6 |
| Part 4 Control of Builder’s Refuse | 6 |
| Part 5 Administration and Enforcement..... | 7 |

Part 1 Introduction

1.1 Title

This Local Law No. [5] of the Mildura Rural City Council and shall be titled ‘Protection of Council Assets and Control of Building Sites’.

1.2 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 infrastructure assets from damage caused by building work;
- c) protecting the health and safety of persons attending building sites and those near or passing building sites;
- d) protecting the environment and the amenity of the Municipal District; and
- e) defining standards to which persons engaged in building work must adhere.

1.3 Authorising Provision

This Local Law is made under section 71 of the *Local Government Act 2020*.

1.4 Commencement and Revocation

This Local Law comes into operation on [22 December 2022] and ends on [21 December 2032] unless revoked sooner.

1.5 Area of Operation

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

1.6 Definitions

In this Local Law:

| | |
|-------------------------|--|
| Asset Protection Permit | means a permit issued under this Local Law. |
| Authorised Officer | means any person appointed pursuant to section 224 of the Local Government Act 1989. |
| Builder | means the person in charge of carrying out any building work. |
| Builder's refuse | includes any solid or liquid domestic or commercial waste, debris, or rubbish, and without 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, and 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 Chief Executive Officer of Council and includes any person acting in that position. |
| 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. |
| Council Land | means Land owned by, vested in, leased by, or otherwise occupied by the Council, or under the Council's management or control, which the public may or may not have access to (whether an admittance fee is required or not), and includes any building, structure or fence thereon and every Council sewer or drain. |
| 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 same meaning as in section 110 of the Sentencing Act 1991. |
| Refuse facility | means a suitable rubbish receptacle capable of restricting debris and other waste from leaving the building site. |
| Road | has the meaning ascribed to it in the Local Government Act 1989 and the Road Safety Act 1986 and includes a road related area as defined in the Road Safety Act 1986 as amended from time to time. |
| 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 provides for the conveyance of stormwater run-off including kerb and channel, open channels, underground pipe systems and natural waterways. |
| Temporary vehicle crossing | means a crossing 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 | means the constructed surface between the road pavement to the property boundary for vehicle access, including any Footpath section, crossing culverts, kerb and channel or layback. |

Part 2 Asset Protection

2.1 Asset Protection

Asset Protection Permit

1. A person must not, without an Asset Protection Permit, remove, destroy, damage or interfere with, or cause, suffer or permit to be removed, damaged or interfered with, any Road, Council Land or other Council asset.
2. A builder must ensure that no Council assets are damaged as a result of buildingwork or any work associated or connected with building work including the delivery or removal of any material or the like to or from the building site.
3. A person who makes an application for an Asset Protection Permit must:
 - a) lodge with the Council an application in a form approved by the Council; and
 - b) pay the application fee.
4. The Council may require a person to provide additional information before further considering an application for an Asset Protection Permit.
5. An 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 Council Land or a Road in circumstances where the storage of such materials or equipment on the land containing the building site is not possible or practical; and

- c) allow a builder's refuse facility to be placed on land other than the land containing the building site in circumstances where the placement of the builder's refuse facility on the land containing the building site is not possible or practical.
6. An Asset Protection Permit may be subject to such conditions as the issuing Authorised Officer determines, including but not limited to:
 - a) requiring that any or all Council assets damaged be repaired, replaced or reinstated within a specified time and to a specified standard; and/or
 - b) requiring a temporary vehicle crossing to be installed and maintained for the duration of any building work.
7. In Asset Protection Permit expires on the date specified on the permit or, if no date is specified, 12 months after the date of issue unless it is renewed or revoked sooner.
8. A builder must not, without an Asset Protection Permit, allow:
 - a) entry to the building site other than by a pre-existing vehicle crossing; or
 - b) building material or equipment to be deposited on any land other than the land containing the building site.
9. Regardless of whether a building permit had been issued or is required, a builder:
 - a) must notify the Council, in writing, of the proposed building work at least 7 days before building work commences;
 - b) may provide to the 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 the Council, in writing, immediately on becoming aware of any damage to any Road, Council Land or 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; and
 - d) must repair, to the satisfaction of the 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. In deciding to grant an Asset Protection Permit, the Council may, at any time, require the applicant to provide to it a security bond, the amount of which is to be proportionate to the likely cost of repairing any potential damage to any Council asset.
11. The Council may retain so much of the security of the bond as is necessary to offset the costs of repairing any damage to Council assets or remedying any breach of this Local Law or a failure to comply with the conditions of the Asset Protection Permit.
12. Upon completion of the building work, or the expiry of an Asset Protection Permit, the Council must, subject to sub-clause (11), refund any remaining amount of the security of the bond to the person who lodged it.
13. If the Council is unable to locate a person entitled to a refund under sub-clause (12), the money held by the Council must be dealt with in accordance with the *Unclaimed Money Act*

2008.

14. For the purpose of determining whether any damage to a Council asset has been caused in the course of building work, a failure to provide notice under sub-clause (9) 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.
15. It is a defence to an offence against subclause (1) 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 Stormwater Protection

3.1 Stormwater Protection

1. Where any building work is being carried out on any land, the owner and the builder must ensure that the building site is developed and managed to prevent stormwater pollution through the contamination of run-off by chemicals, sediment, animal wastes or gross pollutants, including 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 and other wastes being discharged offsite or allowed to enter the stormwater system.

Part 4 Control of Builder's Refuse

4.1 Containment of Refuse

1. Where any building work is being carried out on any land, the builder must:
 - a) provide a refuse facility for the disposal of builder's refuse that adequately contains all builder's refuse on the building site;
 - b) ensure the refuse facility remains on the building site (except for such periods as are necessary to empty the refuse facility) for the duration of the building works;
 - c) not place the refuse facility on any Council Land or Road without an Asset Protection Permit; and
 - d) empty the refuse facility whenever full and, if necessary, provide a replacement refuse facility.

4.2 Disposal of Builders Refuse

1. During building work the builder must:
 - a) ensure that all builder's refuse which requires containment is placed in the refuse facility referred to in clause 9;

- b) ensure that builder's refuse is not deposited in, over or on any land other than in accordance with clause 9; and
- c) not allow any builder's refuse to be deposited in or over any part of the stormwater system.

4.2 Removal of Builder's Refuse

1. On any land where building work is being or has been carried out, the 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 9, 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.

Part 5 Administration and Enforcement

5.1 Fees, Charges and Costs

1. The Council may from time to time determine the fees and charges payable under this Local Law.
2. The Council may waive, reduce or alter any fee, charge, bond, guarantee or payment applying under this Local Law, with or without conditions.

5.2 Other Local Laws

1. 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 by the other Local Law, and a permit under the other Local Law will not be required.

5.2 Offences

1. It is an offence against this Local Law:
 - a) To obtain an Asset Protection Permit where one is required;
 - b) to fail to comply with any condition of an Asset Protection Permit;
 - c) to fail to comply with any provision of this Local Law;
 - d) to fail to comply with a Notice to Comply; and
 - e) to submit incorrect, inaccurate or misleading information in an application for an Asset Protection Permit.

5.3 Notice to Comply

1. Where any person has failed to comply with any requirement of this Local Law

or of an Asset Protection Permit, an Authorised Officer may cause to be served on the person a Notice to Comply in the form of Schedule 1 to this Local Law.

2. Notice to Comply, issued in accordance with this Clause 15, must:
 - a) identify the contravention or non-compliance to be remedied;
 - b) contain directions stating the action required to remedy the contravention or non-compliance; and
 - c) specify the date and time by which the contravention or non-compliance must be remedied.

3. The time and date by which an action must be taken under a Notice to Comply must be reasonable in the circumstances and what will be reasonable will vary depending on the matters to be remedied, but should take into account, if applicable:
 - a) the amount of work involved;
 - b) the degree of difficulty to carry out the work;
 - c) the availability of necessary materials or other necessary items;
 - d) climatic conditions;
 - e) the degree of risk or potential risk;
 - f) the response if any by the person to be served with the Notice to Comply; and
 - g) any other relevant matter.

4. An owner, builder or any person served with a Notice to Comply may make representations to Council about the matters contained in the Notice to Comply.

5. An owner, builder or any person served with a Notice to Comply may make representations to Council about the matters contained in the Notice to Comply.

5.4 Power to Act in Urgent Circumstances

1. An Authorised Officer may, in urgent circumstances arising as a result of another person's failure to comply with this Local Law, take action to remove, remedy or rectify a situation without the necessity to serve a Notice to Comply provided:
 - a) he or she determines the circumstances are, or situation is, urgent and that the time involved or difficulties associated with serving a Notice to Comply may place a person, animal, property or the environment at risk or in danger;
 - b) the Chief Executive Officer, or their delegate, approves the proposed action;
 - c) details of the circumstances and remedying action are, as soon as possible, forwarded to the person on whose behalf the action was taken; and
 - d) the Council is advised as soon as practicable of the action taken.

2. The action taken by an Authorised Officer under this Clause 16 must not extend beyond what is necessary to cause the immediate abatement of the risk or danger involved.

5.4 Penalties

1. The maximum penalty an offence against this Local Law is 10 penalty units for the

first offence and 20 penalty units for a second or subsequent offence.

2. In addition to any penalty imposed pursuant to this Local Law, a penalty not exceeding 2 penalty units will apply for each day that a contravention of this Local Law continues after a finding of guilt or conviction for an offence against it.
3. An infringement notice may be issued under Clause 18 as an alternative to prosecution for an offence against this Local Law.

5.5 Infringement Notices

1. Where an Authorised Officer has reason to believe that a person is guilty of an offence against this Local Law, the Authorised Officer may serve on that person an infringement notice.
2. The penalty fixed for an infringement notice under this Local Law is 2 penalty units.

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 the 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 Offices, 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 the 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



Mildura Rural City Council

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 a fine.