



Clean-Up Notice

Ku-ring-gai Council
86 408 856 411
Locked Bag 1006
GORDON NSW 2072

Attention: Piran Subramaniam, Project Manager, Ku-ring-gai Council

Notice Number 3508795
Reference Number SR-2705
Date 26-04-2024

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Why is the EPA writing to you?

The Environment Protection Authority (**EPA**) reasonably suspects that a pollution incident has occurred or is occurring on land that forms part of Bicentennial Park West Pymble, known as 'Norman Griffiths Oval' at 2 LOFBERG ROAD WEST PYMBLE NSW 2073; Lot 6 in DP564939 (**the Premises**). A map with the estimated location of the Premises can be found in **Attachment 1** of this Notice.

The EPA has issued you with this Clean-up Notice. Further information is set out in the notice below.

What are you required to do?

Please read this notice carefully and carry out the clean-up action specified in this notice by the date required. If you have any queries about this matter, please contact Michael Simpson on 02 8275 1464.

BACKGROUND

- A. The EPA is responsible for the administration and enforcement of the *Protection of the Environment Operations Act 1997* (**the Act**).
- B. Ku-ring-gai Council (ABN 86 408 856 411) (**the Council**) is the owner of the Premises for the purposes of s 91(1)(a) of the Act.



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- C. The EPA is the appropriate regulatory authority for non-scheduled activities carried on by a public authority under section 6(2)(c) of the Act. The Council as a local council is considered a “public authority” as defined in the Dictionary of the Act.
- D. The Premises is currently undergoing a major upgrade which includes the installation of a new synthetic surface, new lighting and pathways, and improved drainage system. The current sport field is closed to the public.
- E. The Premises is under the management and control of the Council. Upgrade works are being managed by Council, with Turf One Pty Ltd (ACN 659 410 778) contracted by Council to complete the installation of the synthetic fields at the Premises.
- F. On 6 April 2024, the EPA received reports that sediment laden water was entering the Premises and allegedly being discharged from the Premises into Quarry Creek located within Lane Cove National Park.

Discharge of sediment laden water from the north-east wall of the sediment basin on the Premises into Quarry Creek

- G. On 8 April 2024, EPA authorised officers attended the Premises and conducted an inspection. EPA authorised officers observed that the Premises’ north-east wall of the sediment basin had collapsed and damaged a pipe which resulted in an uncontrolled discharge of sediment laden water into Quarry Creek on 6 April 2024.
- H. During the inspection, EPA authorised officers cautioned the Council representative onsite and received voluntary information stating that the uncontrolled discharge of sediment laden water was stopped following the plugging of the damaged pipe.
- I. EPA authorised officers observed sediment laden water deposited on a large area of the Premises, sediment deposited directly adjacent to the stormwater outlet and sediment laden water within Quarry Creek. EPA officers observed no upstream impact during the inspection.
- J. EPA authorised officers reminded Council of the duty to notify the EPA of a pollution incident causing or threatening material harm under section 148 of the Act.
- K. Accordingly, the EPA reasonably suspects that a pollution incident occurred and is occurring due to the leak or other escape of sediment laden water from the Premises into Quarry Creek.

Discharge of sediment laden water from stormwater outlet on the Premises into Quarry Creek

- L. On 13 April 2024, the EPA received further reports from members of the public that there was sediment laden water discharging from the Premises into Quarry Creek.
- M. On 15 April 2024, an EPA authorised officer conducted an inspection of the Premises and observed sediment laden water discharging from the stormwater outlet originating from the Premises, sediment deposited directly adjacent to the stormwater outlet, sediment laden water within Quarry Creek and no impact upstream of the premises.
- N. An EPA authorised officer cautioned the Council representative onsite and obtained voluntary information from Council that a faulty joint in a stormwater pipe had been identified, where sediment laden water had been seeping from the Premises into Quarry Creek.



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- O. The EPA understands that Council engaged a consultant to repair the faulty joint with works scheduled to occur on Tuesday 16 April 2024. The EPA inspected the Premises on 19 April 2024 and confirmed that the repairment of the faulty joint took place.
- P. Council stated that arrangements for the sediment laden water at the Premises to be disposed off-site using a vac truck were still in progress, with no date set for this action to occur. This includes sediment laden water at the Premises referred to in paragraphs G to I of this Notice. The EPA understands that this action has commenced but is not complete.
- Q. On 19 April 2024, EPA authorised officers attended the Premises and conducted an inspection of Quarry Creek. EPA authorised officers observed turbid water with very low flow / stagnant water along Quarry Creek for an estimated of 200 metres, with signs of impact including the presence of algae and suspended solids. EPA authorised officers also observed sets of silt socks along Quarry Creek, blocking the flow of the waters within Quarry Creek.
- R. Section 91 of the Act enables the EPA to issue a Clean-up Notice in respect of a pollution incident. On 19 April 2024, under section 91 of the Act, an EPA authorised officer gave a Council representative, a verbal clean-up direction to carry out clean-up actions related to the Premises and the impacted Quarry Creek. A map with the estimated location of Quarry Creek can be found in **Attachment 1** of this Notice.
- S. Accordingly, the EPA reasonably suspects that a pollution incident occurred and is occurring due to the leak or other escape of sediment laden water from the Premises into Quarry Creek.

Environment Protection Law

- T. Section 91 of the Act enables the EPA to issue a Clean-up Notice in respect of a pollution incident.
- U. The Dictionary to the Act defines:
- **“Pollution incident”** as an incident or set of circumstances during or as a consequence of which there is or is likely to be a leak, spill or other escape or deposit of a substance, as a result of which pollution has occurred, is occurring or is likely to occur. It includes an incident or set of circumstances in which a substance has been placed or disposed of on premises, but it does not include an incident or set of circumstances involving only the emission of any noise.
 - **“Pollution”** as including water pollution.
 - **“Waters”** as including:
 - i. Any river, stream, lake, lagoon, swamp, wetlands, unconfined surface water, natural or artificial watercourse, dam, or tidal waters (including the sea), or
 - ii. Any water stored in artificial works, any water in water mains, water pipes, or water channels, or any underground artesian water.
 - **“Water pollution”** or **“pollution of waters”** as:
 - i. placing in or on, or otherwise introducing into or onto, waters (whether through act or omission) any matter, whether solid, liquid, or gaseous, so that the physical, chemical, or biological condition of the waters is changed, or
 - ii. placing in on, or otherwise introducing into or onto, the waters (whether through an act or omission) any refuse, litter, debris, or other matter, whether solid or liquid or gaseous, so that the change in the condition of the water or the refuse, litter, debris or other matter, either alone or together with any other refuse, litter, debris or matter present in the waters makes, or is likely to make, the waters unclean, noxious, poisonous or impure, detrimental to the health,



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safety, welfare or property of persons, undrinkable for farm animal, poisonous or harmful to aquatic life, animals, birds or fish in or around the waters or unsuitable for use in irrigation, or obstructs or interferes with, or is likely to obstruct or interfere with persons in the exercise or enjoyment of any right in relation to the waters, or

- iii. placing in or on, or otherwise introducing into or onto, the waters (whether through an act or omission) any matter, whether solid, liquid or gaseous, that is of a prescribed nature, description or class or that does not comply with any standard prescribed in respect of that matter,

and, without affecting the generality of the foregoing, includes—

- a. placing any matter (whether solid, liquid or gaseous) in a position where—
- b. it falls, descends, is washed, is blown or percolates, or
- c. it is likely to fall, descend, be washed, be blown or percolate,

into waters, onto the dry bed of any waters, or into any drain, channel or gutter used or designed to receive or pass rainwater, floodwater or any water that is not polluted, or

- a. placing any such matter on the dry bed of any waters, or in any drain, channel or gutter used or designed to receive or pass rainwater, floodwater or any water that is not polluted,
- b. if the matter would, had it been placed in any waters, have polluted or have been likely to pollute those waters.

Pollution incidents

- V. The EPA reasonably suspects that pollution incidents involving the pollution of waters have occurred, is occurring or is likely to occur at the Premises, namely because:
 - a. On around 6 April to 8 April 2024, an incident or set of circumstances occurred (as outlined in paragraphs G to I of this Notice) as a result of which sediment laden water leaked, spilled or otherwise escaped or was deposited from the Premises into waters of Quarry Creek, as a result of which water pollution has occurred, is occurring and is likely to occur.
 - b. On around 13 to 15 April 2024, an incident or set of circumstances occurred (as outlined in paragraphs L to N) as a result of which sediment laden water leaked, spilled or otherwise escaped or was deposited from the Premises into the waters of Quarry Creek, as a result of which water pollution has occurred, is occurring and is likely to occur.
 - c. On around 19 April 2024, as a result of sediment laden water being leaked, spilled or otherwise escaped or was deposited from the Premises into water of Quarry Creek (outlined in paragraph V), signs of impact were observed in waters of Quarry Creek including the presence of algae and suspended solids.
- W. The EPA is directing Council to take clean-up action because Council is the owner of the Premises, and the EPA reasonably believes that the pollution incident has occurred and is occurring from the Premises.

DIRECTION TO TAKE CLEAN-UP ACTION

The EPA directs Ku-ring-gai Council to take the following clean-up action:



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1. By **5:00 pm on 1 May 2024**, Ku-ring-gai Council must take immediate action to stop the discharge of sediment laden water from the Premises and into Quarry Creek, including but not limited to:
 - a. Repair the collapsed sediment dam wall, repair the damaged section of pipe leading from the dam to the stormwater system, and reinstate the holding capacity of the sediment dam.
 - b. Assess the condition and operational status of all stormwater pipes running underneath or above at the Premises to prevent any further sediment laden water from entering the stormwater system from the Premises.
 - c. Arrange for the sediment laden water at the Premises to be lawfully disposed of and/or discharged in an appropriate fashion that does not result in further environmental harm.
 - d. Remove the build-up of any sediment originating from the Premises in Quarry Creek as well as algae and suspended solids in waters of Quarry Creek for at least but not limited to 200 metres from the stormwater outlet. A map detailing the estimated location of Quarry Creek can be found in **Attachment 1** of this Notice.
2. By **5:00 pm on 10 May 2024**, Ku-ring-gai Council must provide a report to the EPA containing evidence of the completion of the above actions, as well as evidence that the pollution incident is no longer occurring.
3. By **5:00 pm on 1 May 2024**, Ku-ring-gai Council must engage an independent and suitably qualified person to review all sediment and erosion controls at the Premises and identify any existing controls which are in a poor condition or ineffective. This must include, but not be limited to:
 - a. The identification of any potential overflow points where sediment laden water may exit the Premises overland.
 - b. Ensuring that, upon reconstruction, the sediment basin on the premises is compliant with Landcom's 'Managing Urban Stormwater, Soils & Construction Guidelines (The Blue Book), 2004'
 - c. Ensuring that proper clean-water diversion is in place and functioning as intended on the premises.
 - d. Ensuring that any exposed soil on the premises is sufficiently stabilised to prevent erosion.
 - e. Review and audit the floccing and pump out process for sediment laden captured water at the site.
 - f. Replace any existing controls which are identified as being in a poor condition or ineffective.
 - g. Create a detailed 'Sediment and Erosion Control Plan' for the Premises. The plan must outline a detailed strategy to control the discharge of sediment laden water into Quarry Creek from earthworks undertaken by Council at the Premises, a plan for the ongoing maintenance of controls, and must contain a detailed map outlining the location of erosion and sediment controls, clean water diversions as well as the flow-path of potentially sediment laden water on the Premises.

Details of the review must be provided to the EPA by **5:00 pm on 23 May 2024**.

4. By **5:00 pm on 1 May 2024**, Ku-ring-gai Council must engage a suitably qualified consultant to conduct a comprehensive inspection and assessment of the drainage systems beneath the Premises. The assessment must include, but not be limited to:
 - a. Identifying whether there are any potential pathways for sediment laden water to infiltrate the underground drainage network beneath the Premises and migrate offsite, including, but not

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limited to; fractures, cracks, or degraded seals in the underground drainage pipes; or any unsealed drainage points on the Premises where sediment laden water can enter the underground drainage network.

- b. If there are any ongoing sources from the Premises contributing to the discharge of sediment laden water into the drainage channels beneath the Premises.
 - c. Any site improvement works or measures that are required to ensure sediment laden water does not infiltrate the underground drainage network and discharge offsite into Quarry Creek during periods of heavy rainfall.
5. By **5:00 pm on 30 May 2024**, Ku-ring-gai Council must provide a report to the EPA outlining any site improvement works or measures that have been taken as required or recommended by the assessment of drainage systems on the site.
6. All information required by this notice must be submitted by email to info@epa.nsw.gov.au and quoting reference number [SR-2705] in the subject line and copied to michael.simpson@epa.nsw.gov.au.

FEE TO BE PAID

- You are required by law to pay a fee for the administrative costs of issuing this notice. An invoice for the fee has been attached to this notice.
- It is an offence not to pay this fee. However you can apply for an extension of time to pay the fee or for the fee to be waived. At the end of this notice there is information about how and when to pay the fee and how to apply for an extension or a waiver of the fee.

A handwritten signature in black ink that reads 'Corrie Ford'.

Corrie Ford
Manager Regional Operations
(by Delegation)

WARNINGS AND INFORMATION ABOUT THIS CLEAN-UP NOTICE

- This notice is issued under section 91 of the Act.
- It is an offence against the Act not to comply with a clean-up notice unless you have a reasonable excuse.



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- Details provided in this notice will be available on the Public Register in accordance with section 308 of the Act
- If this notice is issued to a corporation and the notice is not complied with by the date specified, the EPA may, under s 91A(2) of the Act, issue a supplementary clean-up notice to a current or former director or manager, or a related body corporate, directing them to carry out, or ensure the carrying out of, clean-up action specified in the supplementary notice.

Penalty for not complying with this notice

- The maximum penalty that a court may impose for a corporation is \$2,000,000 and a further \$240,000 for each day the offence continues. The maximum penalty that a court may impose for an individual is \$500,000 and a further \$120,000 for each day the offence continues.

When this notice begins to operate

- This notice operates from the day the notice is given, unless a later date is specified in the notice.

Continuing obligation

- Under section 319A of the Act, your obligation to comply with the requirements of this notice continues until the notice is complied with in full, even if the due date for compliance has passed.

Cost recovery from the person(s) who caused or contributed to the incident

- If you comply with this clean-up notice but you are not the person who caused, or solely caused, the pollution incident to which the notice relates, you have a right to go to court to recover your costs, or part of your costs, of complying with the notice from any person who caused or contributed to the incident.

Deadline for paying the fee

- The fee must be paid by **no later than 30 days after the date of this notice**, unless the EPA extends the time to pay the fee or waives the fee.

How to pay the fee

- Possible methods of payment are listed on the last page of the attached invoice/statement.
- Please include the payment slip from the attached invoice/statement with your payment.

How to apply for an extension of time to pay/waive the fee

- Any application for an extension of time to pay the fee or for the fee to be waived must be made in writing to the EPA. The application should set out clearly why you think your application should be granted.



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Other costs

- The Act allows the EPA to recover from you reasonable costs and expenses it incurs in monitoring action taken under this notice, ensuring the notice is complied with and associated matters.
- If you are required to pay these other costs and expenses you will later be sent a separate notice called a “Notice Requiring Payment of Reasonable Costs and Expenses”.

Variation of this notice

- The requirements of this notice may only be varied or revoked by written notice issued by the EPA.