
Cessnock City Council Control of Open Burning Policy (Dead and Dry Vegetative Material)

Date Adopted **xx/xx/2021** Revision: **3**

1. POLICY OBJECTIVES

The objectives of this Policy are to:

- 1.1. Set Council's position on the issuing of Approval to Burn dead and dry vegetative material in the open in accordance with the *Protection of the Environment Operations (Clean Air) Regulation 2010* (NSW) (**the Regulation**).
- 1.2. Outline under what conditions an Approval to Burn dead and dry vegetative materials in the open is granted.
- 1.3. Provide a standing Approval to Burn for a class of persons to undertake Open Burning on specified land to assist residents and land owners to conduct ongoing maintenance of their property.

2. POLICY SCOPE

- 2.1. This policy applies to all Open Burning of dead and dry vegetative material within the Cessnock Local Government Area (**LGA**).
- 2.2. This policy does **NOT** provide:
 - a) Approval to Burn the land for bush fire hazard reduction;
 - b) Approval to clear vegetation;
 - c) Approval to Burn vegetation resulting from the clearing of land related to a development consent under the *Environmental Planning and Assessment Act (1979)* (NSW); or
 - d) Approval to burn prohibited materials including tyres, coated wire, paint containers and residues, solvent containers and residues and timber treated with copper chrome arsenate (CCA) or pentachlorophenol (PCP)

3. POLICY STATEMENT

- 3.1. Open Burning is regulated across the State of New South Wales by the Regulation. The intention of the Regulation is to prevent or minimise emissions associated with Open Burning, with a view to protecting local and regional air quality, local amenity and human health.

4. OPEN BURNING

- 4.1. Burning of anything in the Cessnock LGA is prohibited except in accordance with an approval or exemption under the Regulation or the *Rural Fires Act 1997* (NSW) and Regulation.
- 4.2. Council is specified in Parts 2 and 3 of Schedule 8 of the Regulation, therefore may grant a standing Approval to Burn to a defined class of persons for the purposes of these Parts in respect to the Open Burning of dead and dry vegetation.

The prescribed criteria for the class of persons in which a standing Approval to Burn is granted is provided by means of a notice published in the NSW Government Gazette and in such a manner as Council is satisfied it is likely to bring the notice to the attention of the community.

- 4.3. Before granting an Approval to Burn, Council takes into consideration the following issues:
 - 4.3.1. The impact on regional air quality;
 - 4.3.2. The impact on local air quality;
 - 4.3.3. The feasibility of re-use, recycling or other alternative means of disposal;
 - 4.3.4. The views of the sector of the public likely to be affected by the proposed approval; and
 - 4.3.5. The views of the Environmental Protection Authority in relation to a proposed approval to any class of persons.
- 4.4. Council will provide a conditional standing Approval to Burn to a class of persons on parcels of land that meet the prescribed criteria. Such approval is intended for properties that have a large number of mature trees that are likely to generate larger than average quantities of vegetative debris.
- 4.5. Approval by Council is not required to:
 - 4.5.1. cook or barbecue in the open, or
 - 4.5.2. light, maintain or use a fire for recreational purposes such as camping, picnicking, scouting or other similar outdoor activities,provided only dry seasoned wood, liquid petroleum gas, natural gas or proprietary barbecue fuel (including a small quantity of fire starter) is used.

Please note: Other restrictions may apply and advice should be sought from the Relevant Fire Authority prior to lighting a recreational fire.

Fire Safety and Response Arrangements

- 4.6. As appropriate authorities for the purposes of the *Rural Fire Act 1997* (NSW), NSW Rural Fire Service and Fire and Rescue NSW work together in a complimentary manner to meet community fire safety and response needs across rural and urban jurisdictions.

- 4.7. Fire Permit and notice requirements apply to persons lighting fires as determined by the Relevant Fire Authority. Conditions set out in a Fire Permit may address fire safety requirements.
- 4.8. Conditions associated with an Approval to Burn under this policy support compliance with fire safety, notification and permit requirements of the Relevant Fire Authority.

Note: Notification and permit requirements may vary according to the Relevant Fire Authority jurisdiction and Statutory Bushfire Danger Period thus should be clarified with the Relevant Fire Authority.

As a guide, urban areas require a fire permit all year round and fall within the jurisdiction of Fire and Rescue NSW, other land with varying permit issuing timeframes is covered by NSW Rural Fire Service.

5. CLASS OF PERSONS APPROVAL

- 5.1. Under section 13(2)(a) of the Regulations Council may grant standing approval to a class of persons for the Open Burning of dead and dry vegetative material in accordance with the Regulations.
- 5.2. The prescribed criteria for the land on which a class of persons Approval to Burn will be granted is land that is
 - 5.2.1. Greater than 4000m² in area; and
 - 5.2.2. Zoned RU4 Primary Production Small Lots, or RU2 Rural Landscape, or R5 Large Lot Residential, or SP3 Tourist.
- 5.3. When the prescribed criteria for the land are fulfilled and the land owner / manager complies with the *Conditions of Approval* outlined in clause 6 of this policy, Approval to Burn is deemed to have been given.
- 5.4. Evaluation of the prescribed criteria for the land in clause 5.2 is the responsibility of the land owner / manager and individual assessment or approval documentation is not provided by Council.
- 5.5. Approval to Burn does not exempt or remove the necessity to obtain relevant permits or licenses and adhere to requirements under other legislation including:
 - 5.5.1. *Rural Fires Act 1997* (NSW),
 - 5.5.2. *Protection of the Environment Operations Act 1997* (NSW),
 - 5.5.3. *Threatened Species Conservation Act 1995* (NSW),
 - 5.5.4. *Native Vegetation Act 2003* (NSW), or
 - 5.5.5. *Environment Protection and Biodiversity Conservation Act 1999* (NSW).
- 5.6. The standing class of persons approval commences following adoption by Council and notice is published in the NSW Government Gazette. The standing class of persons approval will continue until the approval is reviewed or revoked and notice is published in the NSW Government Gazette.

6. CONDITIONS OF APPROVAL

Relevant Fire Authority Authorisation

- 6.1. The land manager/owner must notify the Relevant Fire Authority of their intention to burn at least 24 hours prior to the intended time of burning.
- 6.2. The land manager/owners must obtain a Fire Permit where requested by the Relevant Fire Authority.

Note: As a guide, urban areas require a fire permit all year round and fall within the jurisdiction of Fire and Rescue NSW, other land with varying permit issuing timeframes is covered by NSW Rural Fire Service.

Where a Fire Permit is not required by the Relevant Fire Authority General Conditions still apply including compliance with the publications on undertaking a burn specified in condition 6.7.

General Conditions of Approval

- 6.3. An Approval to Burn under this policy is only for the purpose of disposal of dead and dry vegetative material, that cannot be feasibly reused or recycled (such as mulching or chipping), through Open Burning. Vegetative material must consist only of that which accumulates on the prescribed parcel of land during the normal use of that land.
- 6.4. Only one pile of vegetation may be burnt on any parcel of land at any one time, with the maximum size of any such pile to be 2 metres long, 2 metres wide and 1.5 metre high.
- 6.5. All reasonable measures must be taken to provide 24 hours notice (verbal or written) to adjacent property owners of an intention to burn in the open in accordance with this policy.
- 6.6. All reasonable measures must be taken to avoid causing a nuisance to neighbours including considering wind direction, weather conditions and ensuring the material being burnt is not wet.
- 6.7. Open Burning must be undertaken in accordance with the NSW Rural Fire Service / Fire and Rescue NSW publications [Standards for Pile Burning](#) and [Before you light that fire](#).
- 6.8. The land manager/owner provides consent for an authorised Council officer to enter the parcel of land prior to or during the Open Burning for the purpose of administering the Regulations.
- 6.9. All [No Burn Notices](#) issued by the Environmental Protection Authority (EPA) or Total Fire Bans issued by the NSW Rural Fire Service override an Approval to Burn.

7. RESPONSIBILITIES

Compliance

- 7.1. The elected Council is responsible for adopting this policy, and granting approval for the class of persons to be published in the NSW Government Gazette and in such other manner as is satisfied to bring the notice to the attention of the community.
- 7.2. Council Officers authorised and/or delegated under relevant legislation are responsible for implementing this policy.

Records management

- 7.3. Staff must maintain all records relevant to administering this policy in accordance with Council's Records Management Policy.

8. POLICY DEFINITIONS

Approval to Burn	Means an approval to burn dead and dry vegetative material in Cessnock LGA. An approval can be granted by Council as per the Regulations.
Excess Vegetation	That above what is practical to utilise on-site for rehabilitation of temporarily cleared areas or as mulch.
Fire Permit	Means a permit with conditions detailing how a fire is lit and maintained, notification requirements and the like. Permits are issued by NSW Rural Fire Services and Fire and Rescue NSW as per <i>Rural Fires Act 1997</i> (NSW).
No Burn Days	Can be declared by the Environmental Protection Authority outside of the Statutory Bushfire Danger Period if it is of the opinion that, because forecast weather conditions, burning is likely to contribute to the build-up of air pollution. During No Burn Days burning of fires in the open or in incinerators are prohibited by the issuing of a No Burn Notice as per section 133 of the <i>Protection of the Environment Operations Act 1997</i> (NSW).
Open Burning	The act of burning anything in the open air. (<i>sometimes referred to as backyard burning or pile burning</i>)
Statutory Bushfire Danger Period	Unless otherwise modified by the Commissioner under the <i>Rural Fires Act 1997</i> (NSW), the period between 1 October to 31 March.
Total Fire Bans	Can be declared by the NSW Rural Fire Services Commissioner to reduce the risk of fires damaging or destroying life, property and the environment. In a Total Fire Ban no fire may be lit in the open and all Fire Permits are suspended. This includes incinerators and barbecues which burn solid fuel, e.g. wood, charcoal or heat beads. No general purpose welding, grinding, soldering or gas cutting can be done in the open.
Relevant Fire Authority	As per <i>section 85</i> of the <i>Rural Fires Act 1997</i> (NSW) : appropriate authority , in relation to a fire permit in respect of land, means— (a) in the case of land in a rural fire district—the Commissioner of the NSW Rural Fire Service, (b) (Repealed)

(c) in the case of land in a fire district—the Commissioner of Fire and Rescue NSW.

(d) (Repealed)

9. POLICY ADMINISTRATION

Business Group	Planning and Environment
Responsible Officer	Manager Health & Building.
Associated Procedure	N/A
Policy Review Date	Three years from date of adoption unless legislated otherwise
File Number / Document Number	DOC2018/044460
Relevant Legislation (reference specific sections)	This policy supports Council's compliance with the following legislation: <ul style="list-style-type: none"> • <i>Protection of Environment Operations Act 1997 (NSW)</i> • <i>Part 3 – Control of Burning, Protection of the Environment Operations (Clean Air) Regulation 2010 (NSW)</i>
Relevant desired outcome or objectives as per Council's Delivery Program	A connected, safe and creative community <ul style="list-style-type: none"> • Objective 1.3.2 - Carry out regulatory and education programs to protect residential amenity and community health and safety.
Related Policies / Protocols / Procedures / Documents (reference document numbers)	<ul style="list-style-type: none"> • Records Management Policy (DOC2019/038769) • Compliance and Enforcement Policy (DOC2017/083408) • Register of Delegations (16/66)

10. POLICY AUTHORISATIONS

No.	Authorised Function	Authorised Business Unit / Role(s)
	N/A	N/A

11. POLICY HISTORY

Revision	Date Approved / Authority	Description Of Changes
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1	19/08/2015 (PE58/2015)	New policy adopted
2	1/06/2018	Periodic review
3	17 March 2021	<p>Periodic Review</p> <ul style="list-style-type: none"> • Clarification of policy Scope. • Incorporation of SP3 Tourist Zone to the class of persons approval. SP3 Tourist Zone was formally RU4 zoned and was unintentionally excluded from the class of person approval following re-zoning. • As there are currently no lands that are deferred matters under the CLEP 2011 reference within the class of person approval was removed. • Clarifying requirements for Fire Permits. • Clarifying land owner / manager responsibility to determine class of persons approval. • Addressing fires for the purpose of cooking and recreation • Update of conditions, specifically relevant Fire Authority authorisation, removing conditions potentially inconsistent with a Fire Permit and specifying overriding power of EPA No Burn Notice or Total Fire Ban Declaration. • Update of Policy Definition to define Relevant Fire Authority • Wording and formatting changes throughout that do not materially affect the intent or application of the existing Control of Open Burning Policy (Dead and Dry Vegetative Material).