

## Planning certificates: loose-fill asbestos material

This circular provides councils with guidance on section 10.7 planning certificate notations relating to loose-fill asbestos ceiling insulation in residential dwellings.

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### Introduction

This circular replaces Planning Circular PS 18-004 and provides advice in relation to planning certificate notations for residential properties affected by loose-fill asbestos insulation.

### Loose-fill asbestos insulation notations on section 10.7 planning certificates

Residential properties that are known to contain loose-fill asbestos used as ceiling insulation material must be notified on planning certificates issued under section 10.7(2) of the *Environmental Planning and Assessment Act 1979* (NSW) (EP&A Act).

Potential home purchasers rely on the information provided in section 10.7 planning certificates as part of making an informed purchase. Providing information regarding loose-fill asbestos insulation on planning certificates is a key mechanism for increasing awareness of this important public health issue.

### Loose-fill asbestos ceiling insulation definition

Loose-fill asbestos insulation is defined under the *Home Building Act 1989* to be loose-fill asbestos used as ceiling insulation.

The definition does not include other asbestos containing materials that may be present in residential dwellings. Commercial and industrial properties are also excluded from this definition because they are regulated by workplace legislation, including the *Work Health and Safety Act 2011*.

### Section 10.7 planning certificates

Planning certificates are a means of disclosing information about a parcel of land, including any relevant information, policies and land use controls that apply to the land at the time of issue.

A planning certificate under section 10.7(2) discloses matters relating to the land, including whether the land is affected by a policy that restricts the development of land.

A planning certificate may also include information under section 10.7(5). This allows a council to provide advice on other relevant matters affecting land that a council is aware affects the land but is not disclosed in a section 10.7(2) certificate. This can include past, current or future issues.

In NSW it is a mandatory part of the property conveyancing process to include a planning certificate containing information prescribed under section 10.7(2). The conveyancing process does not mandate the inclusion of information under section 10.7(5), but any purchaser may request that information.

Planning certificates may be purchased through the NSW Planning Portal or from a council by anyone, at any time and for any purpose.

### Identification of affected properties

During 2016, NSW Fair Trading made available a free ceiling insulation testing service to residents of pre-1980 dwellings located in specified local government areas. The *Home Building Act 1989* requires the Secretary of NSW Fair Trading to

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<sup>1</sup> Revised 10 August 2023 to include updated references to the *Environmental Planning and Assessment Regulation 2021* and *Conveyancing (Sale of Land) Regulation 2022*

maintain a register of residential properties that contain or have contained loose-fill asbestos insulation.

NSW Fair Trading provides local councils with written confirmation of an affected property immediately after it is added to the Loose-Fill Asbestos Insulation Public Register, including the property address and lot and DP number.

Additionally, the Loose-Fill Asbestos Insulation Register may be viewed online at the NSW Fair Trading website. The Register specifies the local government area that an identified property falls within, enabling council to identify all properties relevant to their local government area.

## Planning Certificates: Information under section 10.7(2)

The information to be included in a planning certificate under section 10.7(2) is outlined in the *Environmental Planning and Assessment Regulation 2021*. It includes the mandatory disclosure of matters relating to the land, which are listed in Schedule 2 of the Regulation. A statement about whether a property is listed on the Loose-Fill Asbestos Insulation Register maintained by the Secretary of NSW Fair Trading is required to be included on a section 10.7(2) certificate.

### Suggested wording

It is suggested that councils include a notation on section 10.7(2) planning certificates issued for properties listed on the Register in the following form:

*'A residential dwelling erected on this land has been identified in the Loose-Fill Asbestos Insulation Register as containing loose-fill asbestos ceiling insulation. Contact NSW Fair Trading for more information.'*

## Demolition and remediation of affected properties

When a property containing loose-fill asbestos insulation is demolished and the land on which the premises were erected has been remediated, NSW Fair Trading will remove the property from the Loose-Fill Asbestos Insulation Register and provide written confirmation to the relevant council that a property in their local government area has been removed from the Register.

Additionally, each council can confirm the property has been remediated and removed from the Register by viewing it online at NSW Fair Trading website.

The EP&A Act does not require a section 10.7(2) planning certificate to disclose information on a property that is no longer listed on the Register.

## Planning Certificates: Information under section 10.7(5)

Section 10.7(5) provides the means for a council to disclose information about other relevant matters affecting the land.

Councils need to take reasonable care when disclosing information to ensure that the information is accurate and relevant. Councils should also be aware of the 'good faith' liability protections afforded to them by section 10.7(6) of the EP&A Act, and section 733 of the *Local Government Act 1993*.

Research undertaken by the Loose-fill Asbestos Insulation Taskforce has determined that there is potential for loose-fill asbestos insulation to be found in residential dwellings constructed prior to 1980 in a number of local government areas.

Providing information under section 10.7(5) is at the discretion of council, but it is recommended that the identified councils provide a general alert regarding the potential for loose-fill asbestos insulation in properties that are not listed on the Register.

Conveyancing legislation mandates only a section 10.7(2) certificate be attached to a contract of sale. However, council can provide this information on a section 10.7(2) certificate, even if a section 10.7(5) certificate has not been applied for or the additional fee paid. Care should be taken to ensure that the information provided under section 10.7(5) is differentiated from the mandatory information included in a section 10.7(2) certificate.

The *Conveyancing (Sale of Land) Regulation 2022* require a prescribed warning statement to be included in the contract of sale for any residential premises (within the meaning of Division 1A of Part 8 of the *Home Building Act 1989*) built before 1985. This statement ensures potential purchasers are aware of the possibility that the premises may contain loose-fill asbestos insulation.

### Suggested wording

It is suggested that councils in the areas where loose-fill asbestos ceiling insulation has been identified include a section 10.7(5) notation on planning certificates issued for properties not listed on the Register, in the following form:

### ***'Information regarding loose-fill asbestos insulation***

*Some residential homes located in the [insert LGA] have been identified as containing loose-fill asbestos insulation, for example in the roof space. NSW Fair Trading maintains a Register of homes that are affected by loose-fill asbestos insulation.*

*You should make your own enquiries as to the age of the buildings on the land to which this certificate*

*relates and, if it contains a building constructed prior to 1980, the council strongly recommends that any potential purchaser obtain advice from a licensed asbestos assessor to determine whether loose-fill asbestos is present in any building on the land and, if so, the health risks (if any) this may pose for the building's occupants.*

Contact NSW Fair Trading for further information.

*This information has been provided pursuant to section 10.7(5) of the Environmental Planning and Assessment Act 1979 but does not constitute a full section 10.7(5) planning certificate.'*

## Identified Councils

The NSW Government has identified local government areas where loose-fill asbestos insulation is more likely to be found in residential dwellings, based on historical records and testing results. An up to date list of these local government areas can be found on the Loose-Fill Asbestos Testing Results page of the NSW Fair Trading website at: [www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au)

## Further Information

Planning system circular PS 21-036 provides further information on standards and requirements for removing or demolishing asbestos material in relation to complying or exempt development.

The Asbestos in NSW website provides further information on identifying and safely removing and disposing of asbestos material.

For further information please contact Service NSW on 13 77 18.

Department of Planning and Environment circulars are available at: <https://www.planning.nsw.gov.au/policy-and-legislation/planning-system-circulars/>

## Authorised by:

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**Important note:** This circular does not constitute legal advice. Users are advised to seek professional advice and refer to the relevant legislation, as necessary, before taking action in relation to any matters covered by this circular.

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