

PLANNING SYSTEM

Circular updated to include information on the demolition and remediation of affected properties

Circular	PS 18-004
Issued	5 April 2018
Related	Replaces PS 16-001 (dated 17 June 2016)

Loose-fill asbestos insulation notations on section 149 planning certificates

The purpose of this circular is to provide councils with guidance on section 149 planning certificate notations relating to loose-fill asbestos ceiling insulation in residential dwellings.

Introduction

This circular replaces Planning Circular PS 16-001 and provides updates and advice in relation to the demolition and remediation of properties affected by loose-fill asbestos insulation.

On 20 June 2016, the *Environmental Planning and Assessment Amendment (Loose-fill Asbestos Insulation) Regulation 2016* (the Regulation Amendment) commenced.

This regulatory framework relates to properties that are known to contain loose-fill asbestos used as ceiling insulation material. The Regulation Amendment includes the mandatory notification of residential properties containing loose-fill asbestos insulation on planning certificates issued under s149(2) of the *Environmental Planning and Assessment Act 1979* (NSW) (EP&A Act).

Potential home purchasers rely on the information provided in s149 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 149 planning certificates

Planning certificates are a means of disclosing information about a parcel of land. There are two types of information in planning certificates: information under section 149(2) and information under section 149(5). The 'sections' refer to sections of the EP&A Act.

A planning certificate under section 149(2) will disclose matters relating to the land, including whether or not the land is affected by a policy that restricts the development of land. Those policies can be based on identified risks (*Environmental Planning and Assessment Regulation 2000*, schedule 4, clause 7), and whether development on the land is subject to flood related development controls (*Environmental Planning and Assessment Regulation 2000*, schedule 4, clause 7A).

A planning certificate may also include information under section 149(5). This allows a council to provide advice on other relevant matters affecting land. This can include past, current or future issues.

Inclusion of a planning certificate containing information prescribed under section 149(2) is a mandatory part of the property conveyancing process in NSW. The conveyancing process does not mandate the inclusion of information under section 149(5), but any purchaser may request that information.

Planning certificates may be purchased from a council by anyone, at any time and for any purpose.

Planning certificates disclose the relevant information, policies and land-use controls that apply at the time of issue.

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 maintain a register of residential properties that have been tested and verified as containing loose-fill asbestos insulation.

NSW Fair Trading is responsible for informing local councils of any identified properties located within their boundaries. NSW Fair Trading will provide 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.

Additionally, the Loose-Fill Asbestos Insulation Register may be viewed online at the NSW Fair Trading website, and will specify 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 149(2)

The information to be included in a planning certificate under section 149(2) is outlined in the EP&A Regulation. It includes the mandatory disclosure of matters relating to the land, which are listed in Schedule 4 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 now required to be included on a section 149(2) certificate.

Suggested wording

It is suggested that councils include a notation on the section 149(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.

When a property is no longer listed on the Register, no specific disclosure pertaining to loose-fill asbestos insulation should remain on any planning certificate issued for the property under section 149(2) of the

Environmental Planning and Assessment Act 1979.

Planning Certificates: Information under Section 149(5)

Section 149(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 149(6) of the *Environmental Planning and Assessment Act 1979*, 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, as listed below. Providing information under section 149(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 149(2) certificate be attached to a contract of sale. However, council can provide this information on a section 149(2) certificate, even if a section 149(5) certificate has not been applied for or the additional fee paid. Care should be taken to ensure that the information provided under section 149(5) is differentiated from the mandatory information included in a section 149(2) certificate.

The *Conveyancing (Sale of Land) Regulation 2017* require a prescribed warning statement to be included in the contract of sale for certain 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 notation on all section 149(5) 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 149(5) of the EP&A Act but does not constitute a full section 149(5) planning certificate.'

Identified Councils

At the time of this circular, 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. These local government areas currently identified are listed below:

Albury City Council
Bega Valley Shire Council
Berrigan Shire Council
Canterbury-Bankstown Council
Eurobodalla Shire Council
Goulburn Mulwaree Council
Greater Hume Shire Council
Hilltops Council
Hornsby Shire Council
Ku-ring-gai Shire Council
Lithgow City Council
Narrandera Shire Council
North Sydney Council
Orange City Council
Parramatta City Council
Queanbeyan-Palerang Regional Council
Snowy Monaro Regional Council
Snowy Valleys Council
Tamworth Regional Council
The Hills Shire Council
Upper Lachlan Shire Council
Wagga Wagga City Council
Yass Valley Shire Council

Further Information

For further information regarding the loose-fill asbestos insulation register, please contact NSW Fair Trading on 13 32 20 or Service NSW on 13 77 18.

Department of Planning and Environment circulars are available at:
planning.nsw.gov.au/circulars

Authorised by:

Simon Officer
Acting Secretary

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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