

POL229- Regulatory – Policy for Burning of Vegetation within the Local Government Area

Applies to:	Planning and Environment (Environmental Health)
Responsible Stream:	Service Delivery
Responsible Officers:	Manager Development & Regulatory Services, Planning & Environment , Environmental Health & Building Surveyor , Environmental Health Officer
Legislation	Protection of the Environment Operations Act 1997 Protection of the Environment (Clean Air) Regulation 2010
Adoption Date/History:	<i>Version I – 22 October 2012</i> <i>Version VII November 2020</i> <i>Version VIII 28 April 2021</i>
CEO Approval Date	28/4/2021
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1. PURPOSE

This Policy provides a framework for the consideration of proposal for the burning of cut and stacked vegetation (pile burn) within the Armidale Regional Council Local Government Area.

2. APPLICATION

Where Council grants approval to burn, the approval is giving permission to pollute and is not giving permission to light a fire. Additional information should also be gained from the NSW Rural Fire Service or NSW Fire and Rescue about approvals required from those agencies.

3. POLICY INTENT

The *Protection of the Environment Operations (Clean Air) Regulation 2010* and *Rural Fires Act 1997* regulate the burning of materials in New South Wales.

Under cl.13 of the *Protection of the Environment Operations (Clean Air) Regulation 2010*, approvals to burn may be granted by Armidale Regional Council for the 'burning of dead and dry vegetation on the premises from which the vegetation grew'. All other approvals to burn can only be granted by the Environment Protection Authority (EPA).

NOTE:

The Protection of the Environment Operations (Clean Air) Regulation 2010:

- *Requires anyone who burns anything in the open or in an incinerator to do so in a manner that prevents or minimises air pollution (Clause 13(3))*
- *Prohibits the burning of tyres, coated wire, paint or solvent containers and residues, and timber treated with copper chromium arsenate or pentachlorophenol (Clause 11)*
- *Controls the burning of domestic waste and vegetation (Clause 12)*
- *Permits agricultural, cooking and recreational fires in certain circumstances. (Clause 12(4))*
- *Prohibits the burning of domestic waste without approval where there is a domestic waste collection service available (Schedule 8)*

The main objectives of this policy are to:

- To improve ambient air quality in Armidale's urban area.
- To assist in reducing air pollution to reach the pollution reduction target set for the Armidale urban area in POL 134: Policy for Sustainable Domestic Energy Use and Local Air Quality (incorporating Local Approvals Policy for Solid Fuel Heaters).
- To implement this Policy in a manner which is fair to our community, balancing consideration of local Climate, environment sustainability and community health.
- To encourage the re-use of green waste at Council's waste transfer station and recycling facilities.
- To address Council's statutory responsibilities in relation to pile burning.
- To allow burning where there is no reasonable alternative to dispose of dead and dry vegetation on the premises from which the vegetation grew.

4. COMMUNITY STRATEGIC PLAN OBJECTIVES

To implement Strategic Goal 5E-1.3 of the Armidale Community Strategic Plan 2011-2026 – “ To reduce wood smoke pollution in Armidale urban area in order to meet national fine particle (PM 2.5) air quality standards”.

5. POLICY

Armidale Regional Council requires that other alternatives to pile burning of vegetation within the “Armidale urban area” (see definition below) should be considered. These are preferred before an application for a permit to burn is submitted for assessment or blanket approval applies under this policy.

Burning in the Armidale urban area

No pile burning allowed within the Armidale urban area.

NOTE:

The Rural Fires Act 1997:

This Act regulates the lighting of fires. If the lighting of any fire is to occur during the bush fire danger period or is likely to cause harm to any building, a permit from either the NSW Rural Fire Service or NSW Fire and Rescue is required (depending on the location of the fire). The purpose of this permit is to provide for the safe use of fire. The lighting of any open fire is prohibited by the declaration of a Total Fire Ban by the Commissioner of the NSW Rural Fire Service or on days when the Fire Danger Rating for the New England area is VERY HIGH OR ABOVE. (Information on Fire Danger Ratings and Total Fire Bans can be obtained from www.rfs.nsw.gov.au or by calling 1800 679 737). It is the responsibility of any person lighting a fire to determine if a prohibition is in force.

Applications to pile burn within the Armidale urban area are rarely granted as there is a green waste collection service and a waste transfer station that receives green waste for a charge listed in Council’s Operational Plan. Additionally it is expected that urban landowners will manage their land such that large piles will not be removed by burning.

Certain recreational and cooking fires do not require Council approval in accordance with the *Protection of the Environment Operations (Clean Air) Regulation 2010*. As a guide for the purposes of this Policy, recreational or cooking fires consist of dry seasoned wood or proprietary BBQ fuel less than 1 metre in diameter and 1 metre in height. Any larger fires must be discussed with Council’s Environmental Health Officers. No prohibited items under the Regulation (eg tyres) are to be burnt in any case.

The Armidale urban area is defined for this purpose as the following land use zones in Council’s Local Environmental Plan 2012:

- R1 General Residential
- R2 Low Density Residential
- B2 Local Centre
- B3 Commercial Core
- B4 Mixed Use
- B5 Business Development
- B7 Business Park
- E4 Environmental Living
- IN1 General Industrial
- IN2 Light Industrial
- SP2 Infrastructure zone
- RE1 Public Recreation
- RE2 Private Recreation

Burning in Rural Areas including Guyra

'Blanket approval':

A 'blanket approval' is available for properties that are not located within the Armidale urban area as defined above.

As required by cl.10 of the Regulation, at all times burning must be carried out *"by such practical means necessary to prevent or minimise air pollution"*. The potential for smoke impacting on any person due to wind direction and weather conditions must be taken into account.

Enforcement actions for not complying with the conditions in this Policy or lighting fires without approval are listed at the end of this document.

The blanket approval is granted only when Requirements 1 and 2 below are met.

Requirement 1 - Before burning

- a) The person responsible for the burn must consider:
- Can they avoid the burning altogether? Consider other options. Is mechanical clearing possible? Is vegetation destruction essential? Have alternatives such as mulching been considered?
 - If persistent pesticides have been applied to the biomass, burning should be avoided.
- b) Burning must **NOT** include:
- Matter other than dead and dry vegetation grown on the property.
 - Grass clippings and leaves.
 - Any vegetation, where necessary Council and/or other relevant agency approvals have not been obtained (eg vegetation subject to Council or State Government tree preservation controls).

Requirement 2 - Blanket Approval Conditions

- a) The person responsible for the burn must conduct the burn in accordance with the *NSW Rural Fire Service* 'Standards for Pile Burning' and 'Before You Light That Fire' documents as available from www.rfs.nsw.gov.au
- b) The person must undertake the following prior to burning:
- If open burning cannot be avoided, choose weather conditions likely to be favourable for both fire control and pollution dispersion.
 - In the event of a total fire ban or a fire danger rating of very high or above being declared, this approval is suspended. Any existing fire is to be extinguished and cannot be re-commenced until the fire ban is lifted and the fire danger rating recedes below Very High.
 - In the event of a no burn day being declared by the EPA, this approval is suspended for the duration of the declaration. When a No Burn Notice is issued, it applies to the lighting of new fires in the declared areas. Existing fires should be allowed to continue as extinguishing them would result in more smoke. No Burn Notices are usually available from 4pm the day before they come into effect. Information is available by calling 131 555 or via the OEH website <http://www.environment.nsw.gov.au/air/aboutnb.htm>.
 - This permit is subject to variation, suspension or revocation by Council's authorised officers, either verbally or in writing should the conditions of this blanket approval not be complied with.

- c) The person responsible for the burn must undertake the following during burning:
- Persons lighting fires in proximity to main roads or highways must ensure the safety of the road users from smoke hazards or other hazards associated with the fire. Before lighting, the wind direction should be favourable to prevent these hazards.
 - A responsible supervising adult over the age of 18 shall be available to monitor the fire periodically with enough water to extinguish the fire, if required, for the time the fire is active. Any direction or condition issued by a fire authority supersedes this requirement.
- d) The person responsible for the burn must undertake the following after burning:
- Any residue waste from the burning must be disposed of in an environmentally satisfactory manner and in accordance with *Protection of the Environment Operations Act 1997* and *Protection of the Environment Operations (Waste) Regulation 2005*. On completion of the burn, the burnt area must be maintained in a condition that minimises or prevents the emission of dust and prevents sediment or ash from fires being washed from the area into surrounding waterways (natural or constructed).

Special Circumstances:

If any conditions in this Policy cannot be complied with, a proposal may be presented to the General Manager or delegated officer for determination. A report is to be prepared by an authorised officer to provide information to the General Manager or delegated officer to assist in the determination. The preparation of this report shall incur an hourly fee for “Development/activity-related information services” in the Council’s annual schedule of fees. This is to be paid at the time of lodgement of an application to gain approval to pile burn, based on the officer’s estimated processing time. Any unexpended fees will be refunded. Payment of fees will not guarantee that approval will be granted.

Notes:

The exhibition of this document and review of submissions prior to its adoption is considered to satisfy Clause 13 (3d) and (3e) of the Protection of the Environment Operations (Clean Air) Regulation 2010.

Due to the restrictions this Policy will place on the residents in the Local Government Area, there will be a transitional period of twelve months after this Policy has been adopted. During this period there will be increased awareness made of this Policy through the media and education resources. Applications made during this period will be assessed by the Environmental Health Officer on a case by case basis using the criteria described above.

Enforcement

An authorised officer of Council or of the EPA can issue directions to extinguish a fire and not to light or maintain a similar fire at a premise for a period of up to 48 hours in accordance with Section 134 of the *Protection of the Environment Operations Act 1997* if:

1. The fire is prohibited by an order of the EPA under Section 133 of the Act, or;
2. Air pollution from the fire is injurious to the health of any person, or is causing or likely to cause serious discomfort or inconvenience to any person.

The authorised officer may give this direction to:

- The occupier of the premises, or;
- The person apparently in charge of the premises, or;
- The person apparently in charge of the fire.

A direction to extinguish a fire, and not to light or maintain a similar fire at premises for a period of up to 48 hours, overrides any approval for certain fires or incinerators granted under the Regulation.

Note - Penalties:

A person who, with out reasonable excuse does not comply with an order or notice (as stated above) is guilty of an offence, Maximum Penalty 30 Penalty units (Protection of the Environment Operations Act 1997 s.135).

The burning of vegetation in the Armidale Dumaresq LGA without approval may incur a Maximum Penalty of 100 Penalty Units (Corporation) and 50 Penalty Units (Individual). This excludes exempt fires as described in the background section of this policy, as per the Protection of the Environment Operations (Clean Air) Regulation 2010 cl.12. At the time of writing a penalty unit is \$110.00.

6. LEGISLATIVE REQUIREMENTS

Protection of the Environment Operations Act 1997

Protection of the Environment Operations Act (Clean Air) Regulation 2010

Rural Fires Act 1997

Associated documents:

POL 134 Policy for sustainable Domestic Energy Use and Local Air Quality (incorporation Local Approvals Policy for Solid Fuel Heaters).

NSW Rural Fire Service “Standards for Pile Burning”

NSW Rural Fire Service “Before you light that Fire:”

