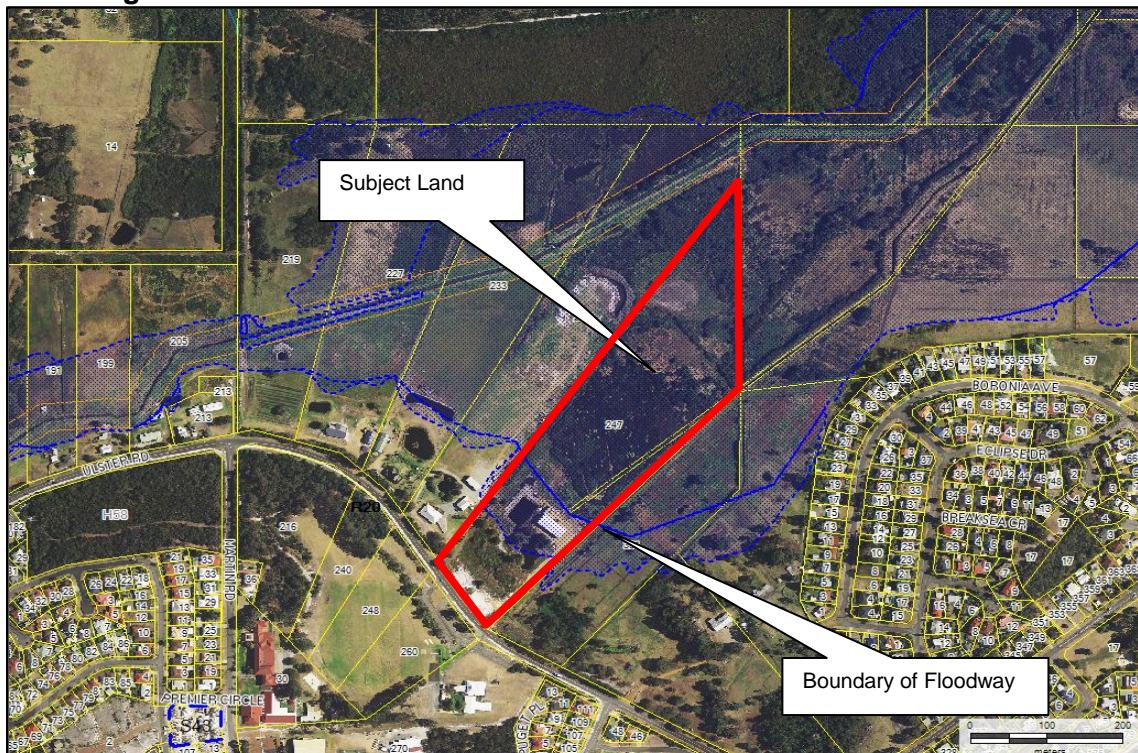


2.3: DEVELOPMENT APPLICATION – LANDFILL (INERT WASTE FROM BUILDING DEMOLITION) – 241 TO 247 ULSTER ROAD, COLLINGWOOD HEIGHTS

- Land Description** : 241-247 Ulster Road, Collingwood Heights
Proponent : R Barker
Owner : R Barker
Business Entity Name : Nil
Attachments :
 - Application for Planning Scheme Consent
 - Recommended Floodplain Development Strategy
 - Correspondence from John Holland that spoil is free from asbestos/contaminants
 - Copies of Submissions**Councillor Workstation** : Photographs of waste material onsite
 : Legal Advice from Mcleods Solicitors
Responsible Officer(s) : E/Director Planning and Development Services (G Bride)

Maps and Diagrams:



IN BRIEF

- Demolition spoil, consisting mainly of concrete and brick rubble, associated with the Albany Hospital redevelopment was used by the proponent to fill approximately 2500m² of the subject land. The spoil is classed as a waste material under the Town Planning Scheme and its deposit requires planning scheme consent. Retrospective consent is now sought for the imported demolition spoil.
- Objections have been received from the public and agencies due to the impact on flood flows and capacity and risk of contamination.

CEO:	RESPONSIBLE OFFICER:
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RECOMMENDATION

ITEM 2.3: RESPONSIBLE OFFICER RECOMMENDATION 1
VOTING REQUIREMENT: SIMPLE MAJORITY

THAT Council resolves to ISSUE a Notice of Planning Scheme Consent for a ‘Use Not Listed – Landfill (inert waste from building demolition)’ at 241 – 247 Ulster Road, Collingwood Heights, subject to the following conditions at the proponents expense:

- A. The proponent within a period of 60 days from the date of the approval is to complete the Western Australian Planning Commission’s Acid Sulfate Soils Self Assessment Form to the satisfaction of the City and the Department of Environment and Conservation for the retrospective works.

Advice:

Where an Acid Sulfate Soils report is required under the Assessment Form such a report needs to be prepared in accordance with the Department of Environment’s Guidelines titled ‘Investigation of Acid Sulfate Soils’.

- B. Where an Acid Sulfate Soils report is prepared and subsequently endorsed and actions are identified in an accompanying management plan, such actions stated in that management plan are to be completed within 60 days of the Acid Sulfate Self Assessment Form being received by the City.
- C. The approval is limited to the existing demolition spoil deposited on the site (as per the approved site plan) and no further waste material is to be deposited on the site without the prior authorisation of Council.
- D. The proponent within a period of 60 days is to the satisfaction of the City, place a notification, pursuant to Section 70A of the *Transfer of Land Act 1893* on the Certificate of Title of the lot advising of the existence of the fill site and that a geotechnical report to determine the suitability of the site to support structures would be required should development be contemplated on or adjacent to the fill.
- E. The extent of the landfill material being surveyed by a licensed surveyor to properly inform the notification on the title as required under Condition D.
- F. The survey plan should be overlaid with the boundary of the flood way as designated within the *Yakamia Creek Flood Study 2001* and where any spoil has encroached into the flood way, such material shall be removed and the remaining fill appropriately battered to the satisfaction of the City of Albany as per the *Recommended Flood Plain Strategy* within a period of 90 days from the date of the approval.
- G. The proponent proving that the timber content within the spoil does not exceed unavoidable quantities. To this end the proponent shall dig random inspection pits in accordance with a methodology agreeable to the City and the Department of Environment and Conservation. If the timber content is found to be excessive further screening will be required.

**ITEM 2.3: RESPONSIBLE OFFICER RECOMMENDATION 2
VOTING REQUIREMENT: SIMPLE MAJORITY**

THAT the proponent is ADVISED that the current enforcement notices issued will not be pursued, however:

- 1) should the proponent fail to comply with the above conditions of planning scheme consent, and/or**
 - 2) any further unauthorised fill is placed on the site,**
- new enforcement action under the *Planning and Development Act 2005* will be actioned.**

BACKGROUND

1. The subject site is just over 8.5ha in area and is zoned Rural under Town Planning Scheme No. 3. It is located on the north side of Ulster Road opposite St Joseph's College. The land is low lying and the flood plain of the Yakamia Creek extends over the site from the northeast as far as 180m from the Ulster Road boundary. The flood fringe area extends a further 80m to within 100m of the Ulster Road boundary.
2. Clause 5.1.2.2(b) of Town Planning Scheme No. 3 permits land owners to alter the natural contours of their land through excavation or filling provided this does not exceed 600mm in height, however under part (a) of the same Clause the deposit of any refuse or waste materials requires planning scheme consent.
3. Following complaints from the public regarding truck movements to and from the site, City staff visited the site and found demolition waste from the redevelopment of the Albany Hospital was being used to fill an area of approximately 2500m² within 180 metres of the front boundary of the subject land.
4. Given a waste material was being deposited without prior planning scheme consent, the City served Direction Notices under Sections 214(2) and 214(3) requiring the activity to stop and not recommence and for the material to be removed within a period of 60 days. However, within this timeframe the proponent lodged a retrospective planning application seeking Council's support to retain the demolition spoil onsite as inert fill.
5. The enforcement notices have been held in abeyance pending the outcome of Council's decision on this application.
6. This application is referred to Council in accordance with the Planning Applications Guidelines. The activity is classified as a landfill, for which staff do not have delegation to make a decision.

DISCUSSION

7. The proponent has excavated the topsoil and back filled with demolition spoil. Although the imported material is deeper than 600mm, this has not increased the new level beyond 600mm above the pre-existing natural ground level.

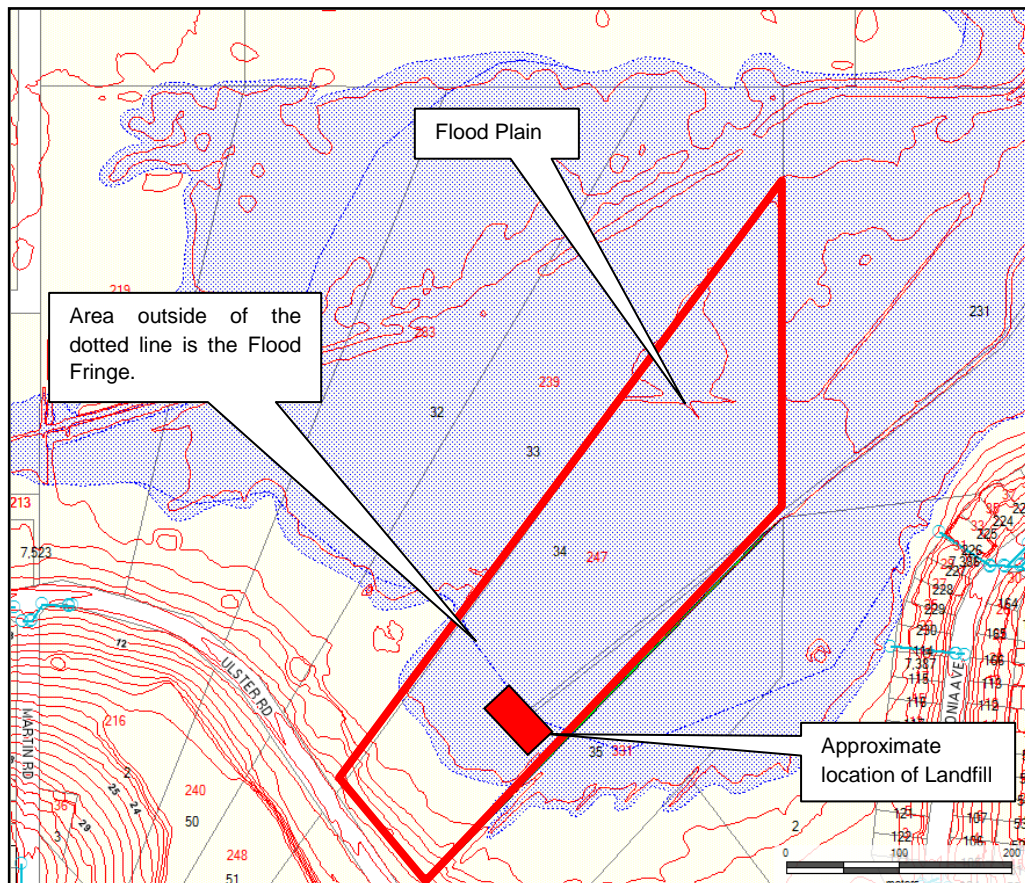
8. The waste materials were inspected by City staff whereby it was observed that the materials were predominantly bricks, concrete and general demolition rubble. Other materials consisting of carpet, electrical cabling, timber, metal sheets and strapping as well as plastic pipes were also observed, albeit in smaller quantities. Staff deemed the demolition spoil to be a waste material for the purposes of the Scheme.
9. Legal advice obtained by the City confirmed that the deposit of this material required planning scheme consent and should correctly be classified as a 'Use Not Listed (Inert Waste from Building Demolition)'.
10. "Uses that are not listed" in the Zone Development Table of Council's Town Planning Scheme No. 3 are required to be advertised. Such advertising was undertaken which involved referral to surrounding landowners and relevant government agencies.
11. Objections were received raising the following broad issues:
 - Heavy truck movements in close proximity to the schools;
 - Road safety and poor access arrangements;
 - Amenity of residential properties in the vicinity and
 - Concerns of this activity being within the floodplain.
12. The Department of Water (DOW) has objected to the proposal on the grounds that the fill straddles the floodway and flood fringe which may present an obstacle to flood flows and could exacerbate the impact of flooding upstream of the site.
13. The Department of Environment and Conservation (DEC) advised that the subject land has a moderate to high risk of Acid Sulfate Soils. The Acid Sulfate Soils status would require further investigation for ongoing excavation and burial activities that may require liaison with the DEC Contaminated Sites Branch in Perth. However, their main concern was the stated up to 10% timber content of the material. Treated timber is excluded from being buried at an inert landfill site and any timber (treated or not) is not considered to be inert and is only allowed in 'unavoidable' quantities.
14. The DEC further add that a licence under the *Environmental Protection Act 1986* is required for a landfill with a capacity of 500 tonnes per year.
15. The proponent was informed of the objections and concerns raised through the consultation process and was invited to reply or provide further information or clarification on the application in light of the comments received.
16. In response to the concerns over truck movements, proximity to schools and road safety, the proponent advised that the trucks delivering the material have now ceased and no more are envisaged. He also advised that the route from the Albany Hospital site was much shorter than that to the City Hanrahan Road tip, so the distance travelled and time spent on the road was much less and reduced the possibility for traffic conflict. Whilst the trucks were entering his property he had signs up advising and warning traffic travelling along Ulster Road.

17. In response to the fill in the flood plain and obstruction to flood flows, the proponent has provided photographs and advances the argument that the diversion drain is severely restricted downstream where it has had little or no maintenance resulting in flood waters backing up and flooding. He is doing relatively minor work to his land, yet the drain and creek are required to cope with increased stormwater flows from development and impermeable surfaces upstream within the catchment, with little or no upgrade to the drain infrastructure.
18. In response to the DEC comment on the quantity of timber present in the waste, the proponent advises he has further screened the building rubble onsite and has removed a lot of the timber. He estimates the timber content is now less than 1% by volume and would meet the DEC's requirements for 'unavoidable quantities'.
19. Although the application is classified as a landfill operation, it is not comparable to a typical landfill activity. It is not intended to be set up to receive all manner of waste materials and in fact the landfill activity as an operation has ceased. The application merely covers the area where the waste material has already been deposited and no further areas for landfill have been identified under the application. The proponent has accepted delivery of demolition waste/rubble as fill to raise the level of his land by less than 600mm. As no more of the demolition spoil will be brought onto the site many of the objections received (relating to vehicle movements and road safety) are no longer relevant.
20. Due to the nature of the demolition spoil and the way it was deposited, it may not have been adequately compacted to offer a sufficient base for any possible future construction. Such a construction may or may not be intended at this point in time on this area of the site, but this may compromise the use of this part of the site by current and/or subsequent owners. In this regard it is recommended that a notification be placed on the title of the lot to ensure that future purchasers are aware that prior to development occurring within the area subject to fill, a geotechnical engineer would need to confirm that the site is adequately stabilised/compacted for the development envisaged.
21. As the landfill activity was undertaken within the flood fringe and not the flood way it is unlikely to present a major obstacle to flood flows and exacerbate the impact of flooding upstream. The two main issues associated with the proposal are:
 - (i) The site is located in an area with a moderate to high possibility of acid sulfate soils which if present may have been disturbed as part of the excavation process prior to the placement of the landfill; and
 - (ii) Whether the proponent has adequately demonstrated that the demolition spoil is free of harmful contaminants, such as asbestos.

GOVERNMENT CONSULTATION

22. The proposal was referred to the DOW and the DEC.
23. The DOW has objected to the proposal on the grounds that the fill straddles the floodway and flood fringe which may present an obstacle to flood flows and could exacerbate the impact of flooding upstream of the site.

24. On closer inspection of the map associated with the *Yakamia Creek Flood Study 2001* (as shown below) and the site plan submitted by the proponent, the area of land affected by the land fill is located within the flood fringe (although a surveyed drawing will verify this beyond doubt). The DOW's Recommended Floodplain Development Strategy, which accompanied the Flood Study, does indicate that development such as filling and building can encroach into the flood fringe area and would be acceptable with respect to major flooding. A copy of the Recommended Floodplain Development Strategy is attached.



25. The response received from the DEC advises that the land is located within the Yakamia Creek drainage flats with a history of flooding and has a high to moderate risk of Acid Sulfate Soils. In relation to the specific details of the application, the DEC was concerned that the timber content could be as high as 10%. DEC guidelines exclude treated timber from being buried as inert landfill and any timber (treated or not) is not considered inert, but is allowed in 'unavoidable' quantities. A 10% content exceeds this intent and the DEC recommends that further separation of timber be undertaken for re-use or disposal elsewhere if the application is approved. Since this submission was received and communicated to the proponent, the proponent has advised that further screening has been undertaken and quantities of timber would now be in the realm of 1%. As the subsequent screening was not observed by staff it is recommended that sample holes are dug to prove the timber content has been reduced to around 1% of overall content. It should be noted that the timber was not likely to be chemically treated as it was made up of jarrah or karri (commonly used in buildings of that period) rather than pine.

26. The DEC further advised that given the Acid Sulfate Soils risk status, further investigation in liaison with the DEC Contaminated Sites Branch in Perth should be considered with the possibility of a management plan being required. Ongoing licensing under the *Environmental Protection Act 1986* is required if a landfill receives more than 500 tonnes of waste per year. If this threshold is not reached / exceeded then DEC has advised that they have no direct interest.
27. As suggested by the DEC Albany Office, further consultation has been undertaken with the DEC Contaminated Sites Branch. In relation to the issue of Acid Sulfate Soils, the Contaminated Sites Branch has recommended an acid sulfate self-assessment form be completed and depending on the outcomes of that assessment, an acid sulfate soils report and management plan may be required.
28. The Contaminated Sites Branch have also advised that given the material is demolition rubble from the Albany Regional Hospital site there is potential for asbestos containing materials to be mixed in with this waste. As suggested by the Contaminated Sites Branch, Staff have liaised with the demolition contractor (Delta Group) who was responsible for the demolition of the buildings at the Hospital site. John Holland Pty Ltd (builders of the hospital) have advised that the removal of the asbestos was undertaken prior to the demolition of the buildings. A copy of the evidence in this regard is attached to the rear of this report. John Holland Pty Ltd have also advised that a contamination investigation over the whole Albany Hospital site was undertaken prior to demolition and revealed only a small area of the site was contaminated (most likely from an isolated oil/fuel leakage). This area of the site has not yet been disturbed and is a considerable distance from the buildings that were demolished. Staff have sought a copy of the overall site contamination report which details this information; if received the report will be circulated to Councillors.
29. Based on the advice from John Holland Pty Ltd staff are satisfied that the fill can be classified as 'inert'. The DEC Contaminated Sites Branch have reviewed the evidence and are also confident that no contamination would be present in the fill.
30. The Contaminated Sites Branch has advised that should Council be satisfied that the proponent has adequately demonstrated that the landfill was 'inert', no further conditions would be required. If Council however is not satisfied with the level of information provided, Council may wish to either:
 - (a) Place a condition on the development requesting the proponent at his cost submit an environmental report to determine whether any contaminants such as asbestos are present within the inert waste material and surrounding soil; or
 - (b) Report the site to the DEC under the *Contaminated Sites Act 2003* as a potential contaminated site. The DEC will then assess the available information and classify the site accordingly.
31. The Contaminated Sites Branch has advised that Option (a) above may be an expensive undertaking for the proponent and Council may wish to consider Option (b) as an alternative. Option (b) will allow the Contaminated Sites Branch, who has expertise in this area, to determine whether the waste material is free from potential contamination. It will also provide a ruling in perpetuity from the appropriate government department that the concerns relating to contamination have been thoroughly investigated in accordance with legislative

requirements. From the proponent's perspective the DEC, based on the evidence provided, may be satisfied that a more detailed environmental investigation as identified in Option (a) is not required. Further details on the process identified in the *Contaminated Sites Act 2003* are outlined in Paragraph 47 below, under the heading of Legal Implications. If Council is not satisfied that the spoil is inert and Option (b) is pursued it is recommended that the application be deferred pending the outcome of the DEC investigation.

PUBLIC CONSULTATION / ENGAGEMENT

32. The surrounding landowners were consulted, a sign was placed on the road verge outside the site and an advertisement was placed in the Public Notices section of the Albany Advertiser.
33. A total of five (5) responses were received from members of the public and surrounding landowners. Two (2) of these raised no objections, the remaining three (3) raised the following issues/concerns:
 - Heavy truck movements in close proximity to the schools.
 - Road safety and poor access arrangements.
 - Amenity of residential properties in the vicinity.
 - Concerns of this activity being within the floodplain.

STATUTORY IMPLICATIONS

34. The use 'Landfill – inert waste from building demolition' is not a use that is listed within Town Planning Scheme No. 3.
35. Clause 3.2 of the Scheme details how uses that are not listed are to be considered and states:
 - 3.2 ... *Where an application is received for permission to use land for a proposed use which is not contained in the "Use Class" table and the table does not, in the opinion of the Council contain a use class with which the proposed use is comparable, Council may determine that the proposed use:*
 - a) *is considered to be consistent with the objectives of the zone and is therefore permitted;*
 - b) *may be consistent with the objectives of the particular zone and thereafter follow the advertising procedures of Clause 5.1.4 in considering an application for planning approval; or*
 - c) *is not consistent with the objectives of the particular zone and is therefore not permitted.*
36. The objective of the 'Rural' zone as stated within Town Planning Scheme No. 3 is:

To ensure that high quality agricultural land is retained for primary production. To regulate uses which might conflict with farming interests, and foster uses which are complementary to such interests. To preserve rural land within easy reach of urban areas.

37. In relation to the objective stated above, the subject land is not high quality agricultural land, being predominantly affected by the Yakamia Floodplain, and the nature of the proposal is unlikely to conflict with farming interests as the surrounding rural lots are not used for agricultural production. The proposal also does not result in a loss of rural land.

38. Clause 5.4 of the Scheme details the matters to be considered by Council and states:

5.4 The Council in considering an application for planning consent is to have due regard to such of the following matters as are in the opinion of the Council relevant to the use or development the subject of the application:

(i) the compatibility of a use or development with its setting;

(l) the likely effect of the proposal on the natural environment and any means that are proposed to protect or to mitigate impacts on the natural environment;

(m) whether the land to which that application relates is unsuitable for the proposal by reason of it being, or likely to be, subject to flooding, tidal inundation, subsidence, landslip, bush fire or any other risk;

(y) any relevant submission received on the application;

(z) the comments or submissions received from any authority consulted under clause 5.1A;

(zb) any other planning consideration the Council considers relevant.

STRATEGIC IMPLICATIONS

39. The land is identified in the Albany Local Planning Strategy as 'Regional Reserve' noting that the subject site is part of the Yakamia Creek Floodplain.

POLICY IMPLICATIONS

40. Policy 5E of the City's Local Planning Policy Manual titled 'Development in Flood Prone Areas' is relevant to the proposal.

41. Whilst the Policy is broad in nature it notes that in areas subject to periodic inundation or flooding, that development should:

1) Prevent disruption to the natural drainage system or the modification of the flood levels that would be experienced within the drainage system;

- 3) *Maintain the natural ecological and drainage function of the area to store and convey stormwater and floodwater within the watercourse, drainage system or floodplain;*

42. This proposal is located within the flood fringe and not the flood way and the impact of the natural drainage system is unlikely to be significant. The conditions identified in the responsible officer recommendation will ensure compliance with the DOW's Recommended Floodplain Development Strategy.

RISK IDENTIFICATION & MITIGATION

43. The risk identification and categorisation relies on the City's Risk Management Framework.

Risk	Likelihood	Consequence	Risk Analysis	Mitigation
The demolition spoil and excavation works may present an asbestos risk.	Possible	Medium	High	The City notes the evidence supplied by John Holland that asbestos was removed prior to and during demolition.
The excavation works may have disturbed the acid sulphate soils, exposing such soils to the open air which can turn the soil acidic.	Possible	Medium	High	Request the proponent complete an Acid Sulfate Soils Self Assessment Form as recommended by DEC Contamination Branch.

FINANCIAL IMPLICATIONS

44. The appropriate planning fee has been paid by the proponent and staff have processed the application within existing budgetary lines.

LEGAL IMPLICATIONS

45. Should Council accept the Responsible Officer Recommendation the proponent may seek a review of any of the conditions by the State Administrative Tribunal (SAT). Such an appeal would be a Class 1 appeal which does not involve legal representation, and therefore such costs would be mainly staff time.

46. Should Council accept the Responsible Officer Recommendation the existing notices held in abeyance would not be pursued as the fill will be able to be retained on site. This does not mean that the City cannot issue new notices in the future if the proponent does not comply with the conditions of planning scheme consent or brings further waste materials onto the site. If Council refuses the proposal the existing enforcement notice will remain in place.

47. As per Paragraph 30(b) Council has the ability to refer the site under Section 11 of the *Contaminated Sites Act 2003* to the CEO of the DEC advising that the portion of the site subject to the deposited demolition spoil could possibly be contaminated. The CEO of the DEC will then be required to classify the site within 45 days and may deem that the site is '*possibly contaminated — investigation required*'. This classification, which is subject to appeal, would be placed on the certificate of title of the subject land (as a Section 70A Notification) and remain until evidence was provided that the site is not contaminated or remedial actions to the satisfaction of the DEC have been undertaken. Based on the evidence that asbestos was removed from the site and that no other contaminants were found through a pre-demolition contamination survey within or adjacent to the buildings that were demolished in Stage 1, this action is not considered necessary.

ALTERNATE OPTIONS

48. Council has the following alternate options to the responsible officer recommendation:

Option 1

Determine that Conditions A, B and/or D in the Responsible Officer Recommendation No. 1 are not required if Council is satisfied that there is likely to be no adverse impacts associated with the disturbance of the soil which is at a moderate to high risk for acid sulfate soils. The Acid Sulfate Soil Assessment Form is a relatively straight forward process (Condition A). If the excavation work involved less than 100m³ of soil removal no further acid sulfate soil reports or management plans are required (Condition B).

Condition D is a notification so that should the area subject to the landfill be considered for development (dwellings/outbuildings) a geotechnical engineers report would be required to assess soil stability for construction. This notification ensures that all future purchasers are aware of this requirement.

Condition E and F have been requested to accurately map the area subject to the landfill and ensure that all landfill is located outside of the flood way of the Yakamia Creek.

Condition G will give Council further security that the timber content is now at a level that can be considered an unavoidable quantity.

Option 2

Determine that the application should be refused if Council is concerned that the proposal will have a detrimental impact on the floodplain of the Yakamia Creek.

Option 3

Formally refer the proposal under Section 11 of the *Contaminated Sites Act 2003* to the DEC Contamination Branch if Council is not satisfied with the evidence that the spoil is not likely to be contaminated and defer making a decision on the proposal until the DEC has finalised their investigations under the Act. Alternatively Council could place a condition on the

approval requiring testing of the soil for asbestos any other potential contaminants by a relevant professional.

SUMMARY CONCLUSION

49. This application is for retrospective approval for a landfill – inert waste from building demolition. The application is not seeking support for ongoing use as a landfill facility and merely seeks Council’s consent to retain the deposited fill on site.
50. The imported material is classified as waste material, being demolition spoil, and there was evidence that low quantities of other materials within the landfill on inspection by staff. In unavoidable quantities timber, metal and plastic is allowed, however it is difficult to determine from the photographs taken whether the criteria of the DEC has been met. It is clear however that the amount of landfill deposited is well within the 500 tonnes per year annual restriction set down by the DEC. The demolition contractor has advised however that all asbestos was removed prior to demolition and therefore the fill would not contain this contaminant.
51. Whilst the DOW has raised concerns on the impact on the proposal on flood water storage capacity of the land, filling within the flood fringe is considered acceptable according to Recommended Floodplain Development Strategy which accompanied the *Yakamia Creek Flood Study 2001*. On this basis it is difficult to sustain the position that the height of the fill involved is likely to cause a significant impact on the drainage function of the Yakamia Creek.
52. Accordingly staff are of the opinion that the proposal can be supported subject to appropriate conditions being placed on the development.

Consulted References	Town Planning Scheme 3 Yakamia Creek Flood Study
File Number (Name of Ward)	A37843 (Yakamia Ward)
Previous Reference	Nil