

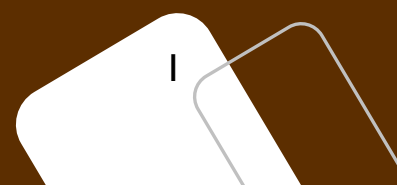
LANDFILL GUIDELINES



LANDFILL GUIDELINES	1
1.0 Background	1
1.1 Scope	1
1.2 Aims	1
1.3 Objectives	2
2.0 What is Landfill?	2
3.0 Blacktown Local Environmental Plan 1988	3
4.0 General Requirements	3
4.1 Relevant Policies, Legislation and Guidelines	4
4.1.1 Blacktown City Council Policies and Planning Instruments	4
4.1.2 State Legislation and Guidelines	4
4.1.3 Commonwealth Legislation	5
4.2 Requirements for Lodging a Development Application	5
4.2.1 Location of Landfill	5
4.2.2 Imported Landfill	5
4.2.3 Slope of the Site	5
4.2.4 Temporary Stockpiles	6
4.2.5 Archaeological Sites	6
4.2.6 Flora and Fauna	7
4.2.7 Other Considerations	7
4.2.8 Other Consultations	7
4.3 Requirements for Supporting Documentation	8
4.4 Operational Compliance	9
5.0 Penalties and Fines	9
APPENDIX A – DEFINITIONS	10
APPENDIX B – EXEMPT DEVELOPMENT	13
B.1 Schedule 6 of Blacktown Local Environmental Plan 1988	13
B.1.1 Retaining Wall	14

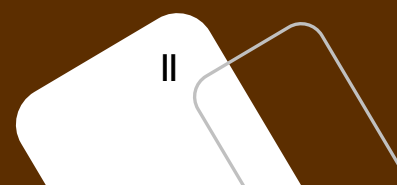
FIGURES AND TABLES

Table 1.1	Types of Development Requiring Additional Consultation	PAGE
		8



Amendments to Part P – Landfill Guidelines
(as of 2 July 2008)

Amendment No.	Location	Description	Adoption Date	Enforcement Date



LANDFILL GUIDELINES

1.0 Background

Activities associated with illegal landfilling are a common form of unauthorised activity within the Blacktown City. Such incidents often occur as land owners and/or occupants are uncertain of activities that are allowed on land, and this can be compounded if construction and demolition industry contractors seek to avoid associated waste disposal costs. Illegal landfill activity also occurs as the result of owners seeking to develop on low-lying property, often flood affected or traversed by a stormwater drainage system or watercourse.

Council is also aware of “sham” applications associated with the illegal placement of landfill. In the past these have been disguised as ‘filling a dam’ or ‘constructing a dam’ for the purpose of ‘landfill’ or ‘extraction’ purposes. Council considers such applications with caution. This Part of Blacktown Development Control Plan (DCP) 2006 allows a rigorous assessment of all landfill applications. Strict criteria must be ratified before approval is obtained.

Activities associated with illegal landfilling/excavation can have adverse effects, such as changes to existing overland flow patterns, increased flood levels, land instability and sedimentation. These can negatively affect upstream and downstream land owners. Council has sought to address these issues through the controls contained within this Part of the DCP. However, this Part may also apply at Council’s discretion to land situated within the commercial and industrial zones in instances where a site comprises rural remnant land (ie. land of a rural nature that is not zoned rural).

Specifically, as a key requirement of this section, Council requests that the **purpose of any related landfill activity** is clearly stated on the Development Application and accompanying documentation. Furthermore, Council has a **clearly stated requirement for a neutral net cut/landfill approach**, the details of which are outlined within this section.

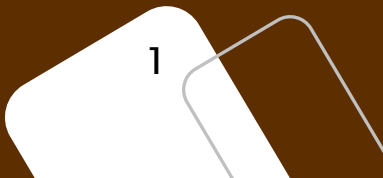
1.1 Scope

This Landfill Guidelines identify the requirements for undertaking activities associated with landfill on rural lands within the Blacktown Local Government Area.

1.2 Aims

The aims of this Part of the DCP are to:

- (a) provide guidelines with respect to proposed landfill activities;
- (b) promote acceptable bulk earthworks practices for building site preparation;
- (c) control and minimise variations to natural ground levels; and
- (d) ensure that any landfill-related activity does not independently or cumulatively adversely affect the environment.



1.3 Objectives

The main objectives of this Part are to ensure that all landfill activity:

- (a) enhances a development and/or use of land;
- (b) does not adversely affect local stormwater drainage or change floodplain characteristics;
- (c) does not contaminate land;
- (d) utilises clean material where landfilling is required;
- (e) is suitably treated to minimise soil erosion and weed infestation;
- (f) provides for the installation of sedimentation controls to minimise the potential for water pollution;
- (g) does not injure or destroy any tree;
- (h) considers the visual impact on a locality by complementing adjoining land features;
- (i) does not adversely affect the health and safety of any person; and
- (j) considers the relevant State and Commonwealth Government legislative requirements, appropriate guidelines and Council policies.

2.0 What is Landfill?

Landfill involves the deposition of soil or other material on a site after it has been excavated/cut and transported from another location, whether on-site or off-site.

Some examples of landfill activities include:

- (a) reshaping an area of land, dam or floodway (involving cutting, grading, excavating or landfilling);
- (b) rural earthdams;
- (c) retaining walls; and
- (d) building platforms.

Unless these activities are "Exempt Development" as described in Schedule 6 of Blacktown Local Environmental Plan 1988 (refer to Appendix B), development approval **must** be obtained from Council under the provisions of the *Environmental Planning and Assessment Act 1979*.

A Development Application for landfilling could also constitute "Integrated Development" and/or "Designated Development" pursuant to Schedule 3 of the *Environmental Planning and Assessment Act 1979* and Regulations. Separate additional requirements will need to be met if these legislative requirements apply.

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LANDFILL GUIDELINES

3.0 Blacktown Local Environmental Plan 1988

Blacktown LEP 1988 prescribes the requirements for all development activities within the Blacktown Local Government Area.

Under Blacktown LEP 1988 there is only one instance concerning landfill where development approval is not required from Council. These requirements are set out within Schedule 6 of the LEP under *retaining wall*. The criteria are reproduced in Appendix B to this Part.

If the activity involving landfill does not fall within the retaining wall criteria listed in Schedule 6, approval **must** be obtained from Council.

4.0 General Requirements

A person who undertakes any landfill activity will have to demonstrate through the application process that they have considered the potential impacts on:

- (a) soil erosion and sedimentation;
- (b) flooding/floodways/stormwater runoff;
- (c) groundwater/surface water;
- (d) contaminated material (existing or imported);
- (e) existing trees and vegetation;
- (f) water pollution;
- (g) dust (air pollution); and
- (h) development consent/Construction Certificate requirements.

These requirements are explained in sections 4.2 to 4.4 (pages 5 to 9) of this Part.

Also, landfilled areas must:

- (a) comprise of clean material free from contamination (imported material shall be “Virgin Excavated Natural Material (VENM)” as defined in Appendix A);
- (b) be suitably compacted and stabilised with density tests to verify that compaction was achieved;
- (c) be revegetated where appropriate; and
- (d) be provided with soil erosion and sedimentation controls in accordance with Part R (Soil Erosion and Sediment Control) of Blacktown DCP 2006.

P

LANDFILL GUIDELINES

4.1 Relevant Policies, Legislation and Guidelines

There is a range of Council policies, State Government legislation and guidelines that place obligations on any person who undertakes landfill-related activities. These are set out below.

4.1.1 Blacktown City Council Policies and Planning Instruments

- (1) Blacktown LEP 1988 – Exempt Development.
- (2) Blacktown DCP 2006 Part Q (Contaminated Land Guidelines).
- (3) Section 8.4 of Blacktown DCP Part A (Introduction and General Guidelines) “Control of Development on Flood Prone Land”.
- (4) Eastern Creek Floodplain Management Study and Plan 1996.
- (5) Blacktown DCP 2006 Part O (Site Waste Management and Minimisation).
- (6) Blacktown DCP 2006 Part R (Soil Erosion and Sediment Control Policy).
- (7) South Creek Floodplain Management Study 1999.

4.1.2 State Legislation and Guidelines

The following New South Wales legislation may place an obligation on any person who undertakes any excavation/landfill activities, namely:

- (1) *Contaminated Land Management Act 1994.*
- (2) *Environmental Planning and Assessment Act 1979 and Regulations 2000.*
- (3) *Fisheries Management Act 1994.*
- (4) *Local Government Act 1993.*
- (5) *National Parks and Wildlife Act 1994.*
- (6) New South Wales Floodplain Management Manual: the management of flood liable land (January 2001).
- (7) *Protection of the Environment Operations Act 1997.*
- (8) *Rivers and Foreshores Improvement Act 1948.*
- (9) *Soil Conservation Act 1938.*
- (10) Sydney Regional Environmental Plan No.20 - Hawkesbury-Nepean River 1996.
- (11) *Threatened Species Conservation Act 1995.*
- (12) *Waste Avoidance and Recovery Act 2001.*

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LANDFILL GUIDELINES

4.1.3 Commonwealth Legislation

The *Environment Protection and Biodiversity and Conservation Act 1999* may place an obligation on any person who undertakes any excavation/landfill activities, which is deemed to be a "Controlled Action" under the Act.

4.2 Requirements for Lodging a Development Application

There are specific planning considerations for proposed landfill activities when an applicant lodges a Development Application as outlined below.

4.2.1 Location of Landfill

In general, landfilling within a floodplain will not be supported. However, floodplain landfill applications will be treated on their merits based on the following:

- (1) No net loss of flood storage and/or conveyance within the floodway extents.
- (2) No net loss of flood storage within the 1% Annual Exceedance Probability (AEP) critical duration flood. This requirement must address the cumulative impacts on flood levels from "like" development on other areas of the floodplain.
- (3) The alternation of local drainage or overland flow contours and/or natural watercourses must not adversely affect adjacent property.

Council may require the undertaking of detailed hydrologic/hydraulic modelling and survey contour plans in support of such applications.

Where landfilling is proposed within 40 metres of a watercourse, under the *Rivers and Foreshores Improvement Act 1948*, a permit under section 3(a) must be obtained from the Department of Land and Water Conservation.

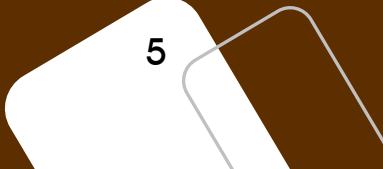
Where work involves the reconstruction of creek lines, reclamation or dredging works, a separate permit will be required from the Department of Fisheries under the *Fisheries Management Act 1994*.

4.2.2 Imported Landfill

Where landfill is proposed to be imported onto land, a report must be submitted to Council which must be prepared by a NSW Environment Protection Authority accredited Consultant. The report must verify that the landfill material is suitable for the intended use of the site having regard to the presence and levels of possible contaminants. The report is to be approved by Council prior to any earthworks commencing on the site.

4.2.3 Slope of the Site

In the instance where landfill occurs on a site where the natural slope exceeds 1 in 8 (12.5%), details of any proposed batters or retaining works shall be indicated. The proposed cross-fall for batters used in cut and landfill are to be restricted to a maximum slope of 1(V) in 4(H) (25% - the maximum slope allowable for general maintenance).



4.2.4 Temporary Stockpiles

Where the temporary stockpiling of landfill material will occur on any land, the following matters must be addressed within a report which documents in written and plan form:

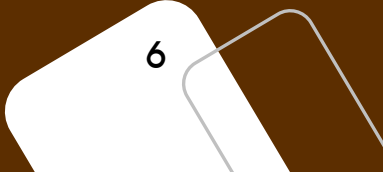
- (a) the location and configuration of stockpiles;
- (b) the proposed period of stockpiling;
- (c) the quality, quantity and characteristics of stockpiled material;
- (d) proposed height of stockpiled materials;
- (e) land clearing and other proposed preparation requirements;
- (f) proposed soil erosion including dust control/sedimentation control measures; and
- (g) any potential for leaching from any stockpile and its effect on the surrounding area.

4.2.5 Archaeological Sites

Any cut/landfill proposal can potentially damage or destroy existing Aboriginal artefacts on a site and consideration must be given to such sites.

Within Part A (Introduction and General Guidelines) of Blacktown DCP 2006 Council has established several different classes of archaeological sites. These are:

- (1) **Known Archaeological Sites**
These are sites which have been recorded by the National Parks and Wildlife Service (NPWS) and are indicated on Council’s DCP map. The applicant is required to consult with the NPWS as a condition of development consent.
- (2) **Areas of High Archaeological Significance**
These are sites with a high likelihood of archaeological sites occurring in these locations and are shown in detail on Council’s DCP map. The applicant is required to consult with the NPWS as a condition of development consent.
- (3) **Areas of Potential Archaeological Significance**
Within these areas there is a possibility of sites occurring. The applicant will be required to consult with the NPWS to determine if there are any requirements as a condition of consent.
- (4) **Areas of Low Archaeological Significance**
Areas other than those noted above are substantially developed. However, where it becomes the case that a site of low archaeological significance is found, development consent will require consultation with the NPWS.



It is therefore paramount that, prior to any landfill or work being determined, a relevant site be inspected by representatives of each of the three Aboriginal groups (listed below) to determine the archaeological significance of the land. This will determine if a detailed archaeological report is required by a suitably qualified archaeologist.

The three Aboriginal community groups that oversee archaeological sites in the Blacktown Local Government Area include:

- (1) Deerubbin Local Aboriginal Land Council
- (2) Darug Custodians Aboriginal Corporation
- (3) Darug Tribal Association Incorporated.

Also, the bulk earthworks phase may require an inspection by a representative from either of the above groups. This would determine if there are any Aboriginal artefacts that could potentially be or have been disturbed by any earthworks undertaken.



4.2.6 Flora and Fauna

A flora and fauna report, including an Eight Part Test under the *Environmental Planning & Assessment Act 1979*, may be required in order to assess the likely impacts of proposed landfilling on threatened species, populations or ecological communities. Identification of any vegetation (or fauna) of significance may result in a Species Impact Assessment report to be completed in consultation with the National Parks and Wildlife Service.

Furthermore, regard should be given to Council’s Tree Preservation Order within Clause 25 of Blacktown LEP 1988.

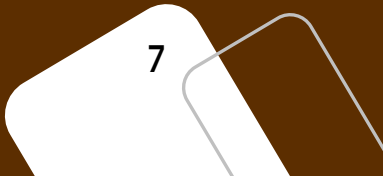
4.2.7 Other Considerations

Should it be proposed to vary the finished ground or floor levels from those shown on the approved Development Application plans, then re-notification to neighbouring owners and residents may be required. Council may exercise its rights under Section 96 of the *Environmental Planning & Assessment Act 1979* and seek a formal request to modify the development consent.

Furthermore, the “Environmental Impact Study Practice Guidelines – Land landfilling” is to be used when preparing an EIS. Consultation must also be undertaken with the Department of Planning (DoP).

4.2.8 Other Consultations

Additional consultations may be required. Table 1.1 provides a list of the types of development that would require additional consultation:



Type of Development	Authority
Works to prevent flooding, such as levees	Department of Land and Water Conservation (DLWC)
Dam, weir or structures to impound water	DLWC
Within 40 metres of a watercourse or which diverts a watercourse or affects the quantity of water flowing into or from a river or lake	DLWC
Development involving dredging or reclamation in a waterway	NSW Department of Fisheries DLWC



Table 1.1
Types of Development Requiring Additional Consultation

4.3 Requirements for Supporting Documentation

A Development Application (DA) must be accompanied by the following supporting documents where applicable:

- (1) A statement providing full justification for the proposed landfilling works. The written statement should include the details of alternatives to the proposed landfilling option. This information is to be submitted with landfill/excavation activities that require Council consent.
- (2) Suitable plans drawn to an appropriate scale (1:100, 1:200, 1:500, 1:1000 or 1:2000 should be used to adequately define detail) and indicating:
 - (a) Levels, to be provided at Australian Height Datum (AHD).
 - (b) Finished (to be shown in bold) and existing or natural ground level contours are to be displayed as follows.

Total existing ground relief over subject site:

- (i) <1m – contours at 100mm
- (ii) <2m – contours at 200mm
- (iii) >2m – contours at 500mm

Sufficient levels to accurately define contours must be taken. Particular care should be taken at changes in grade, natural watercourses/creek lines and other major features.

- (c) The height above existing ground levels on adjoining properties are to be shown where retaining walls are used for retention of landfill on the site.
- (d) Batter slopes of a maximum 5(horizontal) to 1(vertical) are to be shown for the tapering edges of landfilling works, where no retaining walls are intended.

- (3) Tree Survey, showing existing trees on the site may be required as part of the site plan to identify vegetation species and their location.
- (4) Traffic Report, detailing the transportation of landfill, may be required, dependent on the volume of landfill required to be transported to a site.
- (5) Hydraulic/Hydrological Report by a chartered professional Civil Engineer or equivalent, which addresses cumulative impacts (e.g. the displacement of flood storage and affect on flood levels in flood liable areafs) may be required.
- (6) Soil Contamination Report may be required to identify the source of the landfill. Such a report would need to be prepared by a NSW Environment Protection Authority accredited Consultant.



4.4 Operational Compliance

Where Council has granted consent to a Development Application, and all works have taken place, Council may request evidence of compliance. This could be in the form of:

- (a) Works as Executed Plans;
- (b) Site “free from contamination” verification/certification;
- (c) Surveyor's report; and
- (d) Certification of hydraulic recommendation,

from suitably qualified persons.

5.0 Penalties and Fines

Non-compliance with the provisions of this Part of the DCP and/or conditions of approval may result in the serving of a Notice/Order under Section 121 of the Environmental Planning & Assessment Act 1979. In addition, Section 124 of the *Local Government Act 1993* may require remedial work to be carried out. Infringement notices may also be issued and other action instituted under the *Protection of the Environment Operations Act 1997*.

Also, the *Waste Avoidance and Recovery Act 2001* may be initiated in situations where individuals or corporations have breached the Act by undertaking illegal waste disposal/landfill operations.

In circumstances where illegal landfill/earthworks have taken place, and that landfill is likely to result in the pollution of waterways, the matter will be referred to the appropriate authority for their independent action.

APPENDIX A – DEFINITIONS

Definitions or terms used within this Policy are provided below.

“1% Annual Exceedance Probability Flood” means a flood which has a 1 in 100 chance of occurring in any given year. (*Source: BLEP 1988*).

“Activity” means any development on land and may include any one of the following:

- (a) the erection of a building; or
- (b) the carrying out of a work in, on, over or under land; or
- (c) the use of land or of a building or work; or
- (d) the subdivision of land involving earthworks; or
- (e) any soil disturbing activity in or on a public place or on land owned by Council which may or may not be the subject of an approval; or
- (f) any act, matter or thing for which provision may be made under Section 26 of the EP&A Act 1979 and which is prescribed for the purpose of this definition, but does not include:
 - (i) any act, matter or thing referred to in Section 26 of the EP&A Act for which development consent is required or has been obtained; or
 - (ii) any act, matter or thing that is prohibited under an environmental planning instrument.

(*Source: Blacktown DCP 2006 Part R (Soil Erosion and Sediment Control Guidelines)*).

“Approval”/ “Approved” means a consent, licence or permission or any form of authorisation issued by Blacktown City Council. (*Source: Blacktown DCP 2006 Part R (Soil Erosion and Sediment Control Guidelines)*).

“Clean Landfill” means **Virgin Excavated Natural Material (VENM)**. Refer to separate definition.

“Contamination”/ “Contaminated Landfill” means the presence in, on or under the land of a substance at a concentration above the concentration at which the substance is normally present in, on or under (respectively) land in the same locality, being a presence that presents a risk of harm to human health or any other aspect of the environment and/or inert material such as bricks, concrete and other building debris, as well as tree roots and other organic matter (*Part Source: Contaminated Land Management Act 1994*).

“Cut/Cutting”/“Ground Excavation” means lowering the natural ground surface by the regrading and/or the removal of soil from land.

“Floodplain” means that area of land subject to inundation by floods. (*Source: Floodplain Management Manual*).

APPENDIX A

DEFINITIONS

APPENDIX A

DEFINITIONS

“**Floodway**” means those areas of the floodplain where a significant discharge of water occurs during floods. They are often aligned with naturally defined channels. Floodways are areas that, even if only partially blocked, would cause a significant redistribution of flood flow, or a significant increase in flood levels. *(Source: Floodplain Management Manual: the management of Flood Liable Land).*

Blacktown DCP 2006 Part A (Introduction and General Guidelines) refers to a floodway as those areas:

- (a) in which human life could be at risk from the passage of flood waters;
- (b) which are the main flowpaths for flood waters once the river or stream has overflowed;
- (c) in which developments may adversely affect the behaviour or passage of flood waters; and/or
- (d) in which developments may be adversely affected by the passage of flood waters, other than by immersion.

Furthermore, Blacktown LEP 1988 defines a floodway as the channel of a river or stream and those portions of land, affected by the 1% annual exceedance probability flood, adjoining the channel and which constitute the main flow path of floodwaters. Floodwaters are areas which, even if only partially blocked, would cause significant redistribution of the flood flow, which may in turn adversely affect other areas. They are often, but not necessarily, the areas of deeper flow or the areas where higher velocities occur.

“**Landfill**” means any work or activity which involves the placement of soil or other material on land, excluding the top dressing of lawns, whether undertaken as a principal activity or associated with another development, which in the opinion of council significantly alters the shape or drainage of land and includes any earthworks or excavation which would have similar impact, whether or not such works would involve the importation of fill.

“**Natural Ground Surface/Level**” means the natural existing land surface that has not been filled, cut, excavated, reshaped or otherwise altered.

“**Sediment**” means material of varying size, both mineral and organic, that is being, or has been, moved from its site of origin by the action of wind, water or gravity, and comes to rest on the earth’s surface either above or below sea level. *(Source: Blacktown DCP 2006 Part R (Soil Erosion and Sediment Control Guidelines).*

“**Sedimentation**” means the deposition of sediment, usually in such locations as a channel, along a fence line or an area of low slope, or in a gully, creek, river, sediment trap or dam. *(Source: Blacktown DCP 2006 Part R (Soil Erosion and Sediment Control Guidelines).*

“**Soil**” means a natural material consisting of layers, amalgamates or individual particles of mineral and/or organic constituents, of variable thickness, that differs from its parent material in morphological, physical, chemical and mineralogical properties and biological characteristics. *(Source: Blacktown DCP 2006 Part R (Soil Erosion and Sediment Control Guidelines).*

“**Soil Erosion**” means the detachment, entrainment, suspension and transport of soil material by wind, water or gravitational effects. (*Source: Blacktown DCP 2006 Part R (Soil Erosion and Sediment Control Guidelines)*).

“**Unauthorised Fill**” means the deposition of fill onto a site (other than as Exempt Development under BLEP 1988), which has not received approval from Council.

“**Virgin Excavated Natural Material (VENM)**” means natural material such as clay, gravel, sand, soil and rock which is not mixed with any other type of waste and which has been excavated from areas of land that are not contaminated.

“**Waste**”, as defined under the *Waste Avoidance and Recovery Act 2001*, includes any:

- (a) substance (whether solid, liquid or gaseous) that is discharged, emitted or deposited in the environment in such volume, constituency or manner as to cause an alteration in the environment, or
- (b) discarded, rejected, unwanted, surplus or abandoned substance, or
- (c) otherwise discarded, rejected, unwanted, surplus or abandoned substance intended for sale or for recycling, reprocessing, recovery or purification by a separate operation from that which produced the substance, or
- (d) substance prescribed by the regulations to be waste for the purposes of this Act.

A substance is not precluded from being waste for the purposes of the Act merely because it can be reprocessed, re-used or recycled.

APPENDIX A

DEFINITIONS

APPENDIX B – EXEMPT DEVELOPMENT

B.1 Schedule 6 of Blacktown Local Environmental Plan 1988

Development specified in Schedule 6 of Blacktown LEP 1988 is Exempt Development (i.e. does not require Council consent) provided it satisfies all of the applicable criteria in that Schedule. The criteria must firstly be met in Clause 9A. The criteria specifically relevant to fill or excavation has been extracted from Blacktown LEP 1988 and is provided below.

Development in Schedule 6 must ensure the development:

- “(c) does not involve the removal, lopping, topping or ringbarking of a tree;
- (d) does not encroach upon any easement or right-of-way;
- (e) is carried out at least 1 metre from any easement or public sewer main and complies with the building over sewer requirements of Sydney Water Corporation applying to the land;
- (f) is not on land that contains threatened species, threatened populations or endangered ecological communities or land that is subject to a recovery plan or threat abatement plan under the *Threatened Species Conservation Act 1995* or the *Fisheries Management Act 1994*;
- (h) is not on land that is:
 - (i) dedicated or reserved under the *National Parks and Wildlife Act 1974*; or
 - (ii) dedicated or reserved under the *Crown Lands Act 1989*, for the preservation of flora, fauna or geological formations or for other environmental protection purposes; or
 - (iii) subject to an order under the *Heritage Act 1977*; or
 - (iv) an Aboriginal place, or contains an Aboriginal relic, under the *National Parks and Wildlife Act 1974*; or
 - (v) identified in an environmental planning instrument as a wetland, or within 20 metres of a wetland; or
 - (vi) an aquatic reserve declared under the *Fisheries Management Act 1994*; or
 - (vii) flood liable land; or
 - (viii) steeper than 33% slope; or
 - (ix) within an area identified as being of high archaeological significance under Blacktown DCP 2006; or
 - (x) contaminated, within the meaning of the *Contaminated Land Management Act 1997*; or
 - (xi) subject to subsidence or slip; or

APPENDIX B

EXEMPT
DEVELOPMENT

- (xii) within 40 metres of a waterway; or
- (xiii) identified as a riverine scenic area under Sydney Regional Environmental Plan No. 20 – Hawkesbury – Nepean River (No 2 - 1997).

Note: Section 76 (3) of the Environmental Planning & Assessment Act 1979 says that Exempt Development cannot be carried out on land that is:

- (a) critical habitat (within the meaning of the *Threatened Species Conservation Act 1995* or the *Fisheries Management Act 1994*), or
- (b) within a wilderness area (within the meaning of the *Wilderness Act 1987*).

B.1.1 Retaining Wall

Within Schedule 6, retaining wall is Exempt Development provided it satisfies all of the following applicable criteria:

- (1) The maximum height is 900mm above the lowest adjacent ground level.
- (2) Structurally adequate construction.
- (3) Masonry walls comply with relevant Australian Standard.
- (4) Designed and constructed so as not to interfere with the natural flow of surface water.
- (5) Located a minimum 900mm horizontal distance from the property boundaries.
- (6) Does not compromise the structural integrity of any adjacent structure.
- (7) The dimensions of any terracing or stepping of ground incorporating a number of series of retaining walls are a maximum 900mm vertical and minimum 1.8m horizontal for any one terrace or step.
- (8) Soil erosion measures are to be installed to prevent the transportation of any soil or sediment onto any adjoining property.

