

The Proper Officer
CPB Contractors Pty Ltd t/as CPB Contractors
& John Holland Joint Venture
Level 18, 177 Pacific Highway
NORTH SYDNEY NSW 2060

Ref: POEO/2024/0002

Date: 23-Feb-2024

NOTICE OF INTENTION TO ISSUE CLEAN UP NOTICE
Under Section 91 (1) of the Protection of the Environment Operations Act, 1997
Premises: Lilyfield Road LILYFIELD NSW 2040 - Lot 24 DP 1194941

The Council advises that it is considering serving you with a Notice in writing, pursuant to *Section 91 of the Protection of the Environment Operations Act 1997*, in the form attached to this Notice.

You may make representations to the Council yourself or by engaging a barrister, solicitor or agent as to:-

- Why the Notice should not be given;
- The terms of the proposed Notice; and
- The period for compliance with the proposed Notice

Time for making of any representations:-

Any representation should be made, in writing, to the council, by **4:00pm Friday 1 March 2024**. Following due consideration of any representations made, Council may decide:

- a. to serve the Notice in accordance with the proposed Notice; or
- b. to serve a proposed Notice in accordance with modifications made to the proposed Notice; or
- c. not to serve a Notice

For further information, please contact **Michael Ryan** on **02 9392 5597** or **michael.ryan@innerwest.nsw.gov.au** during normal business hours.

Yours faithfully


Michael Ryan
Senior Manager Health and Building



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CLEAN UP NOTICE - POEO/2024/0002
Section 91 (1) of the Protection of the Environment Operations Act, 1997
Issuing Authority – Inner West Council

Premises: Lilyfield Road LILYFIELD NSW 2040 - Lot 24 DP 1194941

Background:

1. The Inner West Council (IWC) has responsibility for the administration and enforcement of the *Protection of the Environment Operations Act 1997 (Act)*
2. Under Section 91(1)(a) of the Act, the IWC reasonable suspects a pollution incident has occurred or is likely occurring at the Premises. The IWC reasonable suspects there is more than ten (10) tonnes of material containing asbestos, being asbestos waste, that has been applied to land in an area of the Premises and is causing land pollution.
3. The Rozelle Parklands have been created as part of the M4-M8 motorway tunnel link and Rozelle Interchange Project, which are parts of the West Connex.
4. IWC has information from the New South Wales Environment Protection Authority (EPA) that John Holland Pty Ltd (John Holland) and CPB Contractors Pty Limited (CPB) trading as CPB Contractors and John Holland Joint Venture (JV) is contracted by TfNSW to build the Rozelle Interchange.
5. IWC has information from the EPA that John Holland holds Environment Protection Licence No. 21278 for construction of the Rozelle Interchange.
6. IWC has information from the EPA that TfNSW notified the EPA on 10 January 2024 that mulch used for landscaping at the Premises has been found to contain fragments of material that contain asbestos.

7. IWC has information from the EPA that TfNSW has closed the Premises until further notice as a precaution.
8. IWC has information from the EPA that TfNSW and John Holland have collected samples from across the Premises which have undergone laboratory analysis. The testing has confirmed the mulch contains construction and demolition waste and some samples including asbestos.
9. The IWC considers it is an emergency, meaning it can issue a clean-up notice even if it is not the appropriate regulatory authority with respect to the pollution incident.
10. The IWC reasonable suspects that a pollution incident is occurring or is likely to occur at the Premises.
11. John Holland and CPB as a joint venture are occupiers of the Premises and responsible for the cleanup action in respect of the pollution incident.

Direction to take clean-up action:

Inner West Council directs you to the following 'clean up action' within the time period as specified in the Notice;

- a. All broken, damaged or deteriorated Asbestos Containing Material (ACM) is to be removed from the land or premises, by a licenced contractor and in accordance with SafeWork NSW Guidelines and the advice and guidance of a suitably qualified Occupational Hygienist.
- b. Submit to Council an Asbestos Clearance Certificate (ACC) signed by an a suitably qualified Occupational Hygienist, certifying that the land and premises are free from any broken, damaged, or deteriorated Asbestos Containing Material (ACM) and will not have any adverse effect on human life or the environment due to the presence of asbestos.
- c. Submit to Council a Notice of Proper Disposal (NPD) demonstrating that all Asbestos Containing Material (ACM) from the land and premises has been disposed of at an approved waste facility

- d. The Premises is to be secured and maintained to prevent the entry of public and be provided with appropriate asbestos warning signs to alert people that asbestos is present.

This notice is issued under section 91 of the *Protection of the Environment Operations act 1997*. It is an offence against that Act not to comply with this notice, unless you have a reasonable excuse for not complying.

Period of Compliance:

All specified 'clean up action' necessary to satisfy the requirements of this Notice shall be completed within fourteen (14) days of the date of this Notice.

Failure to comply with the Notice:

It is an offence pursuant s 91(5) of the Act to fail to comply with this Notice. Should the Notice not be complied with the Council may do the following things:

1. Commence civil enforcement proceedings in the Land and Environment Court of NSW pursuant to s 252 of the Act seeking mandatory orders to compel you to comply with the Notice, and any other order necessary and in addition, an order that you pay the Council's legal costs; and/or
2. Commence summary criminal proceedings in a Court of competent jurisdiction pursuant to s 215 of the Act seeking a conviction and pecuniary penalty; and/or
3. Issue a penalty notice pursuant to s 224 of the Act which carries a maximum penalty of \$ 500.00 (for individuals) and/or \$1,000.00 (for companies) and a maximum daily penalty of the same amount (individual or company) each day the offence continues.

Note: That in relation to (2) above s 91(5) the Act carries a maximum pecuniary penalty as follows:

- in the case of a corporation - \$1,000,000.00 and, in the case of a continuing offence, a further penalty of \$120,000 for each day the offence continues, or

- in the case of an individual - \$250,000 and, in the case of a continuing offence, a further penalty of \$60,000 for each day the offence continues.

Council may carry out the clean-up action:

In addition to (1), (2) and (3) above the Council may exercise its powers pursuant to Section 92 of the Act, to do all such things that are necessary or convenient to give effect to the Notice and give a Compliance Cost Notice pursuant to Section 104 of the Act, to recover all costs associated with the clean-up action a debt due back to the Council.

In the alternative, the Council, pursuant to s 106 of the Act, may have a charge registered on the title of the land in relation to unpaid costs levied under the Compliance Cost Notice.

Statutory Fee:

You are required to pay a prescribed statutory fee of \$550.00 for the recovery of the Council's administrative costs related to the preparation and service of this Notice within 30 days of the date of this Notice. The payment must be made using the attached invoice.

Note-1 It is an offence pursuant to s 94(4) of the Act to fail to pay this fee. Section 94(4) of the Act carries a maximum pecuniary penalty of \$22,000 for such an offence.

Note-2 You may apply to the Council to either extend the time limit available for the payment of the fee or to waive the fee.

Service of Notices:

1. For the purposes of this Act, any Notice or other documentation may be issued or given to a person, or may be served on a person:
 - a. by delivering it personally to the person,
 - b. by delivering it to the place of residence or business of the person and by leaving it there for the person with some other person, or

- c. by posting it duly stamped and addressed to the person at the place last shown in the records of the appropriate regulatory authority as the person's place of residence or business, or
 - d. by posting it duly stamped and addresses to the person at the place indicated by the person as an address to which correspondence may be posted (including for example a post office box), or
 - e. by sending it by facsimile or electronic transmission (including for example the internet) to the person in accordance with arrangements indicated by the person as appropriate for transmitting documents to the person, or
 - f. by leaving it addressed to the person at a document exchange or other place (in accordance with usual arrangements for the exchange or other place) indicated by the person as an exchange or place through which correspondence may be forwarded to the person.
2. This section does not affect any other mode of issuing, giving or serving a notice or other document under any other law.

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Yours faithfully,

Michael Ryan
Senior Manager Health and Building