

State Environmental Planning Policy No 55—Remediation of Land

under the

Environmental Planning and Assessment Act 1979

His Excellency the Lieutenant-Governor, with the advice of the Executive Council, has made the following State environmental planning policy under the *Environmental Planning and Assessment Act 1979* in accordance with the recommendation made by the Minister for Urban Affairs and Planning. (S97/00152/PC)

Minister for Urban Affairs and Planning

Sydney,

1998.

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State Environmental Planning Policy No 55— Remediation of Land

1 Name of this Policy

This Policy is *State Environmental Planning Policy No 55—Remediation of Land*.

2 Object of this Policy

- (1) The object of this Policy is to provide for a Statewide planning approach to the remediation of contaminated land.
- (2) In particular, this Policy aims to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment:
 - (a) by specifying when consent is required, and when it is not required, for a remediation work, and
 - (b) by specifying certain considerations that are relevant in rezoning land and in determining development applications in general and development applications for consent to carry out a remediation work in particular, and
 - (c) by requiring that a remediation work meet certain standards and notification requirements.

3 Notes

The table of contents and notes in the text of this Policy do not form part of this Policy.

4 Definitions

- (1) In this Policy:
 - category 1 remediation work* is defined in clause 9.
 - category 2 remediation work* is defined in clause 14.
 - contaminated land* has the same meaning as it has in Part 7A of the Act.
 - contaminated land planning guidelines* means guidelines under section 145C of the Act.

investigation area means land declared to be an investigation area by a declaration in force under Division 2 of Part 3 of the *Contaminated Land Management Act 1997*.

Minister means the Minister administering the Act.

preliminary investigation, in relation to land, means a preliminary investigation referred to in the contaminated land planning guidelines.

remediation means:

- (a) removing, dispersing, destroying, reducing, mitigating or containing the contamination of any land, or
- (b) eliminating or reducing any hazard arising from the contamination of any land (including by preventing the entry of persons or animals on the land).

Note. This definition of remediation corresponds to parts of the definition of remediation in the *Contaminated Land Management Act 1997*.

remediation order means a remediation order made by the Environment Protection Authority and in force under Part 3 of the *Contaminated Land Management Act 1997*.

remediation site means:

- (a) land declared to be a remediation site by a declaration in force under Division 3 of Part 3 of the *Contaminated Land Management Act 1997*, or
- (b) premises:
 - (i) in respect of which there is in force a notice under section 35 of the *Environmentally Hazardous Chemicals Act 1985* requiring prescribed remedial action to be taken, or
 - (ii) that are the subject of prescribed remedial action (whether being undertaken by the Environment Protection Authority or by another public authority at the direction of that Authority) under section 36 of that Act.

the Act means the *Environmental Planning and Assessment Act 1979*.

unincorporated area means such parts of the Western Division of New South Wales as are not within a local government area.

- (2) A reference in this Policy to a remediation work carried out or to be carried out on any land includes a reference to a remediation work carried out or to be carried out in, over or under the land concerned.

5 Land to which this Policy applies

This Policy applies to the whole of the State.

6 Contamination and remediation to be considered in zoning or rezoning proposal

- (1) In preparing an environmental planning instrument, a planning authority is not to include in a particular zone (within the meaning of the instrument) any land specified in subclause (4) if the inclusion of the land in that zone would permit a change of use of the land, unless:
- (a) the planning authority has considered whether the land is contaminated, and
 - (b) if the land is contaminated, the planning authority is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for all the purposes for which land in the zone concerned is permitted to be used, and
 - (c) if the land requires remediation to be made suitable for any purpose for which land in that zone is permitted to be used, the planning authority is satisfied that the land will be so remediated before the land is used for that purpose.

Note. In order to satisfy itself as to paragraph (c), the planning authority may need to include certain provisions in the environmental planning instrument.

- (2) Before including land in a particular zone, the planning authority is to obtain and have regard to a report specifying the findings of a preliminary investigation of the land carried out in accordance with the contaminated land planning guidelines.

- (3) If a person has requested the planning authority to include the land concerned in a particular zone, the planning authority may require the person to furnish the report referred to in subclause (2).
- (4) The land concerned is:
 - (a) land that is within an investigation area,
 - (b) land on which development for a purpose referred to in Table 1 to the contaminated land planning guidelines is being, or is known to have been, carried out,
 - (c) to the extent to which it is proposed to carry out development on it for residential, educational, recreational or child care purposes, or for the purposes of a hospital—land:
 - (i) in relation to which there is no knowledge (or incomplete knowledge) as to whether development for a purpose referred to in Table 1 to the contaminated land planning guidelines has been carried out, and
 - (ii) on which it would have been lawful to carry out such development during any period in respect of which there is no knowledge (or incomplete knowledge).
- (5) In this clause, *planning authority* has the same meaning as it has in section 145A of the Act.

7 Contamination and remediation to be considered in determining development application

- (1) A consent authority must not consent to the carrying out of any development on land unless:
 - (a) it has considered whether the land is contaminated, and
 - (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and
 - (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.

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- (2) Before determining an application for consent to carry out development that would involve a change of use on any of the land specified in subclause (4), the consent authority must consider a report specifying the findings of a preliminary investigation of the land concerned carried out in accordance with the contaminated land planning guidelines.
 - (3) The applicant for development consent must carry out the investigation required by subclause (2) and must provide a report on it to the consent authority. The consent authority may require the applicant to carry out, and provide a report on, a detailed investigation (as referred to in the contaminated land planning guidelines) if it considers that the findings of the preliminary investigation warrant such an investigation.
 - (4) The land concerned is:
 - (a) land that is within an investigation area,
 - (b) land on which development for a purpose referred to in Table 1 to the contaminated land planning guidelines is being, or is known to have been, carried out,
 - (c) to the extent to which it is proposed to carry out development on it for residential, educational, recreational or child care purposes, or for the purposes of a hospital—land:
 - (i) in relation to which there is no knowledge (or incomplete knowledge) as to whether development for a purpose referred to in Table 1 to the contaminated land planning guidelines has been carried out, and
 - (ii) on which it would have been lawful to carry out such development during any period in respect of which there is no knowledge (or incomplete knowledge).

8 Remediation work permissible

- (1) A person may carry out a remediation work in accordance with this Policy, despite any provision to the contrary in an environmental planning instrument, except as provided by clause 19 (3).
- (2) A person must not carry out a category 1 remediation work except with the consent of the consent authority.

- (3) A person may carry out a category 2 remediation work without the consent of the consent authority.
- (4) A person who carries out a remediation work must ensure that clause 16 (if it applies) and clauses 17 and 18 are complied with in relation to the work.

Note. See clause 19 for the relationship of this Policy to other environmental planning instruments.

9 Category 1 remediation work: work needing consent

For the purposes of this Policy, a category 1 remediation work is a remediation work (not being a work to which clause 14 (b) applies) that is:

- (a) designated development, or
- (b) carried out or to be carried out on land declared to be a critical habitat, or
- (c) likely to have a significant effect on a critical habitat or a threatened species, population or ecological community, or
- (d) development for which another State environmental planning policy or a regional environmental plan requires development consent, or
- (e) carried out or to be carried out in an area or zone to which any classifications to the following effect apply under an environmental planning instrument:
 - (i) coastal protection,
 - (ii) conservation or heritage conservation,
 - (iii) habitat area, habitat protection area, habitat or wildlife corridor,
 - (iv) environment protection,
 - (v) escarpment, escarpment protection or escarpment preservation,
 - (vi) floodway,
 - (vii) littoral rainforest,
 - (viii) nature reserve,
 - (ix) scenic area or scenic protection,
 - (x) wetland, or

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- (f) carried out or to be carried out on any land in a manner that does not comply with a policy made under the contaminated land planning guidelines by the council for any local government area in which the land is situated (or if the land is within the unincorporated area, the Western Lands Commissioner).

Note. See section 5A of the *Environmental Planning and Assessment Act 1979* for the factors to be taken into account in assessing whether there is likely to be a significant effect as referred to in paragraph (c) above. The terms used in that paragraph are defined in that Act by reference to both the *Threatened Species Conversation Act 1995* and the *Fisheries Management Act 1994*.

10 Consent authority in relation to remediation works

- (1) The consent authority in relation to a development application for consent to carry out a remediation work on any land that is not a remediation site is:
- (a) the person or authority that, in accordance with a provision made by an environmental planning instrument that applies to the land, is the consent authority for the development, or
 - (b) in default of any such provision:
 - (i) the council for the local government area in which the land is situated, or
 - (ii) the Western Lands Commissioner, if the land is within the unincorporated area.
- (2) The consent authority in relation to a development application to carry out a remediation work on land that is a remediation site is the Minister.

11 State significant development

Development that consists of the carrying out of a category 1 remediation work on land that is a remediation site is declared to be State significant development.

12 Refusal of consent to category 1 remediation work

- (1) The consent authority must not refuse development consent for a category 1 remediation work unless the authority is satisfied that there would be a more significant risk of harm to human health or some other aspect of the environment from the carrying out of

the work than there would be from the use of the land concerned (in the absence of the work) for any purpose for which it may lawfully be used.

- (2) Nothing in this clause prevents the consent authority from refusing consent to a development application if:
 - (a) by operation of an environmental planning instrument or section 79B (3) of the Act, the development application may not be determined by the granting of consent without the concurrence of a specified person, and
 - (b) that concurrence is not given.

13 Advertising of development application

- (1) A category 1 remediation work is identified as advertised development, unless the remediation work is:
 - (a) designated development, or
 - (b) State significant development.
- (2) Pursuant to section 29A of the Act, the period specified in clause 65 (5) (d) of the *Environmental Planning and Assessment Regulation 1994* is extended to 30 days in relation to development identified as advertised development by this clause.

Note. Development identified by subclause (1) as advertised development is **other advertised development** within the meaning of Part 6 of the *Environmental Planning and Assessment Regulation 1994*. That Part provides for a period of 14 days for the inspection of a development application (and the documents accompanying the application) relating to other advertised development. However, section 29A of the *Environmental Planning and Assessment Act 1979* allows an environmental planning instrument to add to or extend (but not replace or reduce) the provisions of the regulations concerning the notification and advertising of development and the making of submissions relating to advertised development. The period allowed by subclause (2) is the period of 30 days after publication in a newspaper of a notice concerning the application and the making of submissions in relation to it. That period is the same period as applies to all other development that involves public participation (eg designated development).

14 Category 2 remediation work: work not needing consent

For the purposes of this Policy, a category 2 remediation work is:

- (a) a remediation work that is not a work of a kind described in clause 9 (a)–(f), or
- (b) a remediation work (whether or not it is a work of a kind described in clause 9 (a)–(f)) that:
 - (i) by the terms of a remediation order, is required to be commenced before the expiry of the usual period under the *Contaminated Land Management Act 1997* for lodgment of an appeal against the order, or
Note. The usual period for lodgment of an appeal is 21 days or a period prescribed instead by regulations made under the *Contaminated Land Management Act 1997*.
 - (ii) may be carried out without consent under another State environmental planning policy or a regional environmental plan (as referred to in clause 19 (4) and (5)), or
 - (iii) is carried out or to be carried out by or on behalf of the Director-General of the Department of Agriculture on land contaminated by the use of a cattle dip under a program implemented in accordance with the recommendations or advice of the Board of Tick Control under Part 2 of the *Stock Diseases Act 1923*, or
 - (iv) is carried out or to be carried out under the Public Land Remediation Program administered by the Broken Hill Environmental Lead Centre.

15 Remediation work that is ancillary to other development

- (1) A remediation work that would of itself be a category 2 remediation work but which is ancillary to designated development that requires development consent may, as an applicant chooses:
 - (a) be made part of the subject of the development application for the designated development instead of being made the subject of a separate development application, or
 - (b) be treated as a category 2 remediation work.

- (2) However, a category 1 remediation work must be treated as such even if it is ancillary to development that may be carried out without consent.
- (3) A remediation work that would of itself be a category 1 remediation work and constitute designated development does not, just because it is ancillary to other development:
 - (a) render the latter development designated development, or
 - (b) cause that development to become a development for which development consent is required.

16 Prior notice of category 2 remediation work

- (1) A person who proposes to carry out a category 2 remediation work on any land must give notice of the proposed work to the council for the local government area in which the land is situated (or, if the land is within the unincorporated area, to the Western Lands Commissioner).
- (2) The notice must be given:
 - (a) at least 30 days before the commencement of the work, except in the case of a work referred to in clause 14 (b), and
 - (b) in the case of a work referred to in clause 14 (b)—no later than the day before the commencement of the work.
- (3) The notice must:
 - (a) be in writing, and
 - (b) provide the name, address and telephone number of the person who has the duty of ensuring that the notice is given, and
 - (c) briefly describe the remediation work, and
 - (d) show why the person considers that the work is category 2 remediation work by reference to clauses 9, 14 and (if it applies) 15 (1), and
 - (e) specify, by reference to its property description and street address (if any), the land on which the work is to be carried out, and
 - (f) provide a map of the location of the land, and
 - (g) provide estimates of the dates for the commencement and completion of the work.

17 Guidelines and notices: all remediation work

- (1) All remediation work must, in addition to complying with any requirement under the Act or any other law, be carried out in accordance with:
 - (a) the contaminated land planning guidelines, and
 - (b) the guidelines (if any) in force under the *Contaminated Land Management Act 1997*, and
 - (c) in the case of a category 1 remediation work—a plan of remediation, as approved by the consent authority, prepared in accordance with the contaminated land planning guidelines.
- (2) A notice of completion of a category 1 remediation work on any land must be given to the council for the local government area in which the land is situated (or, if the land is within the unincorporated area, to the Western Lands Commissioner).
- (3) The notice is to be given within 30 days after the completion of the work.
- (4) A copy of the notice must also be given within the same period to the consent authority, if consent was required for the remediation work and the consent authority is not one of the authorities referred to in subclause (2).

18 Notice of completion of remediation work

The notice required by clause 17 (2) must:

- (a) be in writing prepared and signed by the person who carried out the work, and
- (b) provide the person's name, address and business telephone number, and
- (c) provide details of the person's qualifications to carry out the work, and
- (d) specify, by reference to its property description and street address (if any), the land on which the work was carried out, and
- (e) provide a map of the location of the land, and
- (f) state when the work was completed, and

- (g) specify the uses of the land, and the substances, that contaminated it in such a way as to present a risk of harm to human health or some other aspect of the environment, and
- (h) specify the uses of the land immediately before the work started, and
- (i) briefly describe the method of remediation used in the work, and
- (j) specify the guidelines that were complied with in the work, and
- (k) specify the standard of remediation achieved (in the light of the use proposed for the land), and
- (l) show in what manner the work (if a category 1 remediation work) complied with the conditions of the relevant development consent, and
- (m) state what action must be maintained in relation to the land after the completion of the remediation work if the standard of remediation achieved is to be maintained.

Note. A site audit statement (within the meaning of Part 4 of the *Contaminated Land Management Act 1997*) may be given in partial compliance with this requirement.

19 Relationship to other environmental planning instruments

- (1) If this Policy is inconsistent with another State environmental planning policy, a regional environmental plan or a local environmental plan (whether made before or after this Policy), this Policy prevails, except as provided by this clause and section 36 (4) of the Act.
- (2) Nothing in this Policy applies to a remediation work that is development to which *State Environmental Planning Policy No 38—Olympic Games and Related Projects* applies.
- (3) If a provision of another State environmental planning policy or of a regional environmental plan, whether made before or after this Policy, requires development consent for a remediation work, a provision of this Policy that permits the carrying out of the work without development consent does not prevail over that provision.

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- (4) If a provision of another State environmental planning policy or of a regional environmental plan, whether made before or after this Policy, permits a remediation work without development consent, a requirement in this Policy to obtain development consent to carry out the work does not prevail over that provision.
 - (5) However, subclause (4) does not apply in respect of any of the provisions of *State Environmental Planning Policy No 4—Development Without Consent*, except clauses 11, 11A, 11C and 11E (in so far as clause 11E applies to the development specified in clause 11E (1) (a)) of that Policy.
 - (6) Clauses 16–18 apply to any remediation work according to the category of the work under this Policy even if another State environmental planning policy or a regional environmental plan also applies to the work.

20 Transitional provisions

- (1) Of the provisions of this Policy:
 - (a) only clauses 17 and 18 apply to a remediation work that was the subject of a development application that was lodged with a consent authority, but not finally determined, before the commencement of this Policy (unless the applicant notifies the consent authority that it wishes the entire Policy to apply to the application), and
 - (b) only clause 18 applies to a category 1 remediation work that did not, before the commencement of this Policy, require development consent and that was begun before the commencement of this Policy.
- (2) This Policy does not apply to a remediation work proposed to be carried out under Part 5 of the Act and in respect of which, at the commencement of this Policy, an environmental impact statement has been prepared in respect of the work and has commenced to be exhibited.