

1992—No. 129

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979
STATE ENVIRONMENTAL PLANNING POLICY No. 33—
HAZARDOUS AND OFFENSIVE DEVELOPMENT**

NEW SOUTH WALES



[Published in Gazette No. 36 of 13 March 1992]

HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of section 39 of the Environmental Planning and Assessment Act 1979, has been pleased to make the State environmental planning policy set forth hereunder in accordance with the recommendation made by the Minister for Planning.

ROBERT WEBSTER
Minister for Planning.

Sydney, 11 March, 1992.

PART 1—PRELIMINARY

Citation

1. This Policy may be cited as State Environmental Planning Policy No. 33—Hazardous and Offensive Development.

Aims, objectives etc.

2. This Policy aims:

- (a) to amend the definitions of hazardous and offensive industries where used in environmental planning instruments; and
- (b) to render ineffective a provision of any environmental planning instrument that prohibits development for the purpose of a storage facility on the ground that the facility is hazardous or offensive if it is not a hazardous or offensive storage establishment as defined in this Policy; and

- (c) to require development consent for hazardous or offensive development proposed to be carried out in the Western Division; and
- (d) to ensure that in determining whether a development is a hazardous or offensive industry, any measures proposed to be employed to reduce the impact of the development are taken into account; and
- (e) to ensure that in considering any application to carry out potentially hazardous or offensive development, the consent authority has sufficient information to assess whether the development is hazardous or offensive and to impose conditions to reduce or minimise any adverse impact; and
- (f) to require the advertising of applications to carry out any such development.

Definitions of “potentially hazardous industry” and “potentially offensive industry”

3. In this Policy:

“potentially hazardous industry” means a development for the purposes of any industry which, if the development were to operate without employing any measures (including, for example, isolation from existing or likely future development on other land) to reduce or minimise its impact in the locality or on the existing or likely future development on other land, would pose a significant risk in relation to the locality:

- (a) to human health, life or property; or
- (b) to the biophysical environment,

and includes a hazardous industry and a hazardous storage establishment;

“potentially offensive industry” means a development for the purposes of an industry which, if the development were to operate without employing any measures (including, for example, isolation from existing or likely future development on other land) to reduce or minimise its impact in the locality or on the existing or likely future development on other land, would emit a polluting discharge (including for example, noise) in a manner which would have a significant adverse impact in the locality or on the existing or likely future development on other land, and includes an offensive industry and an offensive storage establishment.

Other definitions**4. (1)** In this Policy:

“hazardous industry” means a development for the purposes of an industry which, when the development is in operation and when all measures proposed to reduce or minimise its impact on the locality have been employed (including, for example, measures to isolate the development from existing or likely future development on other land in the locality), would pose a significant risk in relation to the locality;

(a) to human health, life or property; or

(b) to the biophysical environment;

“hazardous storage establishment” means any establishment where goods, materials or products are stored which, when in operation and when all measures proposed to reduce or minimise its impact on the locality have been employed (including, for example, measures to isolate the establishment from existing or likely future development on the other land in the locality), would pose a significant risk in relation to the locality:

(a) to human health, life or property; or

(b) to the biophysical environment;

“offensive industry” means a development for the purposes of an industry which, when the development is in operation and when all measures proposed to reduce or minimise its impact on the locality have been employed (including, for example, measures to isolate the development from existing or likely future development on other land in the locality), would emit a polluting discharge (including, for example, noise) in a manner which would have a significant adverse impact in the locality or on the existing or likely future development on other land in the locality;

“offensive storage establishment” means any establishment where goods, materials or products are stored which, when in operation and when all measures proposed to reduce or minimise its impact on the locality have been employed (including, for example, measures to isolate the establishment from existing or likely future development on other land in the locality), would emit a polluting discharge (including, for example, noise) in a manner which would have a significant adverse impact in the locality or on the existing or likely future development on other land in the locality;

“the Act” means the Environmental Planning and Assessment Act 1979.

(2) A reference in this Policy to circulars or guidelines published by the Department of Planning is a reference to circulars or guidelines so published and available for inspection by the public on request at the offices of the Department.

Land to which Policy applies

5. This Policy applies to the State.

Relationship with other environmental planning instruments

6. In the event of an inconsistency between this Policy and another environmental planning instrument (whether made before, on or after the date on which this Policy takes effect) this Policy prevails to the extent of the inconsistency.

PART 2—HAZARDOUS OR OFFENSIVE DEVELOPMENT**New definitions of “hazardous industry” and “offensive industry”**

7. In an environmental planning instrument (whether made before, on, or after the date on which this Policy takes effect) a reference to:

- (a) an offensive or hazardous industry, however defined in that instrument, is to be taken to be a reference to development for the purposes of an industry (as defined in that instrument) that is a hazardous industry or an offensive industry within the meaning of clause 4; and
- (b) an offensive industry, however defined in that instrument, is to be taken to be a reference to development for the purposes of an industry (as defined in that instrument) that is an offensive industry within the meaning of clause 4; and
- (c) a hazardous industry, however defined in that instrument, is to be taken to be a reference to development for the purposes of an industry (as defined in that instrument) that is a hazardous industry within the meaning of clause 4.

Consideration of Departmental guidelines

8. In determining whether a development is:
- (a) a hazardous storage establishment, hazardous industry or other potentially hazardous industry; or
 - (b) an offensive storage establishment, offensive industry or other potentially offensive industry,

consideration must be given to current circulars or guidelines published by the Department of Planning relating to hazardous or offensive development.

Storage facilities

9. A provision of an environmental planning instrument which prohibits the carrying out of development for the purposes of, or purposes which include, a storage facility (however the storage facility may be described or referred to in the instrument) on the ground that the storage facility is offensive or hazardous has no effect unless the storage facility is a hazardous storage establishment or an offensive storage establishment as defined in this Policy.

Western Division—development consent required

10. (1) This clause applies to development defined in clause 3 or 4 which is carried out or proposed to be carried out on land within the Western Division.

(2) A person may not carry out such development except with the consent of

- (a) the council of the area, if the land concerned is within a local government area; or
- (b) the Western Lands Commissioner, in any other case.

(3) Nothing in this clause authorises the carrying out of such development if the development is not otherwise permitted.

(4) In this clause, “Western Division” has the same meaning as in the Western Lands Act 1901.

PART 3—POTENTIALLY HAZARDOUS OR POTENTIALLY OFFENSIVE DEVELOPMENT**Development to which Part 3 applies**

11. (1) This Part applies to:

- (a) development for the purposes of a potentially hazardous industry;
and
- (b) development for the purposes of a potentially offensive industry;
and
- (c) development notified, for the purposes of this Part, by the Director in the Gazette as being a potentially hazardous or potentially offensive development.

(2) This Part does not apply to development the subject of a development application made before the date on which this Policy takes effect.

Preparation of preliminary hazard analysis

12. A person who proposes to make a development application to carry out development for the purposes of a potentially hazardous industry must prepare (or cause to be prepared) a preliminary hazard analysis in accordance with the current circulars or guidelines published by the Department of Planning and submit the analysis with the development application.

Matters for consideration by consent authorities

13. In determining an application to carry out development to which this Part applies, the consent authority must consider (in addition to any other matters specified in the Act or in an environmental planning instrument applying to the development):

- (a) current circulars or guidelines published by the Department of Planning relating to hazardous or offensive development; and
- (b) whether any public authority should be consulted concerning any environmental and land use safety requirements with which the development should comply; and
- (c) in the case of development for the purpose of a potentially hazardous industry—a preliminary hazard analysis prepared by or on behalf of the applicant; and
- (d) any feasible alternatives to the carrying out of the development and the reasons for choosing the development the subject of the application (including any feasible alternatives for the location of the development and the reasons for choosing the location the subject of the application); and
- (e) any likely future use of the land surrounding the development.

Advertising of applications

14. Pursuant to section 30 (4) of the Act, the provisions of sections 84, 85, 86, 87 (1) and 90 of the Act apply to and in respect of development to which this Part applies in the same way as those provisions apply to and in respect of designated development.

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