



New South Wales

Kogarah Local Environmental Plan 1998 (Amendment No 17)—Acid Sulfate Soils

under the

Environmental Planning and Assessment Act 1979

I, the Minister Assisting the Minister for Infrastructure and Planning (Planning Administration), make the following local environmental plan under the *Environmental Planning and Assessment Act 1979*. (S00/00790/S69)

DIANE BEAMER, M.P.,

Minister Assisting the Minister for Infrastructure
and Planning (Planning Administration)

2004 No 7

Clause 1

Kogarah Local Environmental Plan 1998 (Amendment No 17)—Acid Sulfate Soils

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1 Name of plan

This plan is *Kogarah Local Environmental Plan 1998 (Amendment No 17)—Acid Sulfate Soils*.

2 Aims of plan

The aims of this plan are:

- (a) to provide environmental planning controls that will result in the management of any disturbance to acid sulfate soils in the Kogarah local government area so as to minimise impacts on natural waterbodies and wetlands and on agricultural, fishing, aquaculture, urban and infrastructure activities, and
- (b) to require development consent for works, including some agricultural-related works, that would disturb soils or groundwater levels in localities identified as having a potential for acid sulfate soils to occur, and
- (c) to require special assessment of certain development on land identified as being subject to risks associated with the disturbance of acid sulfate soils.

3 Land to which plan applies

This plan applies to land within the local government area of Kogarah classified as Class 1, 2, 3, 4 or 5 on the map marked “Kogarah Local Environmental Plan 1998 (Amendment No 17)—Acid Sulfate Soil Planning Map” deposited in the office of Kogarah Municipal Council.

4 Relationship to other environmental planning instruments

- (1) *Kogarah Local Environmental Plan 1998* is amended as set out in Schedule 1.

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- (2) *State Environmental Planning Policy No 4—Development Without Consent and Miscellaneous Exempt and Complying Development* is amended by inserting the following matter at the end of Schedule 1:

Clause 13A of *Kogarah Local Environmental Plan 1998*

2004 No 7

Kogarah Local Environmental Plan 1998 (Amendment No 17)—Acid Sulfate Soils

Schedule 1 Amendments

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(Clause 4)

[1] Clause 13A

Insert after clause 13:

13A Development on land containing acid sulfate soils

(1) **Objective of the provision**

To require special assessment of risks associated with acid sulfate soils of land identified on the Acid Sulfate Soil Planning Map.

(2) **Consent usually required**

A person must not, without the consent of the Council, carry out works described in the following table on land of the class specified for those works in that table, except as otherwise provided by this clause.

Class of land as shown on Acid Sulfate Soil Planning Map	Works
1	Any works
2	Works below natural ground surface Works by which the watertable is likely to be lowered
3	Works beyond 1 metre below natural ground surface Works by which the watertable is likely to be lowered beyond 1 metre below natural ground surface
4	Works beyond 2 metres below natural ground surface Works by which the watertable is likely to be lowered beyond 2 metres below natural ground surface

Class of land as shown on Acid Sulfate Soil Planning Map	Works
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5	Works within 100 metres of adjacent Class 2, 3 or 4 land which are likely to lower the watertable below 1 metre AHD on adjacent Class 2, 3 or 4 land
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(3) For the purposes of the table to subclause (2), *works* includes:

- (a) any disturbance of more than 1 tonne of soil (such as occurs in carrying out agriculture, the construction or maintenance of drains, extractive industries, dredging, the construction of artificial waterbodies (including canals, dams and detention basins) or foundations or flood mitigation works), or
- (b) any other works that are likely to lower the watertable.

(4) **Exceptions following preliminary assessment**

This clause does not require consent for the carrying out of works if:

- (a) a copy of a preliminary assessment of the proposed works undertaken in accordance with the *Acid Sulfate Soils Assessment Guidelines* has been given to the Council, and
- (b) the Council has provided written advice to the person proposing to carry out works confirming that results of the preliminary assessment indicate the proposed works need not be carried out pursuant to an acid sulfate soils management plan prepared in accordance with the *Acid Sulfate Soils Assessment Guidelines*.

(5) **Considerations for consent authority**

The Council must not grant a consent required by this clause unless it has considered:

- (a) the adequacy of an acid sulfate soils management plan prepared for the proposed development in accordance with the *Acid Sulfate Soils Assessment Guidelines*, and

- (b) the likelihood of the proposed development resulting in the discharge of acid water, and
 - (c) any comments received from the Department of Infrastructure, Planning and Natural Resources within 40 days of the Council having sent that Department a copy of the development application and of the related acid sulfate soils management plan.
- (6) **Public authorities not excepted**

This clause requires consent for development to be carried out by the Council or another public authority, despite clause 6 (1) (a).
- (7) However, despite any other provision of this clause, consent is not required for the Council or another public authority to carry out development for the purposes of:
 - (a) emergency work, or
 - (b) routine maintenance, or
 - (c) minor excavation work.
- (8) Despite any other provision of this clause, the following development may be carried out by the Council or another public authority without development consent:
 - (a) the installation of stormwater quality improvement devices and drainage works, and
 - (b) any work ancillary to that development, such as the construction of accessways, the provision of power, water and sewerage supplies, and landscape works.
- (9) If the Council or another public authority carries out work referred to in subclause (8) and encounters, or is reasonably likely to encounter, acid sulfate soils, the Council or public authority:
 - (a) must conduct a preliminary assessment of the proposed works in accordance with the *Acid Sulfate Soils Assessment Guidelines* so as to minimise the actual or potential impact to the environment arising from the disturbance of the soils, and
 - (b) must implement reasonable measures to minimise that impact.

(10) In this clause:

emergency work means the repair or replacement of any part of the works of the Council or another public authority:

- (a) because it has been (or is being) damaged by a natural disaster, an accident, an act of vandalism or a like occurrence, or
- (b) because it has ceased to function or suddenly ceased to function adequately,

and includes any work reasonably necessary to prevent or limit any further damage or malfunction.

minor excavation work means new work carried out by a public authority that does not disturb soil more than one metre below the existing ground level, such as the provision of surface irrigation for landscaping.

routine maintenance means the periodic inspection, cleaning, repair and replacement of existing public works, but does not include work that would result in an increase in the design capacity of any part of the works or necessitate the deepening of any existing works below the existing ground level.

[2] Clause 25 Dictionary

Omit the definition of ***acid sulfate soil*** from clause 25 (1).

Insert in clause 25 (1) in alphabetical order:

Acid Sulfate Soil Planning Map means the map marked “Kogarah Local Environmental Plan 1998 (Amendment No 17)—Acid Sulfate Soil Planning Map” kept in the office of the Council.

acid sulfate soils means actual or potential acid sulfate soils, as defined in the *Acid Sulfate Soils Assessment Guidelines*.

Acid Sulfate Soils Assessment Guidelines means the *Acid Sulfate Soils Assessment Guidelines* as published from time to time by the NSW Acid Sulfate Soils Management Advisory Committee and adopted by the Director-General.