



New South Wales

State Environmental Planning Policy Amendment (Remediation of Land) 2018

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*.

ANTHONY ROBERTS, MP
Minister for Planning

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1 Name of Policy

This Policy is *State Environmental Planning Policy Amendment (Remediation of Land) 2018*.

2 Commencement

This Policy commences on the day on which it is published on the NSW legislation website.

3 Repeal of Policy

- (1) This Policy is repealed on the day following the day on which this Policy commences.
- (2) The repeal of this Policy does not, because of the operation of sections 5 (6) and 30 of the *Interpretation Act 1987*, affect any amendment made by this Policy.

Schedule 1 Amendment of State Environmental Planning Policy No 55—Remediation of Land

[1] Clause 4 Definitions

Insert in alphabetical order in clause 4 (1):

Cockle Creek Smelter Land Map means the State Environmental Planning Policy No 55—Remediation of Land—Cockle Creek Smelter Land Map.

[2] Clause 5A

Insert after clause 5:

5A Maps

- (1) A reference in this Policy to a named map adopted by this Policy is a reference to a map by that name:
 - (a) approved by the Minister when the map is adopted, and
 - (b) as amended or replaced from time to time by maps declared by environmental planning instruments to amend or replace that map, and approved by the Minister when the instruments are made.
- (2) Any 2 or more named maps may be combined into a single map. In that case, a reference in this Policy to any such named map is a reference to the relevant part or aspect of the single map.
- (3) Any such maps are to be kept and made available for public access in accordance with arrangements approved by the Minister.
- (4) For the purposes of this Policy, a map may be in, and may be kept and made available in, electronic or paper form, or both.

[3] Clause 22

Insert after clause 21:

22 Perpetual care arrangements required for development at former zinc and lead smelter and fertiliser production site at Boolaroo, Lake Macquarie

(1) Objective

The objective of this clause is to ensure that adequate arrangements are in place to minimise and manage the risks associated with the containment cell on the site of the former Cockle Creek zinc and lead smelter and Incitec fertiliser factory (and other land within that site that has not been fully remediated) so as to protect human health and the environment in perpetuity.

(2) Land application

This clause applies to the land identified as “former Cockle Creek Smelter and Incitec site” on the Cockle Creek Smelter Land Map (*the former Cockle Creek Smelter and Incitec site*).

(3) Adequate arrangements for perpetual care required

A consent authority must not consent to a development application to carry out development on the former Cockle Creek Smelter and Incitec site unless the Planning Secretary has certified to the consent authority that, in the Planning Secretary’s opinion, adequate arrangements are in place for the perpetual care of the following:

- (a) the containment cell at the former Cockle Creek Smelter and Incitec site and its associated infrastructure,
- (b) the land on which that cell and infrastructure is located,
- (c) land on the former Cockle Creek Smelter and Incitec site that has not been remediated,
- (d) the land on the former Cockle Creek Smelter and Incitec site that immediately before the commencement of this clause was within Zone E2 Environmental Conservation under *Lake Macquarie Local Environmental Plan 2014*.

(4) Meaning of “perpetual care”

In this clause, *perpetual care* in relation to the containment cell, infrastructure and land concerned includes the following activities:

- (a) the on-going implementation of long term environmental management plans,
- (b) the on-going monitoring, maintenance and repair of the containment cell and associated infrastructure,
- (c) the replacement, from time to time, of part or all of that containment cell and that associated infrastructure, including as a result of a catastrophic event.

(5) Matters that Planning Secretary may have regard to

In forming an opinion as to whether the adequate arrangements referred to in subclause (3) are in place, the Planning Secretary may have regard to whether any public positive covenants or other instruments or any adequate financial arrangements are in place to sustain the perpetual care concerned.

(6) Exemption from requirement to obtain Planning Secretary’s certificate

Subclause (3) does not apply to a development application only for any of the following purposes:

- (a) a subdivision creating or widening a public road or a drainage reserve,
- (b) road works or the construction of public utility infrastructure,
- (c) remediation or environmental protection works (within the meaning of the standard instrument for a local environmental plan prescribed by the *Standard Instrument (Local Environmental Plans) Order 2006*).

(7) Duration of certificate

A certificate given by the Planning Secretary under this clause remains in force until it is withdrawn.

(8) Withdrawal of certificate

The Planning Secretary may, by notice in writing, withdraw a certificate that has been given to a consent authority.

(9) Certificate effective for different development

For the avoidance of doubt, a new certificate by the Planning Secretary under this clause is not required for each separate development application (including development applications by different persons relating to the carrying out of different development).

(10) Transitional

This clause extends to a development application that has been made, but not finally determined, before the commencement of this clause.

Schedule 2 Amendment of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008

Schedule 3 Complying development codes—variations

Insert in appropriate order in the Schedule:

Lake Macquarie

The land in the local government area of Lake Macquarie that is identified as “former Cockle Creek Smelter and Incitec site” on the Cockle Creek Smelter Land Map within the meaning of *State Environmental Planning Policy No 55—Remediation of Land*

The Housing Code is varied in its application by inserting the following after clause 3.1 (1):

- (1A) Despite subclause (1), development described in subclause (1) (a) (being the erection of a new 1 or 2 storey dwelling house and any attached development) on land identified as “former Cockle Creek Smelter and Incitec site” on the Cockle Creek Smelter Land Map within the meaning of *State Environmental Planning Policy No 55—Remediation of Land* is not complying development under this code.

The Low Rise Medium Density Housing Code is varied in its application by inserting the following at the end of clause 3B.2:

- (1A) Development on land identified as “former Cockle Creek Smelter and Incitec site” on the Cockle Creek Smelter Land Map within the meaning of *State Environmental Planning Policy No 55—Remediation of Land* is not complying development under this code.

The Greenfield Housing Code is varied in its application by inserting after clause 3C.1 (1):

- (1A) Despite subclause (1), this code does not apply to land identified as “former Cockle Creek Smelter and Incitec site” on the Cockle Creek Smelter Land Map within the meaning of *State Environmental Planning Policy No 55—Remediation of Land*.

The Commercial and Industrial (New Buildings and Additions) Code is varied in its application by inserting the following after clause 5A.2 (1):

- (1A) Despite subclause (1), development described in subclause (1) (a) (being the construction of a building for the purposes of industry (other than heavy industry or an artisan food and drink industry) or a warehouse or distribution centre) on land identified as “former Cockle Creek Smelter and Incitec site” on the Cockle Creek Smelter Land Map within the meaning of *State Environmental Planning Policy No 55—Remediation of Land* is not development specified for this code.

The Subdivisions Code is varied in its application by inserting the following after clause 6.3 (1):

- (1A) Despite subclause (1), this clause does not apply to land identified as “former Cockle Creek Smelter and Incitec site” on the Cockle Creek Smelter Land Map within the meaning of *State Environmental Planning Policy No 55—Remediation of Land*.