

# State Environmental Planning Policy No 55—Remediation of Land (1998 EPI 520)

[1998-520]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **See also**  
[Planning Legislation Amendment Bill 2019](#)
- **Editorial note**  
The Parliamentary Counsel's Office is progressively updating certain formatting styles in versions of NSW in force legislation published from 29 July 2019. For example, colons are being replaced by em-dashes (em-dashes). Text of the legislation is not affected.

This version has been updated.

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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# State Environmental Planning Policy No 55—Remediation of Land (1998 EPI 520)



New South Wales

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# State Environmental Planning Policy No 55—Remediation of Land (1998 EPI 520)



New South Wales

## 1 Name of 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.

**Cockle Creek Smelter Land Map** means the [State Environmental Planning Policy No 55—Remediation of Land—Cockle Creek Smelter Land Map](#).

**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](#).

**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.

### **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.

## **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 of a class identified in subclause (4) 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 land of a class identified in subclause (4) in a particular zone, the planning authority may require the person to furnish the report referred to in subclause (2).
- (4) The following classes of land are identified for the purposes of this clause—
  - (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.
- (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
- (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 Minister).

### 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 Conservation 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 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 Minister, if the land is within the unincorporated area.
- (2) (Repealed)

## **11 (Repealed)**

## **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 (Repealed)**

## **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)), 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 Minister).
- (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 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 Minister).

(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) (Repealed)
- (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.

- (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) (Repealed)
- (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.

### **19A Application of SEPP to certain development at Barangaroo subject to Part 3A approvals**

- (1) This clause applies to development that is the subject of the following project approvals under Part 3A of the Act—
  - (a) project application number 10\_0023, approved by the Minister for Planning on 2 November 2010,
  - (b) project application number 10\_0047, approved by the Minister for Planning on 8 November 2010.
- (2) To avoid doubt, the following provisions of this Policy do not apply to the carrying out of development to which this clause applies—
  - (a) clauses 8(4) and 17,
  - (b) any other provision of this Policy that prohibits or restricts the carrying out of that development.

### **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.

## **21 Clean-up notice remediation—special provision**

- (1) This Policy does not apply to or in respect of anything done for the purpose of complying with a clean-up notice, except as provided by this clause.
- (2) Any development or activity carried out for the purpose of complying with a clean-up notice—
  - (a) may be carried out without development consent, and
  - (b) to the extent that it involves carrying out any remediation work, must be carried out in accordance with clause 17(1) (paragraph (c) excepted).
- (3) In this clause, **clean-up notice** means—
  - (a) a notice given under section 91 of the [Protection of the Environment Operations Act 1997](#) that is specified in Schedule 1, or
  - (b) if a notice so specified has been varied under section 110 of that Act, the notice as varied for the time being.
- (4) If this clause is inconsistent with another State environmental planning policy, a regional environmental plan or a local environmental plan (whether made before or after this clause), this clause prevails, subject to section 36(4) of the Act.

## **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 1 Specified clean-up notices**

(Clause 21)

Notice No 1030236 dated 26 September 2003 and addressed to Orica Australia Pty Ltd