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Planning and Environment Act 1987

Section 12(1A)

MINISTERIAL DIRECTION NO.1 POTENTIALLY CONTAMINATED LAND

Purpose

1. The purpose of this Direction is to ensure that potentially contaminated land is suitable for a use which is proposed to be allowed under an amendment to a planning scheme and which could be significantly adversely affected by contamination.

Application

2. This Direction applies to potentially contaminated land.

Revocation

3. Ministerial Direction No.1 Potentially Contaminated Land made under section 12(2)(a) dated 9 October 1989 as amended on 14 May 1992 and 27 September 2001 is revoked.

Definitions

4. In this Direction:
 - potentially contaminated land means land:
 - a) used or known to have been used for industry or mining;
 - b) used or known to have been used for the storage of chemicals, gas, waste or liquid fuel (other than minor above-ground storage that is ancillary to another use of the land); or
 - c) where a known past or present activity or event (occurring on or off the land) may have caused contamination on the land.
 - sensitive use means a residential use, child care centre, kindergarten, pre-school centre, primary school, even if ancillary to another use.
 - Preliminary risk screen assessment statement has the same meaning as in the **Environment Protection Act 2017**.
 - Environmental Audit statement has the same meaning as in the **Environment Protection Act 2017**.
 - Environmental auditor has the same meaning as in the **Environment Protection Act 2017**.

Requirement to be met – sensitive uses, children’s playground or secondary school

5. In preparing an amendment which allows (whether or not subject to the grant of a permit) land to be used for a sensitive use, children’s playground or secondary school a planning authority must:
 - a) satisfy itself whether or not the land, or parts of the land, are potentially contaminated;
 - b) where it has determined that the land is not potentially contaminated, state the determination in the amendment Explanatory Report; and
 - c) where it has determined the land, or parts of the land, are potentially contaminated, must state the determination in the amendment Explanatory Report and satisfy itself that the environmental conditions of that land are or will be suitable for that use.

SPECIAL

How a planning authority must satisfy itself – sensitive uses, children’s playground or secondary school

6. In accordance with clause 5(c) a planning authority must comply with either sub-clause (1), (2) or (3):
- (1) Before it gives a copy or notice of the amendment under Section 17, 18 or 19 of the Act a planning authority must ensure that an environmental auditor has issued a preliminary risk screen assessment statement stating that an environmental audit is not required for sensitive uses, children’s playgrounds and secondary schools allowed by the amendment.
 - (2) Before it gives a copy or notice of the amendment under Section 17, 18 or 19 of the Act a planning authority must ensure that an environmental auditor has issued an environmental audit statement stating that the land is suitable for sensitive uses, children’s playgrounds and secondary schools allowed by the amendment.
 - (3) Where a planning authority determines that complying with subclause (1) or (2) is difficult or inappropriate it may defer the requirements of those subclauses provided the requirements are included in the amendment through the application of an Environmental Audit Overlay or other appropriate measure.

Requirements to be met for other specified uses and activities

7. In preparing an amendment which allows (whether or not subject to the grant of a permit) land to be used for agriculture or public open space, a planning authority must:
- a) satisfy itself whether or not the land, or parts of the land, are potentially contaminated;
 - b) where it has determined that the land is not potentially contaminated, state the determination in the amendment Explanatory Report; and
 - c) where it has determined the land, or parts of the land, are potentially contaminated, must state the determination in the amendment Explanatory Report and satisfy itself that the land is or will be suitable for that use.

Exemption

8. The Minister or Executive Director, State Planning Services, Department of Environment, Land Water and Planning may grant an exemption from the need to comply with this Direction in relation to a particular amendment. The Minister or Executive Director must consult the Environment Protection Authority before deciding to grant an exemption. An exemption may be granted subject to conditions.

THE HON. RICHARD WYNNE MP
Minister for Planning

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