



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: EP&D:DH1b1446513

28 March 2018

Director, Housing Approvals and Policy
Department of Planning and Environment
GPO Box 39
SYDNEY NSW 2001

Dear Sir/Madam,

Remediation of Land SEPP

The Law Society of NSW appreciates the opportunity to participate in the consultation on the Explanation of Intended Effect ("EIE") for a new Remediation of Land State Environmental Planning Policy ("proposed SEPP") and the draft Contaminated Land Planning Guidelines ("draft Guidelines"). The Law Society's Environmental Planning and Development Committee contributed to this submission.

General comment

We consider that a fundamental issue with the proposed framework for managing the remediation of contaminated land is the lack of specific referencing between the proposed SEPP and the powers of appropriate regulatory authorities under the *Protection of the Environment Operations Act 1997* (NSW) ("PEOA").¹ In practical terms the proposed SEPP only plays a role in the assessment of development applications and in a zoning or rezoning proposal. Any proactive measures required by councils when detecting contamination must be undertaken by contacting the Environment Protection Authority or otherwise effected under the PEOA, except in limited circumstances. Where councils do have powers, for example to issue clean up notices under clause 21 of the proposed SEPP, we consider that further guidance on how to exercise these powers, including process questions such as notice and review procedures would be useful for councils.

Proposed SEPP

The Law Society welcomes the clearer delineation in the proposed SEPP of remediation works which require consent and those which may be carried out without consent.

¹ PEOA, s 6.

Draft Guidelines

Under Section 2 of the draft Guidelines (Initial Evaluation by the Planning Authority) Appendix 2 is a non-obligatory checklist for an initial evaluation of whether a site may be contaminated. Most of the examples are focused on the use or zoning of the site in question. In older parts of Sydney it was not uncommon for contaminated fill (eg. untreated fly ash) to be placed on land which was only ever zoned and used for residential purposes. Those sites would not be caught by the checklist. Similarly illegal practices such as dumping of contaminated waste would not be caught.

We suggest that there needs to be a further category under Section 1 of the table in Appendix 2 to the following effect:

(j) was the land ever subject to practices which might have brought contaminants onto the land?

Education

We consider that it would be useful to reinforce the requirements for the management of contaminated sites, to the greatest extent possible, in the guidance provided to councils, through the proposed SEPP and draft Guidelines and in other publications, such as planning system circulars.

Minor drafting issue

We also note that item (f) in Section 1 of the table in Appendix 2 to the draft Guidelines refers to "Table 1" but it appears the reference should be to "Appendix 1".

Thank you once again for the opportunity to comment.

If you have any questions in relation to this submission, please contact Liza Booth, Principal Policy Lawyer at liza.booth@lawsociety.com.au or on (02) 9926 0202.

Yours faithfully,



Doug Humphreys OAM
President