

9 July 2018

Director, Housing Approvals and Policy
Department of Planning & Environment
GPO Box 39
Sydney NSW 2001
~ by email~

Dear Sir / Madam

Subject: Amendment of Exempt and Complying Development Codes SEPP

Thank you for the opportunity to comment on recently exhibited amendments to the *State Environmental Planning Policy (Exempt and Complying Development Codes)*. I am writing to request further changes to planning controls for contaminated land in Lake Macquarie City.

Lake Macquarie City is a coastal local government area located approximately one hour north of Sydney. The City has a population of over 205,000 and a significant legacy of lead contamination. Approximately 3,000 properties within the City are listed as contaminated or potentially contaminated as a consequence of historical land use. Most of these sites are associated with legacy heavy metal contamination resulting from the Pasminco Cockle Creek lead and zinc smelter, which operated in the north Lake Macquarie suburb of Boolaroo for around 100 years.

The Pasminco smelter closed in 2003 and is currently subject to a Deed of Company Arrangement, administered by Ferrier Hodgson. The remediation of the site was subject to a remediation order issued by the NSW Environment Protection Authority (EPA). The remediation program, known as the Lead Abatement Strategy, was subsequently approved (MP06_0184) by the [then] Minister for Urban Affairs and Planning under Part 3A of the *Environmental Planning and Assessment Act 1997*. Remediation activities under this consent were completed in 2015.

In December 2014, following community concern about the long-term impacts of metal contamination in north Lake Macquarie, the EPA established the Lake Macquarie Lead Expert Working Group (LEWG) to evaluate the effectiveness of the Lead Abatement Strategy. The LEWG reported its findings and recommendations to the Minister for the Environment in December 2016. A copy of the LEWG recommendations is enclosed (Attachment 1).

The NSW Cabinet endorsed all of the LEWG's 22 recommendations in November 2017. Three of those recommendations (6, 14 and 15) are assigned to the Department of Planning and Environment. Recommendation 14 relates to application of *State Environmental*

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Planning Policy (Exempt and Complying Development Codes) to contaminated land.

Recommendation 14:

The Department of Planning and Environment, in consultation with the EPA and Lake Macquarie City Council, takes steps to ensure that Exempt and Complying Development that is likely to result in the disturbance of contaminated soil within Lake Macquarie City is appropriately managed to minimise harm to human health and the environment.

The amendment to the *State Environmental Planning Policy (Exempt and Complying Development Codes)*, as described in the Explanation of Intended Effect, proposes to exclude *Significantly Contaminated Land* as defined by the *Contaminated Land Management Act 1997* through amendment of subclause 1.19(1)(e) to include:

“Land that is significantly contaminated land within the meaning of the Contaminated Land Management Act 1997 (CLM Act).”

We support the proposed amendment to subclause 1.19(1)(e), and request that it be extended to include all land that has been identified as contaminated within a local government area (ie land to which s10.7 property notations identifying actual contamination apply). We also recommend that this subclause be amended so that exempt and complying development is excluded on land known to be contaminated for categories of development that disturb soil or generate dust as described in Attachment 2.

Thank you for the opportunity to contribute to the review of the *State Environmental Planning Policy (Exempt and Complying Development Codes)*. Should you require further information, please contact Council’s Manager Planning and Sustainability, Alice Howe, on 4921 0337.

Yours sincerely



Morven Cameron
Chief Executive Officer

[encl]

Attachment 1 LEWG recommendations

Recommendation 1: Lake Macquarie City Council, funded by the NSW Government, establishes a role for ongoing community involvement to monitor ongoing issues and to identify future issues regarding legacy lead contamination in Lake Macquarie through a risk communication framework.

Recommendation 2: Lake Macquarie City Council provides a point of contact and means of disseminating educational materials among the community, agencies and external stakeholders, and updated materials are distributed as they become available. Communication activities may include, but are not limited to:

1. a voluntary code of practice within the real estate industry to ensure that tenants and landowners are appropriately informed of any lead-contaminated soils at residential properties
2. a dedicated point of contact within Lake Macquarie City Council for agencies to provide and discuss new educational materials
3. information about managing capped contaminated material
4. information on living with lead in the environment
5. information on the process for assessing development applications on contaminated land
6. information via Dial Before You Dig on working with lead-contaminated soils.

Recommendation 3: Hunter New England Health notifies Lake Macquarie City Council of the results of any investigation in response to notifications that indicate the need for a coordinated community response, and provides regular updates on public health aspects of lead control and blood lead findings in the area.

Recommendation 4: The EPA reviews all available data associated with the development of the LAS lead contamination survey grid to determine whether the grid boundary corresponds to the geographic zone of soil lead dust contamination as a result of the former Pasminco smelter operations. The EPA provides advice to Lake Macquarie City Council on whether the lead contamination survey grid accurately reflects the extent of potential contamination of properties around the smelter.

Recommendation 5: NSW Health continues ongoing enhanced surveillance for lead notifications in children in the Boolaroo, Speers Point and Argenton suburbs, conducted by the Public Health Unit, noting the reduced level of blood lead resulting in notification. This enhanced surveillance involves annual reminder letters to local General Medical Practitioners (GPs) to identify children at higher risk of lead exposure to offer blood lead testing. Any notifications are followed up by the Public Health Unit using the protocol endorsed by the Chief Health Officer's expert group on lead: Lead in blood control guideline.

Recommendation 6: The Department of Planning and Environment, in consultation with the EPA and Lake Macquarie City Council, works with utilities and public authorities to apply measures comparable with LMCC's *Environmental Management Plan for Contaminated Land in Council's Care and Control*. Comparable measures include:

1. sourcing contamination status information from LMCC's contaminated land database
2. notifying LMCC of any contamination issues so they may be recorded in LMCC's database
3. appropriately managing contamination using measures comparable to LMCC policies and plans
4. providing information, for example via Dial Before You Dig enquiries.

Recommendation 7: Lake Macquarie City Council continues to maintain a central database of contaminated land in Lake Macquarie City, including records of initial contamination status, abatement and remediation, current contamination status and land use, and changes in land use.

Recommendation 8: The EPA, Lake Macquarie City Council and licensed operations continue to monitor water quality in surface water and groundwater around North Lake Macquarie. The EPA analyses this information and identifies any material pollution from stormwater or groundwater, or other discharge issues.

Recommendation 9: The EPA reviews a requirement for ongoing water quality monitoring upon conclusion of remediation activities at the Pasmenco smelter site.

Recommendation 10: The EPA investigates the impacts of Pasmenco smelter slag on water quality in the Lake Macquarie region, especially where slag is either permanently inundated by, or in intermittent contact with, surface water or groundwater. The EPA then provides recommendations to the NSW Office of Water in relation to the suitability of groundwater extraction in affected areas.

Recommendation 11: The EPA continues to develop an environmental liabilities management framework to provide a predictable, transparent and consistent approach for the management of risks associated with environmental liabilities. In support of the development of this framework, the EPA reviews existing legislation to streamline its operation by identifying gaps, inconsistencies and areas that could benefit from new approaches, such as appropriate regulatory instruments for managing the financial risks associated with on- and off-site contamination.

Recommendation 12: Lake Macquarie City Council revises its Contaminated Land Policy so that section 149 planning certificate notations differentiate between remediated land with soil levels above and below the residential Health Investigation Level for lead.

Recommendation 13: Lake Macquarie City Council amends its Development Control Plan (DCP) for development of land known to be contaminated with atmospheric lead or black slag from the smelter. The revised DCP describes a streamlined approach for the assessment of residential soil contamination, by assuming a level of contamination based on existing information, in order to reduce the cost of the development assessment process. The revised DCP describes standard remedial action plans, which are to the EPA's satisfaction, for routine development activities where risks are able to be adequately identified and managed.

Recommendation 14: The Department of Planning and Environment, in consultation with the EPA and Lake Macquarie City Council, takes steps to ensure that Exempt and Complying Development that is likely to result in the disturbance of contaminated soil within Lake Macquarie City is appropriately managed to minimise harm to human health and the environment.

Recommendation 15: The Department of Planning and Environment, in consultation with the EPA and Lake Macquarie City Council, considers the relevant management measures proposed in this report as part of its State Environmental Planning Policy review program.

Recommendation 16: The EPA considers all appropriate options for the disposal of contaminated materials associated with legacy lead contamination as a result of smelting activities in Lake Macquarie City, taking into consideration:

1. affordability
2. public accessibility
3. suitability of the facility to contain the materials received.

Recommendation 17: Lake Macquarie City Council continues to apply conditions of development consent that require tracking and appropriate disposal of contaminated soil.

Recommendation 18: The NSW Government establishes an ongoing funding stream for Lake Macquarie City Council to develop and maintain a small interdepartmental team to manage additional legacy lead issues beyond the usual remit of local government (subject to council approval and availability of a sufficient funding source). The team is responsible for:

1. expanding record keeping and mapping of known contamination and remediation
2. providing funding support and advice to public and private landholders wishing to undertake voluntary soil assessment and property remediation
3. following up on any Hunter New England (HNE) Health investigations regarding high blood lead levels to identify site remediation options
4. managing access to a local repository within the Lower Hunter for lead-contaminated soils

5. identifying a point of contact for community enquiries about living with lead and voluntary management measures
6. regularly engaging with HNE Health regarding blood lead levels tested by GPs and outcomes of follow-up investigations
7. expanding engagement collateral to include advice on maintaining contamination barriers and hygiene, and improving links to and from HNE Health information.

Implementation of this recommendation will facilitate a streamlined approach across the local government area consistent with LMCC's Development Control Plan, LMCC's *Environmental Management Plan for Contaminated Land in Council's Care and Control*, and the *National Environmental Protection (Assessment of Site Contamination) Measure 1999*.

Recommendation 19: Lake Macquarie City Council, the EPA and NSW Health develop a risk-based decision management tool, in consultation with the community, to identify and prioritise access to services supported by the proposed funding stream described in Recommendation 18.

Recommendation 20: Lake Macquarie City Council develops a streamlined approach for the assessment of residential lead contamination within the local government area and ensures the degree of risk is appropriately matched to the level of action.

Recommendation 21: Lake Macquarie City Council continues to maintain an up-to-date environmental management plan (EMP) for dealing with legacy lead contamination on land within council's care and control. The EMP is reviewed every five years, or following new recommendations on lead exposure from health or environmental agencies (e.g. National Health and Medical Research Council, National Environment Protection Measures, etc.).

Recommendation 22: The NSW Government provides the EPA with support for the establishment and operation of a statewide Lead Strategy Group to act as a conduit between the EPA and local councils or other appropriate local bodies across New South Wales. The EPA strategy group is responsible for promoting effective communications and resolving enquiries relating to statewide lead contamination issues.

The EPA strategy group acts as:

- a first point of contact for future lead-related research in New South Wales
- a platform upon which research findings are communicated
- a conduit through which relevant authorities may be notified of changes to relevant policies, guidelines and technical documents.

Attachment 2 – Categories of exempt and complying development that disturb soil or generate dust.

Exempt

Division 1 General Exempt Development Code

Subdivision 1	Access ramps
Subdivision 3A	Animal shelters
Subdivision 4	Aviaries
Subdivision 5	Awnings, blinds and canopies
Subdivision 6	Balconies, decks, patios, pergolas, terraces and verandahs
Subdivision 7	Barbecues and other outdoor cooking structures
Subdivision 8A	Bollards – Minimal soil disturbance
Subdivision 9	Cabanas, cubby houses, ferneries, garden sheds, gazebos and greenhouses
Subdivision 10	Carports
Subdivision 10A	Change of use of premises – Dust creation usually internal of premises
Subdivision 11	Clothes hoists and clothes lines – Minimal soil disturbance
Subdivision 13	Demolition
Subdivision 14	Driveways and hard stand spaces
Subdivision 15	Earthworks, retaining walls and structural support
Subdivision 15AA	Emergency work and temporary repairs
Subdivision 16	Farm buildings
Subdivision 17	Fences (residential zones)
Subdivision 18	Fences (rural and environment protection zones and Zone R5)
Subdivision 19	Fences (business and industrial zones)
Subdivision 20	Flagpoles - Minimal soil disturbance
Subdivision 21	Fowl and poultry houses
Subdivision 21AA	Fuel tanks and gas storage
Subdivision 21A	Garbage bin storage enclosure
Subdivision 24	Landscaping structures - Minimal soil disturbance
Subdivision 25A	Maintenance of buildings in draft heritage conservation areas - Minimal soil disturbance and dust creation

Subdivision 26	Minor building alterations (internal)
Subdivision 27	Minor building alterations (external)
Subdivision 28	Pathways and paving
Subdivision 29	Playground equipment
Subdivision 33	Rainwater tanks (below ground)
Subdivision 36	Shade structures of canvas, fabric, mesh or the like - Minimal soil disturbance
Subdivision 38	Subdivision
Subdivision 39	Sculptures and artworks - Minimal soil disturbance
Subdivision 39B	Tennis courts
Subdivision 40	Water features and ponds
Subdivision 40A	Waterways structures – minor alterations
Subdivision 41	Windmills

Part 4A General Development Code

Division 1 Specified development and development standards under this code

Subdivision 6	Waterways Structures – <i>Minimal soil disturbance</i>
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Part 5 Commercial and Industrial Alterations Code

Subdivision 1	Building alterations (internal)
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Complying

Division 1 Development that is complying development under this code

Division 1A	Removal or pruning of trees – <i>Possible soil disturbance</i>
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Division 2 Development standards for this code

Subdivision 4	Landscaping - Possible soil disturbance
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Subdivision 6	Earthworks and drainage
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Subdivision 7	Ancillary development
Subdivision 8	Outbuildings
Division 3	Conditions applying to complying development certificates under this code

Part 3A Rural Housing Code

Division 4	Landscaping - Possible soil disturbance
Subdivision 6	Earthworks and drainage LMCC Page 6 of 6
Subdivision 7	Ancillary development
Subdivision 8	Outbuildings

Part 4 Housing Alterations Code

Division 1 Specified development and development standards under this code

Subdivision 1	Internal alterations - <i>Dust creation</i>
Subdivision 2	External alterations to dwelling houses
Subdivision 2A	External alterations to residential accommodation other than dwelling houses
Subdivision 5	Shop fronts and awnings
Subdivision 8	Freestanding pylon and directory board signs
Subdivision 9	Development ancillary to the use of land
Subdivision 10	Earthworks, retaining walls and structural support
Subdivision 11	Driveways, hard stand spaces, pathways and paving
Subdivision 12	Fences

Division 5 Conditions applying to complying development certificates under this code

Part 6 Subdivisions Code – *Soil disturbance*

Part 7 Demolition Code – *Dust creation*