

Planning and Environment Act 1987

Section 12 (2) (a)

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 any contamination.

Application

2. This Direction applies to potentially contaminated land

Definitions

3. 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, wastes or liquid fuel above or below ground with the potential to cause contamination; or
 - c) where known past or present activities or events on the land or offsite have the potential to have caused contamination.
 - “sensitive use” means a residential use, child care centre, kindergarten, pre-school centre, primary school, secondary school, or children’s playground, even if ancillary to another use.
 - “Preliminary risk screen assessment” has the same meaning as in the *Environment Protection Act 2017*.
 - “Environmental Audit” has the same meaning as in the *Environment Protection Act 2017*.
 - “Environmental auditor” has the same meaning as in the *Environment Protection Act 2017*.

Requirements to be met

4. In preparing an amendment which would have the effect of allowing (whether or not subject to the grant of a permit) land to be used for a sensitive use, agriculture or public open space, a planning authority must satisfy itself whether or not the land is potentially contaminated.
5. Where a planning authority has determined that the land is not potentially contaminated it must state the determination in the amendment documentation.
6. Where a planning authority has determined that the land is potentially contaminated it must comply with either sub-clause (1) or (2):
 - (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:
 - a) It is satisfied the land has not been used or known to have been used for industry or mining and a preliminary risk screen assessment statement has concluded that an environmental audit is not required, or
 - b) An environmental auditor has made a statement in accordance with Part 8.3 of the *Environment Protection Act 2017* that the environmental conditions are suitable for a sensitive use; and
 - c) Any recommendations of the environmental audit statement are complied with.

(2) Where a planning authority determines that there is a reasonable expectation contamination can be remediated to allow a sensitive use and due to the specific constraints of the land or the nature of the amendment the requirement in sub-clause (1) would be unreasonable or impractical a planning authority may defer the requirement for an audit by including in the amendment the application of the Environmental Audit Overlay in the Victoria Planning Provisions to all land that it has determined to be potentially contaminated.

How a planning authority can satisfy itself about potentially contaminated land

7. To satisfy itself whether the land is potentially contaminated the planning authority may consider the existing and previous land uses and activities on the land and any relevant report which may make a determination on whether the land is potentially contaminated land.

Exemption by Minister

6. The Minister or, Executive Director, Planning, Heritage and Building Division 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.

HON JOHN THWAITES MINISTER FOR PLANNING

Date : 27 September 2001

Amendments to this Direction	
Introduced	9 October 1989
Amended	14 May 1992
Amended	27 September 2001
Amended	xxxx 2020

Note: The Department of Environment, Land, Water and Planning Practice Note, Potentially Contaminated Land provides guidance on using this Ministerial Direction.