



PLANNING SYSTEM

Act and regulation changes

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Related	

Changes to section 149(2) planning certificates by the Contaminated Land Management Amendment Act 2008

The purpose of this circular is to advise councils of changes to the requirements for section 149(2) planning certificates in respect of contaminated land.

Introduction

Amendments to the *Contaminated Land Management Act 1997* (CLM Act) by the *Contaminated Land Management Amendment Act 2008* (Amending Act) commenced on 1 July 2009.

Section 59(2) of the CLM Act, which prescribes certain matters to be included in section 149(2) planning certificates was amended by that Act.

In June 2009, the Department of Environment and Climate Change (DECC) published revised *Guidelines on the duty to report contamination under the Contaminated Land Management Act 1997*, which set out the new changes to section 149(2) planning certificates.

New questions to be answered in section 149(2) certificates

From 1 July 2009, section 59(2) of the CLM Act prescribes the following matters to be specified in a section 149(2) planning certificate:

- (a) *that the land to which the certificate relates is **significantly contaminated land**—if the land (or part of the land) is declared to be significantly contaminated land at the date when the certificate is issued*
- (b) *that the land to which the certificate relates is **subject to a management order**—if it is subject to such an order at the date when the certificate is issued*
- (c) *that the land to which the certificate relates is the **subject of an approved voluntary management proposal**—if it is the subject of such an approved proposal at the date when the certificate is issued*

- (d) *that the land to which the certificate relates is **subject to an ongoing maintenance order**—if it is subject to such an order at the date when the certificate is issued*
- (e) *that the land to which the certificate relates is the **subject of a site audit statement**—if a copy of such a statement has been provided at any time to the local authority issuing the certificate.*

The Amending Act also repealed item 10 to Schedule 4 of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation) relating to contaminated land, replacing it with a note at the end of the schedule.

Councils should include the information required by section 59(2) of the CLM Act in section 149(2) planning certificates after the information relating to item 16—Site Compatibility Certificates.

Savings and transitional provisions

Clause 13 of Schedule 2 of the CLM Act includes savings and transitional provisions that mean from 1 July 2009 all references to:

- an 'investigation area' or a 'remediation site' are taken to be references to 'significantly contaminated land'
- an 'investigation order' or 'remediation order' are taken to be references to a 'management order'
- a 'voluntary investigation proposal' or 'voluntary remediation proposal that has been agreed to by the EPA' are taken to be references to an 'approved voluntary management proposal'.

These saving and transitional provisions apply to relevant references in section 149(2) planning certificates issued prior to 1 July 2009.

New section 149(2) planning certificates issued should refer to 'significantly contaminated land', 'management order', 'approved voluntary management proposal' or 'ongoing maintenance order, where applicable.

Further information

The Environmental Planning and Assessment Regulation 2000 and the *Contaminated Land Management Act 1997* are available online at www.legislation.nsw.gov.au.

DECC's website at www.environment.nsw.gov.au also sets out the changes to the CLM Act.

If you have further enquiries please phone the Department's Information Centre 02 9228 6333 or email information@planning.nsw.gov.au.

Note: This and other Department of Planning circulars are published on the web at www.planning.nsw.gov.au/planningsystem/practicenotes.

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