



New South Wales

State Environmental Planning Policy (Resilience and Hazards) 2021

under the

Environmental Planning and Assessment Act 1979

Her Excellency the Governor, with the advice of the Executive Council, has made the following State environmental planning policy under the *Environmental Planning and Assessment Act 1979*.

Minister for Planning and Public Spaces

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State Environmental Planning Policy (Resilience and Hazards) 2021

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Environmental Planning and Assessment Act 1979

Chapter 1 Preliminary

1.1 Name of Policy

This Policy is *State Environmental Planning Policy (Resilience and Hazards) 2021*.

1.2 Commencement

This Policy commences on 1 March 2022 and is required to be published on the NSW legislation website.

1.3 Definitions

In this Policy—

the Act means the *Environmental Planning and Assessment Act 1979*.

Note— The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Policy.

1.4 Transferred provisions

The *Interpretation Act 1987*, section 30A is taken to apply to the provisions transferred to this Policy on the commencement of this Policy in the same way as it applies to provisions transferred from a statutory rule to another statutory rule.

Note— The *Interpretation Act 1987*, section 30A provides—

- (a) the transfer of a provision does not affect the operation or meaning of the provision, and
- (b) a transferred provision is to be construed as if it had not been transferred.

Chapter 2 Coastal management

Part 2.1 Preliminary

2.1 Aim of Chapter

The aim of this Chapter is to promote an integrated and co-ordinated approach to land use planning in the coastal zone in a manner consistent with the objects of the *Coastal Management Act 2016*, including the management objectives for each coastal management area, by—

- (a) managing development in the coastal zone and protecting the environmental assets of the coast, and
- (b) establishing a framework for land use planning to guide decision-making in the coastal zone, and
- (c) mapping the 4 coastal management areas that comprise the NSW coastal zone for the purpose of the definitions in the *Coastal Management Act 2016*.

2.2 Interpretation

(1) In this Chapter—

certified coastal management program means the following—

- (a) a coastal management program prepared, adopted and certified under Part 3 of the *Coastal Management Act 2016*,
- (b) a coastal zone management plan under the *Coastal Protection Act 1979* that continues to have effect under clause 4 of Schedule 3 to the *Coastal Management Act 2016*,
- (c) a coastal zone management plan under the *Coastal Protection Act 1979*, certified and made in accordance with clause 6 (1) of Schedule 3 to the *Coastal Management Act 2016*, that is taken to be a coastal management program prepared and adopted under that Act.

coastal environment area—see section 2.4(4).

Coastal Environment Area Map means the *State Environmental Planning Policy (Coastal Management) 2018 Coastal Environment Area Map*.

coastal lake means a body of water identified in Schedule 1.

coastal use area—see section 2.4(5).

Coastal Use Area Map means the *State Environmental Planning Policy (Coastal Management) 2018 Coastal Use Area Map*.

coastal vulnerability area—see section 2.4(3).

Coastal Vulnerability Area Map means the *State Environmental Planning Policy (Coastal Management) 2018 Coastal Vulnerability Area Map*. [Not adopted.]

Note—

At the commencement of this Chapter, no *Coastal Vulnerability Area Map* was adopted and therefore no coastal vulnerability area has been identified.

coastal wetlands and littoral rainforests area—see section 2.4(2).

Coastal Wetlands and Littoral Rainforests Area Map means the *State Environmental Planning Policy (Coastal Management) 2018 Coastal Wetlands and Littoral Rainforests Area Map*.

public authority has the same meaning as in the Act.

the Act means the *Environmental Planning and Assessment Act 1979*.

Note—

The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Chapter.

- (2) Words and expressions used in this Chapter have the same meanings as they have in the *Coastal Management Act 2016*, unless otherwise defined in this Chapter.
- (3) Subject to subsection (2), words and expressions used in this Chapter have the same meanings as they have in the standard instrument set out in the *Standard Instrument (Local Environmental Plans) Order 2006*, unless otherwise defined in this Chapter.
- (4) Notes included in this Chapter do not form part of this Chapter.

2.3 Land to which Chapter applies

This Chapter applies to land within the coastal zone.

2.4 Identification of coastal management areas

Note—

Section 5 of the *Coastal Management Act 2016* provides that the **coastal zone** means the area of land comprised of the following coastal management areas—

- (a) the coastal wetlands and littoral rainforests area,
- (b) the coastal vulnerability area,
- (c) the coastal environment area,
- (d) the coastal use area.

- (1) This section identifies land for the purposes of the *Coastal Management Act 2016* and this Chapter.
- (2) The **coastal wetlands and littoral rainforests area** is the land identified as such by the Coastal Wetlands and Littoral Rainforests Area Map.

Note—

The **coastal wetlands and littoral rainforests area** is made up of land identified as “coastal wetlands” or as “littoral rainforests” on the *Coastal Wetlands and Littoral Rainforests Area Map*. The land so identified includes land identified as “proximity area for coastal wetlands” and “proximity area for littoral rainforest”.

- (3) The **coastal vulnerability area** is the land identified as such by the *Coastal Vulnerability Area Map*.

Note—

At the commencement of this Chapter, no Coastal Vulnerability Area Map was adopted and therefore no coastal vulnerability area has been identified.

- (4) The **coastal environment area** is the land identified as such by the *Coastal Environment Area Map*.
- (5) The **coastal use area** is the land identified as such by the *Coastal Use Area Map*.

2.5 Relationship with other environmental planning instruments

- (1) In the event of an inconsistency between this Chapter and another environmental planning instrument, whether made before or after the commencement of this Chapter, this Chapter prevails to the extent of the inconsistency.
- (2) This Chapter does not apply to land within the Lease Area within the meaning of *State Environmental Planning Policy (Three Ports) 2013*.

2.6 Maps

- (1) A reference in this Chapter to a named map adopted by this Chapter is a reference to a map by that name—
 - (a) approved by the Minister when the map is adopted, and
 - (b) as amended or replaced from time to time by maps declared by environmental planning instruments to amend or replace that map, and approved by the Minister when the instruments are made.
- (2) Any 2 or more named maps may be combined into a single map. In that case, a reference in this Chapter to any such named map is a reference to the relevant part or aspect of the single map.
- (3) Any such maps are to be kept and made available for public access in accordance with arrangements approved by the Minister.
- (4) For the purposes of this Chapter, a map may be in, and may be kept and made available in, electronic or paper form, or both.

Note—

The maps adopted by this Chapter are to be made available on the NSW Planning Portal.

Part 2.2 Development controls for coastal management areas

Division 2.2.1 Coastal wetlands and littoral rainforests area

2.7 Development on certain land within coastal wetlands and littoral rainforests area

- (1) The following may be carried out on land identified as “coastal wetlands” or “littoral rainforest” on the *Coastal Wetlands and Littoral Rainforests Area Map* only with development consent—
 - (a) the clearing of native vegetation within the meaning of Part 5A of the *Local Land Services Act 2013*,
 - (b) the harm of marine vegetation within the meaning of Division 4 of Part 7 of the *Fisheries Management Act 1994*,
 - (c) the carrying out of any of the following—
 - (i) earthworks (including the depositing of material on land),
 - (ii) constructing a levee,
 - (iii) draining the land,
 - (iv) environmental protection works,
 - (d) any other development.
- Note—**
Section 2.14 provides that, for the avoidance of doubt, nothing in this Part—
- (a) permits the carrying out of development that is prohibited development under another environmental planning instrument, or
 - (b) permits the carrying out of development without development consent where another environmental planning instrument provides that the development may be carried out only with development consent.
- (2) Development for which consent is required by subsection (1), other than development for the purpose of environmental protection works, is declared to be designated development for the purposes of the Act.
 - (3) Despite subsection (1), development for the purpose of environmental protection works on land identified as “coastal wetlands” or “littoral rainforest” on the *Coastal Wetlands and Littoral Rainforests Area Map* may be carried out by or on behalf of a public authority without development consent if the development is identified in—
 - (a) the relevant certified coastal management program, or
 - (b) a plan of management prepared and adopted under Division 2 of Part 2 of Chapter 6 of the *Local Government Act 1993*, or
 - (c) a plan of management under Division 3.6 of the *Crown Land Management Act 2016*.
 - (4) A consent authority must not grant consent for development referred to in subsection (1) unless the consent authority is satisfied that sufficient measures have been, or will be, taken to protect, and where possible enhance, the biophysical, hydrological and ecological integrity of the coastal wetland or littoral rainforest.
 - (5) Nothing in this section requires consent for the damage or removal of a priority weed within the meaning of clause 32 of Schedule 7 to the *Biosecurity Act 2015*.

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- (6) This section does not apply to the carrying out of development on land reserved under the *National Parks and Wildlife Act 1974* if the proposed development is consistent with a plan of management prepared under that Act for the land concerned.

2.8 Development on land in proximity to coastal wetlands or littoral rainforest

Note—

The *Coastal Wetlands and Littoral Rainforests Area Map* identifies certain land that is inside the coastal wetlands and littoral rainforests area as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” or both.

- (1) Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the *Coastal Wetlands and Littoral Rainforests Area Map* unless the consent authority is satisfied that the proposed development will not significantly impact on—
- (a) the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or
 - (b) the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.
- (2) This section does not apply to land that is identified as “coastal wetlands” or “littoral rainforest” on the *Coastal Wetlands and Littoral Rainforests Area Map*.

Division 2.2.2 Coastal vulnerability area

Note—

At the commencement of this Chapter, no *Coastal Vulnerability Area Map* was adopted and therefore no coastal vulnerability area has been identified.

2.9 Development on land within the coastal vulnerability area

Development consent must not be granted to development on land that is within the area identified as “coastal vulnerability area” on the *Coastal Vulnerability Area Map* unless the consent authority is satisfied that—

- (a) if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and
- (b) the proposed development—
 - (i) is not likely to alter coastal processes to the detriment of the natural environment or other land, and
 - (ii) is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and
 - (iii) incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and
- (c) measures are in place to ensure that there are appropriate responses to, and management of, anticipated coastal processes and current and future coastal hazards.

Division 2.2.3 Coastal environment area

2.10 Development on land within the coastal environment area

- (1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following—

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- (a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,
 - (b) coastal environmental values and natural coastal processes,
 - (c) the water quality of the marine estate (within the meaning of the *Marine Estate Management Act 2014*), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,
 - (d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,
 - (e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
 - (f) Aboriginal cultural heritage, practices and places,
 - (g) the use of the surf zone.
- (2) Development consent must not be granted to development on land to which this section applies unless the consent authority is satisfied that—
- (a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subsection (1), or
 - (b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.
- (3) This section does not apply to land within the Foreshores and Waterways Area within the meaning of *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*.

Division 2.2.4 Coastal use area

2.11 Development on land within the coastal use area

- (1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority—
- (a) has considered whether the proposed development is likely to cause an adverse impact on the following—
 - (i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
 - (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,
 - (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,
 - (iv) Aboriginal cultural heritage, practices and places,
 - (v) cultural and built environment heritage, and
 - (b) is satisfied that—
 - (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or

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- (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - (iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and
 - (c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.
- (2) This section does not apply to land within the Foreshores and Waterways Area within the meaning of *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*.

Division 2.2.5 General

2.12 Development in coastal zone generally—development not to increase risk of coastal hazards

Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

2.13 Development in coastal zone generally—coastal management programs to be considered

Development consent must not be granted to development on land within the coastal zone unless the consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies to the land.

2.14 Other development controls not affected

Subject to section 2.5, for the avoidance of doubt, nothing in this Part—

- (a) permits the carrying out of development that is prohibited development under another environmental planning instrument, or
- (b) permits the carrying out of development without development consent where another environmental planning instrument provides that the development may be carried out only with development consent.

2.15 Hierarchy of development controls if overlapping

If a single parcel of land is identified by this Chapter as being within more than one coastal management area and the development controls of those coastal management areas are inconsistent, the development controls of the highest of the following coastal management areas (set out highest to lowest) prevail to the extent of the inconsistency—

- (a) the coastal wetlands and littoral rainforests area,
- (b) the coastal vulnerability area,
- (c) the coastal environment area,
- (d) the coastal use area.

Part 2.3 Miscellaneous

2.16 Coastal protection works

Note—

Section 4 (1) of the *Coastal Management Act 2016* defines **coastal protection works** to mean—

- (a) beach nourishment activities or works, and
- (b) activities or works to reduce the impact of coastal hazards on land adjacent to tidal waters, including (but not limited to) seawalls, revetments and groynes.

Section 27 of the *Coastal Management Act 2016* also contains provisions dealing with the granting of development consent to development for the purpose of coastal protection works.

- (1) **Coastal protection works by person other than public authority** Development for the purpose of coastal protection works may be carried out on land to which this Chapter applies by a person other than a public authority only with development consent.

Note—

See clause 8A of Schedule 7 to *State Environmental Planning Policy (State and Regional Development) 2011*, which declares certain development for the purpose of coastal protection works to be regionally significant development for which a Sydney district or regional planning panel is the consent authority.

- (2) **Coastal protection works by public authority** Development for the purpose of coastal protection works may be carried out on land to which this Chapter applies by or on behalf of a public authority—
 - (a) without development consent—if the coastal protection works are—
 - (i) identified in the relevant certified coastal management program, or
 - (ii) beach nourishment, or
 - (iii) the placing of sandbags for a period of not more than 90 days, or
 - (iv) routine maintenance works or repairs to any existing coastal protection works, or
 - (b) with development consent—in any other case.

Note—

See clause 8A of Schedule 7 to *State Environmental Planning Policy (State and Regional Development) 2011*, which declares certain development for the purpose of coastal protection works to be regionally significant development for which a Sydney district or regional planning panel is the consent authority.

- (3) **Emergency coastal protection works by public authority** Development for the purpose of emergency coastal protection works carried out on land to which this Chapter applies is exempt development if it is carried out by or on behalf of a public authority in accordance with a coastal zone emergency action subplan (or a coastal zone management plan under the *Coastal Protection Act 1979* containing an emergency action subplan that continues to have effect under clause 4 of Schedule 3 to the *Coastal Management Act 2016*).
- (4) In this section, **emergency coastal protection works** means works comprising the placement of sand, or the placing of sandbags for a period of not more than 90 days, on a beach, or a sand dune adjacent to a beach, to mitigate the effects of coastal hazards on land.

2.17 Flexible zone provisions

- (1) A provision of an environmental planning instrument that allows development within a zone to be consented to as if it were in a neighbouring zone, or a similar provision, has no effect to the extent that it applies to land to which this Chapter applies.
- (2) To avoid doubt, subsection (1) does not apply to a provision of another State Environment Planning Policy that allows development within a zone to be consented to as if it were in a neighbouring zone or a similar provision.

2.18 Savings and transitional provisions

Note—

See also section 27 (Granting of development consent relating to coastal protection works) of the *Coastal Management Act 2016*.

Section 2.7 of this Chapter does not apply to the following activities (to the extent that they would otherwise comprise development to which that section would apply)—

- (a) the carrying out of an activity for which an approval was granted by a determining authority under Part 5 of the Act before 3 April 2018,
- (b) the carrying out of an activity after 3 April 2018, but only if—
 - (i) any approval that is required for carrying out the activity is granted by the determining authority under Part 5 of the Act within 12 months after that commencement, and
 - (ii) any environmental impact assessment of that activity under Part 5 of the Act that is required had commenced before the commencement of this Chapter.

Chapter 3 Hazardous and offensive development

Part 3.1 Preliminary

3.1 Aims, objectives etc

This Chapter aims—

- (a) to amend the definitions of hazardous and offensive industries where used in environmental planning instruments, and
- (b) to render ineffective a provision of any environmental planning instrument that prohibits development for the purpose of a storage facility on the ground that the facility is hazardous or offensive if it is not a hazardous or offensive storage establishment as defined in this Chapter, and
- (c) to require development consent for hazardous or offensive development proposed to be carried out in the Western Division, and
- (d) to ensure that in determining whether a development is a hazardous or offensive industry, any measures proposed to be employed to reduce the impact of the development are taken into account, and
- (e) to ensure that in considering any application to carry out potentially hazardous or offensive development, the consent authority has sufficient information to assess whether the development is hazardous or offensive and to impose conditions to reduce or minimise any adverse impact, and
- (f) to require the advertising of applications to carry out any such development.

3.2 Definitions of “potentially hazardous industry” and “potentially offensive industry”

In this Chapter—

potentially hazardous industry means a development for the purposes of any industry which, if the development were to operate without employing any measures (including, for example, isolation from existing or likely future development on other land) to reduce or minimise its impact in the locality or on the existing or likely future development on other land, would pose a significant risk in relation to the locality—

- (a) to human health, life or property, or
- (b) to the biophysical environment,

and includes a hazardous industry and a hazardous storage establishment.

potentially offensive industry means a development for the purposes of an industry which, if the development were to operate without employing any measures (including, for example, isolation from existing or likely future development on other land) to reduce or minimise its impact in the locality or on the existing or likely future development on other land, would emit a polluting discharge (including for example, noise) in a manner which would have a significant adverse impact in the locality or on the existing or likely future development on other land, and includes an offensive industry and an offensive storage establishment.

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3.3 Other definitions

(1) In this Chapter—

hazardous industry means a development for the purposes of an industry which, when the development is in operation and when all measures proposed to reduce or minimise its impact on the locality have been employed (including, for example, measures to isolate the development from existing or likely future development on other land in the locality), would pose a significant risk in relation to the locality—

- (a) to human health, life or property, or
- (b) to the biophysical environment.

hazardous storage establishment means any establishment where goods, materials or products are stored which, when in operation and when all measures proposed to reduce or minimise its impact on the locality have been employed (including, for example, measures to isolate the establishment from existing or likely future development on the other land in the locality), would pose a significant risk in relation to the locality—

- (a) to human health, life or property, or
- (b) to the biophysical environment.

offensive industry means a development for the purposes of an industry which, when the development is in operation and when all measures proposed to reduce or minimise its impact on the locality have been employed (including, for example, measures to isolate the development from existing or likely future development on other land in the locality), would emit a polluting discharge (including, for example, noise) in a manner which would have a significant adverse impact in the locality or on the existing or likely future development on other land in the locality.

offensive storage establishment means any establishment where goods, materials or products are stored which, when in operation and when all measures proposed to reduce or minimise its impact on the locality have been employed (including, for example, measures to isolate the establishment from existing or likely future development on other land in the locality), would emit a polluting discharge (including, for example, noise) in a manner which would have a significant adverse impact in the locality or on the existing or likely future development on other land in the locality.

the Act means the *Environmental Planning and Assessment Act 1979*.

(2) A reference in this Chapter to circulars or guidelines published by the Department of Planning is a reference to circulars or guidelines so published and available for inspection by the public on request at the offices of the Department.

3.4 Land to which Chapter applies

This Chapter applies to the State.

3.5 Relationship with other environmental planning instruments

In the event of an inconsistency between this Chapter and another environmental planning instrument (whether made before, on or after the date on which this Chapter takes effect) this Chapter prevails to the extent of the inconsistency.

Part 3.2 Hazardous or offensive development

3.6 New definitions of “hazardous industry” and “offensive industry”

In an environmental planning instrument (whether made before, on, or after the date on which this Chapter takes effect) a reference to—

- (a) an offensive or hazardous industry, however defined in that instrument, is to be taken to be a reference to development for the purposes of an industry (as defined in that instrument) that is a hazardous industry or an offensive industry within the meaning of section 3.64, and meaning of section 3.64, and
- (b) a hazardous industry, however defined in that instrument, is to be taken to be a reference to development for the purposes of an industry (as defined in that instrument) that is a hazardous industry within the meaning of section 3.64.

3.7 Consideration of Departmental guidelines

In determining whether a development is—

- (a) a hazardous storage establishment, hazardous industry or other potentially hazardous industry, or
- (b) an offensive storage establishment, offensive industry or other potentially offensive industry,

consideration must be given to current circulars or guidelines published by the Department of Planning relating to hazardous or offensive development.

3.8 Storage facilities

A provision of an environmental planning instrument which prohibits the carrying out of development for the purposes of, or purposes which include, a storage facility (however the storage facility may be described or referred to in the instrument) on the ground that the storage facility is offensive or hazardous has no effect unless the storage facility is a hazardous storage establishment or an offensive storage establishment as defined in this Chapter.

3.9 Western Division—development consent required

- (1) This section applies to development defined in section 3.2 or 3.34 which is carried out or proposed to be carried out on land within the Western Division.
- (2) A person may not carry out such development except with the consent of—
 - (a) the council of the area, if the land concerned is within a local government area, or
 - (b) the Minister, in any other case.
- (3) Nothing in this section authorises the carrying out of such development if the development is not otherwise permitted.
- (4) In this section, *Western Division* has the same meaning as in the *Crown Land Management Act 2016*.

Part 3.3 Potentially hazardous or potentially offensive development

3.10 Development to which Part 3 applies

- (1) This Part applies to—
 - (c) development for the purposes of a potentially hazardous industry, and
 - (d) development for the purposes of a potentially offensive industry, and
 - (e) development notified, for the purposes of this Part, by the Director in the Gazette as being a potentially hazardous or potentially offensive development.
- (2) This Part does not apply to development the subject of a development application made before the date on which this Chapter takes effect.

3.11 Preparation of preliminary hazard analysis

A person who proposes to make a development application to carry out development for the purposes of a potentially hazardous industry must prepare (or cause to be prepared) a preliminary hazard analysis in accordance with the current circulars or guidelines published by the Department of Planning and submit the analysis with the development application.

3.12 Matters for consideration by consent authorities

In determining an application to carry out development to which this Part applies, the consent authority must consider (in addition to any other matters specified in the Act or in an environmental planning instrument applying to the development)—

- (1) current circulars or guidelines published by the Department of Planning relating to hazardous or offensive development, and
- (2) whether any public authority should be consulted concerning any environmental and land use safety requirements with which the development should comply, and
- (3) in the case of development for the purpose of a potentially hazardous industry—a preliminary hazard analysis prepared by or on behalf of the applicant, and
- (4) any feasible alternatives to the carrying out of the development and the reasons for choosing the development the subject of the application (including any feasible alternatives for the location of the development and the reasons for choosing the location the subject of the application), and
- (5) any likely future use of the land surrounding the development.

3.13 Advertising of applications

Pursuant to section 30(4) of the Act, the provisions of sections 84, 85, 86, 87(1) and 90 of the Act apply to and in respect of development to which this Part applies in the same way as those provisions apply to and in respect of designated development.

Chapter 4 Remediation of land

4.1 Object of this Chapter

- (1) The object of this Chapter is to provide for a Statewide planning approach to the remediation of contaminated land.
- (2) In particular, this Chapter aims to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment—
 - (a) by specifying when consent is required, and when it is not required, for a remediation work, and
 - (b) by specifying certain considerations that are relevant in rezoning land and in determining development applications in general and development applications for consent to carry out a remediation work in particular, and
 - (c) by requiring that a remediation work meet certain standards and notification requirements.

4.2 Notes

The table of contents and notes in the text of this Chapter do not form part of this Chapter.

4.3 Definitions

- (1) In this Chapter—

category 1 remediation work is defined in section 4.8.

category 2 remediation work is defined in section 4.11.

Cockle Creek Smelter Land Map means the State Environmental Planning Policy No 55—Remediation of Land—Cockle Creek Smelter Land Map.

contaminated land has the same meaning as it has in Part 7A of the Act.

contaminated land planning guidelines means guidelines under section 145C of the Act.

investigation area means land declared to be an investigation area by a declaration in force under Division 2 of Part 3 of the Contaminated Land Management Act 1997.

preliminary investigation, in relation to land, means a preliminary investigation referred to in the contaminated land planning guidelines.

remediation means—

- (a) removing, dispersing, destroying, reducing, mitigating or containing the contamination of any land, or
- (b) eliminating or reducing any hazard arising from the contamination of any land (including by preventing the entry of persons or animals on the land).

Note—

This definition of remediation corresponds to parts of the definition of remediation in the *Contaminated Land Management Act 1997*.

remediation order means a remediation order made by the Environment Protection Authority and in force under Part 3 of the *Contaminated Land Management Act 1997*.

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remediation site means—

- (a) land declared to be a remediation site by a declaration in force under Division 3 of Part 3 of the *Contaminated Land Management Act 1997*, or
- (b) premises—
 - (i) in respect of which there is in force a notice under section 35 of the *Environmentally Hazardous Chemicals Act 1985* requiring prescribed remedial action to be taken, or
 - (ii) that are the subject of prescribed remedial action (whether being undertaken by the Environment Protection Authority or by another public authority at the direction of that Authority) under section 36 of that Act.

the Act means the *Environmental Planning and Assessment Act 1979*.

unincorporated area means such parts of the Western Division of New South Wales as are not within a local government area.

- (2) A reference in this Chapter to a remediation work carried out or to be carried out on any land includes a reference to a remediation work carried out or to be carried out in, over or under the land concerned.

4.4 Land to which this Chapter applies

This Chapter applies to the whole of the State.

4.5 Maps

- (1) A reference in this Chapter to a named map adopted by this Chapter is a reference to a map by that name—
 - (a) approved by the Minister when the map is adopted, and
 - (b) as amended or replaced from time to time by maps declared by environmental planning instruments to amend or replace that map, and approved by the Minister when the instruments are made.
- (2) Any 2 or more named maps may be combined into a single map. In that case, a reference in this Chapter to any such named map is a reference to the relevant part or aspect of the single map.
- (3) Any such maps are to be kept and made available for public access in accordance with arrangements approved by the Minister.
- (4) For the purposes of this Chapter, a map may be in, and may be kept and made available in, electronic or paper form, or both.

4.6 Contamination and remediation to be considered in determining development application

- (1) A consent authority must not consent to the carrying out of any development on land unless—
 - (a) it has considered whether the land is contaminated, and
 - (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and

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- (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.
- (2) Before determining an application for consent to carry out development that would involve a change of use on any of the land specified in subsection (4), the consent authority must consider a report specifying the findings of a preliminary investigation of the land concerned carried out in accordance with the contaminated land planning guidelines.
- (3) The applicant for development consent must carry out the investigation required by subsection (2) and must provide a report on it to the consent authority. The consent authority may require the applicant to carry out, and provide a report on, a detailed investigation (as referred to in the contaminated land planning guidelines) if it considers that the findings of the preliminary investigation warrant such an investigation.
- (4) The land concerned is—
 - (a) land that is within an investigation area,
 - (b) land on which development for a purpose referred to in Table 1 to the contaminated land planning guidelines is being, or is known to have been, carried out,
 - (c) to the extent to which it is proposed to carry out development on it for residential, educational, recreational or child care purposes, or for the purposes of a hospital—land—
 - (i) in relation to which there is no knowledge (or incomplete knowledge) as to whether development for a purpose referred to in Table 1 to the contaminated land planning guidelines has been carried out, and
 - (ii) on which it would have been lawful to carry out such development during any period in respect of which there is no knowledge (or incomplete knowledge).

4.7 Remediation work permissible

- (1) A person may carry out a remediation work in accordance with this Chapter, despite any provision to the contrary in an environmental planning instrument, except as provided by section 4.16(3).
- (2) A person must not carry out a category 1 remediation work except with the consent of the consent authority.
- (3) A person may carry out a category 2 remediation work without the consent of the consent authority.
- (4) A person who carries out a remediation work must ensure that section 4.13 (if it applies) and sections 4.14 and 4.15 are complied with in relation to the work.

Note—

See section 4.16 for the relationship of this Chapter to other environmental planning instruments.

4.8 Category 1 remediation work: work needing consent

For the purposes of this Chapter, a category 1 remediation work is a remediation work (not being a work to which section 4.11(b) applies) that is—

- (a) designated development, or

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- (b) carried out or to be carried out on land declared to be a critical habitat, or
- (c) likely to have a significant effect on a critical habitat or a threatened species, population or ecological community, or
- (d) development for which another State environmental planning policy or a regional environmental plan requires development consent, or
- (e) carried out or to be carried out in an area or zone to which any classifications to the following effect apply under an environmental planning instrument—
 - (i) coastal protection,
 - (ii) conservation or heritage conservation,
 - (iii) habitat area, habitat protection area, habitat or wildlife corridor,
 - (iv) environment protection,
 - (v) escarpment, escarpment protection or escarpment preservation,
 - (vi) floodway,
 - (vii) littoral rainforest,
 - (viii) nature reserve,
 - (ix) scenic area or scenic protection,
 - (x) wetland, or
- (f) carried out or to be carried out on any land in a manner that does not comply with a policy made under the contaminated land planning guidelines by the council for any local government area in which the land is situated (or if the land is within the unincorporated area, the Minister).

Note—

See section 5A of the *Environmental Planning and Assessment Act 1979* for the factors to be taken into account in assessing whether there is likely to be a significant effect as referred to in paragraph (c) above. The terms used in that paragraph are defined in that Act by reference to both the *Threatened Species Conservation Act 1995* and the *Fisheries Management Act 1994*.

4.9 Consent authority in relation to remediation works

The consent authority in relation to a development application for consent to carry out a remediation work is—

- (a) the person or authority that, in accordance with a provision made by an environmental planning instrument that applies to the land, is the consent authority for the development, or
- (b) in default of any such provision—
 - (i) the council for the local government area in which the land is situated, or
 - (ii) the Minister, if the land is within the unincorporated area.

4.10 Refusal of consent to category 1 remediation work

- (1) The consent authority must not refuse development consent for a category 1 remediation work unless the authority is satisfied that there would be a more significant risk of harm to human health or some other aspect of the environment from the carrying out of the work than there would be from the use of the land concerned (in the absence of the work) for any purpose for which it may lawfully be used.

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- (2) Nothing in this section prevents the consent authority from refusing consent to a development application if—
- (a) by operation of an environmental planning instrument or section 79B(3) of the Act, the development application may not be determined by the granting of consent without the concurrence of a specified person, and
 - (b) that concurrence is not given.

4.11 Category 2 remediation work: work not needing consent

For the purposes of this Chapter, a category 2 remediation work is—

- (a) a remediation work that is not a work of a kind described in section 4.8(a)–(f), or
- (b) a remediation work (whether or not it is a work of a kind described in section 4.8(a)–(f)) that—
 - (i) by the terms of a remediation order, is required to be commenced before the expiry of the usual period under the *Contaminated Land Management Act 1997* for lodgment of an appeal against the order, or

Note—

The usual period for lodgment of an appeal is 21 days or a period prescribed instead by regulations made under the *Contaminated Land Management Act 1997*.

- (ii) may be carried out without consent under another State environmental planning policy or a regional environmental plan (as referred to in section 4.16(4)), or
- (iii) is carried out or to be carried out by or on behalf of the Director-General of the Department of Agriculture on land contaminated by the use of a cattle dip under a program implemented in accordance with the recommendations or advice of the Board of Tick Control under Part 2 of the *Stock Diseases Act 1923*, or
- (iv) is carried out or to be carried out under the Public Land Remediation Program administered by the Broken Hill Environmental Lead Centre.

4.12 Remediation work that is ancillary to other development

- (1) A remediation work that would of itself be a category 2 remediation work but which is ancillary to designated development that requires development consent may, as an applicant chooses—
 - (a) be made part of the subject of the development application for the designated development instead of being made the subject of a separate development application, or
 - (b) be treated as a category 2 remediation work.
- (2) However, a category 1 remediation work must be treated as such even if it is ancillary to development that may be carried out without consent.
- (3) A remediation work that would of itself be a category 1 remediation work and constitute designated development does not, just because it is ancillary to other development—
 - (a) render the latter development designated development, or
 - (b) cause that development to become a development for which development consent is required.

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4.13 Prior notice of category 2 remediation work

- (1) A person who proposes to carry out a category 2 remediation work on any land must give notice of the proposed work to the council for the local government area in which the land is situated (or, if the land is within the unincorporated area, to the Minister).
- (2) The notice must be given—
 - (a) at least 30 days before the commencement of the work, except in the case of a work referred to in section 4.11(b), and
 - (b) in the case of a work referred to in section 4.11(b)—no later than the day before the commencement of the work.
- (3) The notice must—
 - (a) be in writing, and
 - (b) provide the name, address and telephone number of the person who has the duty of ensuring that the notice is given, and
 - (c) briefly describe the remediation work, and
 - (d) show why the person considers that the work is category 2 remediation work by reference to sections 4.8, 4.11 and (if it applies) 4.12(1), and
 - (e) specify, by reference to its property description and street address (if any), the land on which the work is to be carried out, and
 - (f) provide a map of the location of the land, and
 - (g) provide estimates of the dates for the commencement and completion of the work.

4.14 Guidelines and notices: all remediation work

- (1) All remediation work must, in addition to complying with any requirement under the Act or any other law, be carried out in accordance with—
 - (a) the contaminated land planning guidelines, and
 - (b) the guidelines (if any) in force under the *Contaminated Land Management Act 1997*, and
 - (c) in the case of a category 1 remediation work—a plan of remediation, as approved by the consent authority, prepared in accordance with the contaminated land planning guidelines.
- (2) A notice of completion of remediation work on any land must be given to the council for the local government area in which the land is situated (or, if the land is within the unincorporated area, to the Minister).
- (3) The notice is to be given within 30 days after the completion of the work.
- (4) A copy of the notice must also be given within the same period to the consent authority, if consent was required for the remediation work and the consent authority is not one of the authorities referred to in subsection (2).

4.15 Notice of completion of remediation work

The notice required by section 4.14(2) must—

- (a) be in writing prepared and signed by the person who carried out the work, and
- (b) provide the person's name, address and business telephone number, and

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- (c) provide details of the person's qualifications to carry out the work, and
- (d) specify, by reference to its property description and street address (if any), the land on which the work was carried out, and
- (e) provide a map of the location of the land, and
- (f) state when the work was completed, and
- (g) specify the uses of the land, and the substances, that contaminated it in such a way as to present a risk of harm to human health or some other aspect of the environment, and
- (h) specify the uses of the land immediately before the work started, and
- (i) briefly describe the method of remediation used in the work, and
- (j) specify the guidelines that were complied with in the work, and
- (k) specify the standard of remediation achieved (in the light of the use proposed for the land), and
- (l) show in what manner the work (if a category 1 remediation work) complied with the conditions of the relevant development consent, and
- (m) state what action must be maintained in relation to the land after the completion of the remediation work if the standard of remediation achieved is to be maintained.

Note—

A site audit statement (within the meaning of Part 4 of the *Contaminated Land Management Act 1997*) may be given in partial compliance with this requirement.

4.16 Relationship to other environmental planning instruments

- (1) If this Chapter is inconsistent with another State environmental planning policy, a regional environmental plan or a local environmental plan (whether made before or after this Chapter), this Chapter prevails, except as provided by this section and section 36(4) of the Act.
- (2) If a provision of another State environmental planning policy or of a regional environmental plan, whether made before or after this Chapter, requires development consent for a remediation work, a provision of this Chapter that permits the carrying out of the work without development consent does not prevail over that provision.
- (3) If a provision of another State environmental planning policy or of a regional environmental plan, whether made before or after this Chapter, permits a remediation work without development consent, a requirement in this Chapter to obtain development consent to carry out the work does not prevail over that provision.
- (4) Sections 4.13–4.15 apply to any remediation work according to the category of the work under this Chapter even if another State environmental planning policy or a regional environmental plan also applies to the work.

4.17 Application of SEPP to certain development at Barangaroo subject to Part 3A approvals

- (1) This section applies to development that is the subject of the following project approvals under Part 3A of the Act—
 - (a) project application number 10_0023, approved by the Minister for Planning on 2 November 2010,
 - (b) project application number 10_0047, approved by the Minister for Planning on 8 November 2010.

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- (2) To avoid doubt, the following provisions of this Chapter do not apply to the carrying out of development to which this section applies—
- (a) sections 4.7(4) and 4.14,
 - (b) any other provision of this Chapter that prohibits or restricts the carrying out of that development.

4.18 Clean-up notice remediation—special provision

- (1) This Chapter does not apply to or in respect of anything done for the purpose of complying with a clean-up notice, except as provided by this section.
- (2) Any development or activity carried out for the purpose of complying with a clean-up notice—
- (a) may be carried out without development consent, and
 - (b) to the extent that it involves carrying out any remediation work, must be carried out in accordance with section 4.14(1) (paragraph (c) excepted).
- (3) In this section, clean-up notice means—
- (a) a notice given under section 91 of the *Protection of the Environment Operations Act 1997* that is specified in Schedule 2, or
 - (b) if a notice so specified has been varied under section 110 of that Act, the notice as varied for the time being.
- (4) If this section is inconsistent with another State environmental planning policy, a regional environmental plan or a local environmental plan (whether made before or after this section), this section prevails, subject to section 36(4) of the Act.

4.19 Perpetual care arrangements required for development at former zinc and lead smelter and fertiliser production site at Boolaroo, Lake Macquarie

- (1) **Objective** The objective of this section is to ensure that adequate arrangements are in place to minimise and manage the risks associated with the containment cell on the site of the former Cockle Creek zinc and lead smelter and Incitec fertiliser factory (and other land within that site that has not been fully remediated) so as to protect human health and the environment in perpetuity.
- (2) **Land application** This section applies to the land identified as “former Cockle Creek Smelter and Incitec site” on the Cockle Creek Smelter Land Map (*the former Cockle Creek Smelter and Incitec site*).
- (3) **Adequate arrangements for perpetual care required** A consent authority must not consent to a development application to carry out development on the former Cockle Creek Smelter and Incitec site unless the Planning Secretary has certified to the consent authority that, in the Planning Secretary’s opinion, adequate arrangements are in place for the perpetual care of the following—
- (a) the containment cell at the former Cockle Creek Smelter and Incitec site and its associated infrastructure,
 - (b) the land on which that cell and infrastructure is located,
 - (c) land on the former Cockle Creek Smelter and Incitec site that has not been remediated,

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- (d) the land on the former Cockle Creek Smelter and Incitec site that immediately before the commencement of this section was within Zone E2 Environmental Conservation under *Lake Macquarie Local Environmental Plan 2014*.
- (4) **Meaning of “perpetual care”** In this section, *perpetual care* in relation to the containment cell, infrastructure and land concerned includes the following activities—
- (a) the on-going implementation of long term environmental management plans,
 - (b) the on-going monitoring, maintenance and repair of the containment cell and associated infrastructure,
 - (c) the replacement, from time to time, of part or all of that containment cell and that associated infrastructure, including as a result of a catastrophic event.
- (5) **Matters that Planning Secretary may have regard to** In forming an opinion as to whether the adequate arrangements referred to in subsection (3) are in place, the Planning Secretary may have regard to whether any public positive covenants or other instruments or any adequate financial arrangements are in place to sustain the perpetual care concerned.
- (6) **Exemption from requirement to obtain Planning Secretary’s certificate** Subsection (3) does not apply to a development application only for any of the following purposes—
- (a) a subdivision creating or widening a public road or a drainage reserve,
 - (b) road works or the construction of public utility infrastructure,
 - (c) remediation or environmental protection works (within the meaning of the standard instrument for a local environmental plan prescribed by the Standard Instrument (Local Environmental Plans) Order 2006).
- (7) **Duration of certificate** A certificate given by the Planning Secretary under this section remains in force until it is withdrawn.
- (8) **Withdrawal of certificate** The Planning Secretary may, by notice in writing, withdraw a certificate that has been given to a consent authority.
- (9) **Certificate effective for different development** For the avoidance of doubt, a new certificate by the Planning Secretary under this section is not required for each separate development application (including development applications by different persons relating to the carrying out of different development).
- (10) **Transitional** This section extends to a development application that has been made, but not finally determined, before the commencement of this section.

Schedule 1 Coastal lakes

(Section 2.2(1), definition of “coastal lake”)

Sensitive coastal lakes

Bondi Lagoon (Lake)
Bournda Lagoon and Sandy Beach Creek
Durras Lake
Lake Arragan
Lake Brou (Brou Lake)
Lake Brunderee
Lake Hiawatha
Lake Minnie Water
Lake Tarourga
Lake Wollumboola
Meroo Lake
Nadgee Lake
Nargal Lake
Nelson Lagoon
Saltwater Lake
Termeil Lake
Ti Tree (Taylors) Lake

Other coastal lakes

Avoca Lake	Kianga Lake	Pambula Inlet/Lake
Back Lake/Lagoon	Killalea Lagoon	Queens Lake
Baragoot Lake	Kioloa Lagoon	Redhead Lagoon
Bellambi Lagoon	Lake Ainsworth	Saltwater Lagoon
Bingie Lagoon (Kellys Lake)	Lake Cakora	Smiths Lake
Bullengella Lake	Lake Cathie	St Georges Basin
Bunga Lagoon	Lake Conjola (includes Berringer)	Swan Lake
Burrill Lake	Lake Illawarra	Tabourie Lake
Candlagan Creek and Lagoon	Lake Innes	Terrigal Lagoon
Cobaki-Terranora Broadwater	Lake Macquarie	The Broadwater (Clarence River)
Cockrone Lake	Lake Mummuga (Dalmeny)	Tilba Tilba Lake
Coila Lake	Limpid (Brush) Lagoon	Tuggerah Lake (includes Lakes Budgewoi and Munmorah)
Congo Creek and Lagoon	Little Lake (Narooma)	Tuross Lake
Corindi (Pipeclay) Lake	Little Lake (near Wallaga)	Wagonga Inlet
Corunna Lake	Long Swamp	Wallaga Lake
Cudgen Lake	Manly Lagoon	Wallagoot Lake
Curalo Lagoon	Merimbula Lake	Wallis Lake
Curl Curl Lagoon	Meringo Creek and Lagoon	Wamberal Lagoon
Cuttagee Lake	Middle (Tanja) Lagoon	Wapengo Lagoon
Dalhousie Creek and Lagoon	Mullimburra Lagoon	Watsons Taylor Lake
	Murrah Lagoon	Werri Lagoon
	Myall Lakes	
	Nangudga Lake	

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Dee Why Lagoon	Narrabeen Lagoon	Willinga Lake
Deep Creek and Lagoon	Narrawallee Inlet	Wonboyn Lake
Gogleys Lagoon	Oyster Creek and Lagoon	Woolgoolga Lake
Goolawah Lagoon	(includes McGraths Creek)	Wooloweyah Lagoon
Hearns Lake		

Schedule 2 Specified clean-up notices

Notice No 1030236 dated 26 September 2003 and addressed to Orica Australia Pty Ltd

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