



4 March 2014

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Department Environment Regulation
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Our Ref: MRA-00778/ 406099
Your Ref: -

Dear Jason

Review of the Contaminated Sites Act 2003

Thank you for providing the Metropolitan Redevelopment Authority (MRA) with the opportunity to comment on the discussion paper regarding the review of the Contaminated Sites Act 2003 (the Act).

The MRA commends the DER for undertaking this review of the Act which has extended to include operational procedures, and welcomes this opportunity to offer its support for the initiatives and recommendations.

MRA has reviewed the discussion paper and would like to provide the following specific comments:

Issue 1 – Duty to Report

The DER proposes a broadening of those persons required to notify the DER of a possibly contaminated site under s.11(4) of the Act to include 'environmental consultants' engaged for investigation or remediation purposes. The DER suggest that for an environmental consultancy the onus would be the project manager to ensure that known suspected contamination is reported to DER within the appropriate timeframe.

The MRA is concerned that this change may make the seeking of professional advice a less attractive option to the landowner. In doing this the benefits of engaging with an environmental consultant early is removed to the detriment of the health of the environment. Furthermore the MRA is not clear that the existing system of reporting has failed or to what extent this change is warranted as the discussion paper did not provide this information. To this end the MRA recommends the DER reconsiders implementation of this change at this stage.

Issue 2 – site classification scheme

The DER proposes the addition of a new classification under the Act to include 'contaminated – investigation required'. The MRA considers that retention of the

current more simplistic classification system and alterations to the DER's internal processes would be a more successful combination. The MRA believe that the use of DER's judgement on sites where there was a basis for concern should be sufficient to classify sites as '*contaminated*' where further investigations are still required to complete assessment of all issues. Where, there is insufficient information to determine that remediation is required for at least one issue, the appropriate classification ought to remain as '*possibly contaminated – investigation required*'.

Issue 3 – mandatory disclosure

The DER proposes changes to the definitions for '*owner*' and '*completion of a transaction*'. The MRA supports this change as it provides clarity with regard to management of this issue and better reflects the transaction process.

Issue 4 – the Contaminated Sites Committee

The Contaminated Sites Committee (CSC) is an independent body appointed by the Minister for the Environment and established under s.33 of the Act to:

- make statutory decisions on responsibility for remediation of sites classified *contaminated—remediation required*;
- grant, cancel, amend or transfer exemption certificates; and
- determine appeals against classifications and regulatory notices given by DER under the Act.

Only the decisions by the CSC where it is the original decision-maker can be appealed (i.e. the CSC's decisions on appeals against classifications or investigation, clean-up or hazard abatement notices cannot be appealed). These appeals are on a point of law only and are made to the Supreme Court. The DER advise to date, two (2) matters regarding responsibility for remediation have been appealed to the Supreme Court.

4.1 - Improved timeframes for decisions on responsibility for remediation

The DER proposes the setting of a time limit and requirement for all relevant documents to be sent to the CSC to decide on the responsibility for remediation. A time limit of three (3) months is suggested.

The MRA supports the identification of a timeframe, such as an initial 3 month period, with possible extensions based on negotiation and written approval would be an effective way of ensuring the process was proceeding whilst taking into account individual case circumstances. The retention of flexibility for these timeframes is particularly relevant to MRA operations where remediation of contaminated sites are often complex, large in scale and of significance to the State.

4.2 – Role of the Contaminated Sites Committee and the State Administrative Tribunal

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When the Act was drafted, the State Administrative Tribunal (SAT) had not been created. The DER is now exploring a possible role for the SAT in reviewing the

primary decisions of the CSC. The DER has asked whether there is support for SAT becoming the review decision maker in place of the Contaminated Sites Committee for appeals against classification and notices served under the Act, assuming that SAT is appropriately resourced to perform this task.

In response the MRA believes that decisions on appeals for site classification should be made by people who can apply professional judgement based on experience in contaminated site assessment. On this basis any change to the current situation would need to preserve the authority of appropriate professional opinion as well as the independence of a review body, be this provided by the CRC or SAT.

Improvements to DER procedures

The MRA supports the DER's response to submissions requesting improvements to internal processes and procedures. Six areas are identified for improvement intended to ensure greater operational efficiencies.

Should you wish to discuss these comments further please contact Samantha Taylor on 6557 0700 or samantha.taylor@mra.wa.gov.au

Yours sincerely



Kieran Kinsella
Chief Executive Officer