

Urban^{NSW} Taskforce

22nd October 2007

The Hon. Phil Koperberg, MP
Minister for Climate Change, Environment and Water
Level 25
59-61 Goulburn Street
SYDNEY NSW 2000

Dear Minister

RE: CONTAMINATED LAND MANAGEMENT AMENDMENT BILL 2007

The NSW Urban Taskforce would like to bring to your attention a number of serious concerns held in relation to the exhibition and content of the *Contaminated Land Management Amendment Bill 2007* (CLM Bill) prepared by the Department of Environment and Climate Change (DECC).

The NSW Urban Taskforce is an industry organisation representing the NSW property development sector. Our current members include some of Australia's most prominent developers, construction companies, infrastructure providers, architects, planners, financiers and lawyers involved in urban development.

The first time the NSW Urban Taskforce became aware of the CLM Bill was when it was reported in an article in the *Australian Financial Review* on 11 October 2007. This was, we found out after much investigation, to be one day prior to the closure of the exhibition and submission period of the draft Bill. A thorough search of the DECC website failed to disclose any details of the CLM Bill – including in the “what's new” section and the “documents on public exhibition” pages.

It was only after a series of telephone call were made that we were provided via e-mail a link to the exhibition papers. It was explained that it was easier to send the link rather than the DECC Officer explain how to navigate to the location of the website.

This lack of transparency in the exhibition of what is a significant reform of environmental legislation is a cause of great concern to the NSW Urban Taskforce. We request that we be included in whatever lists of stakeholders your Department maintains, and that steps be taken in future to ensure that all documents released for public exhibition are listed in the “what's new” and “documents on exhibition” pages of the Department's website.

We have had limited opportunity to review the CLM Bill and to consult with our members who will be directly and indirectly affected by the proposed legislative amendments. Requests for an extension of time to make a submission have gone unanswered by the DECC. Notwithstanding this we offer general support to the draft Bill.

However we note the Bill may have unintended consequences which should be addressed. Essentially there may be significant new obligations on the owners of property to report more properties – not just when contamination issues are actually known to the property owner, but when they have “constructive knowledge” of the issue.

This obligation creates a great deal of uncertainty. The changes abolish the current "risk of harm test" but do not replace it with anything objective. Instead EPA officers will determine whether a site that needs to be reported will be regulated under the Act. We favor clear objective requirements and criteria over subjective decisions by EPA officers.

In addition we would like to raise concern in relation to proposed section 112 (2A) which provides that:

Without limiting subsection (1), the regulations may make provision for the establishment of schemes to enable communities to be compensated for environmental damage and loss of access to resources that arise because of contamination (being contamination that it is not feasible to remediate within a reasonable time) and may (without limitation) include provisions dealing with any of the following matters:

- (a) the circumstances in which communities are to be compensated,
- (b) the persons responsible for compensating communities,
- (c) the manner in which communities are to be compensated,
- (d) the nature and level of any compensation,
- (e) the monitoring, evaluation and enforcement of any scheme for compensating communities,
- (f) the rights of persons to appeal in relation to any such compensation or scheme.

The CLM Bill does not identify or define a number of essential elements of this section such as what a scheme is, what a community is and who are its members, what constitutes environmental damage or resources, and the nature in which compensation is to be provided. These are essential elements of the provision that should not be left to be detailed in some as yet to be exhibited regulations.

The explanatory note accompanying the CLM Bill does not provide any further detail on how the "schemes" are to be constituted or implemented.

The NSW Urban Taskforce believes it is inappropriate for such a substantive matter to be dealt with by regulations. This provision should either be deleted from the CLM Bill or the draft Bill should be amended to detail the essential elements of the constitution and administration and liability for the schemes and then the CLM Bill should be re-exhibited so that informed consideration and debate if necessary can occur.

We would be more than happy to meet with you or your officers to discuss our concerns.

Yours sincerely
NSW Urban Taskforce



Aaron Gadiel
Chief Executive Officer