

502196-985

Jennifer Reid

From: Sharon Pope
Sent: Friday, 24 June 2011 2:06 PM
To: Councillors
Cc: Councillor Coordination Officer; Executive; Chris Baker; John Andrews; Geoffrey Evans; Gabriele Calcagno
Subject: Office of Environment and Heritage letter to LMCC regarding managing lead contamination issues
Attachments: DOC11-17821 LMCC.pdf
Follow Up Flag: Follow up
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Hello Councillors

On 3 June 2011, the Office of Environment and Heritage (OEH) supplied Council with a letter of advice for managing Lead contamination issues, for properties in the vicinity of the former Cockle Creek Pasminco Lead Smelter. The letter is a response to queries from Council staff while reviewing current s149 Planning Certificate notations.

The OEH has recently advised that the letter will be supplied to members of the public, as a result of a request under the Government Information (Public Access) Act (GIPA Act). A copy of the letter is attached for your information also.

Section 79c of the Environmental Planning and Assessment Act requires Council to consider, in its determination of a development application, the suitability of a site for the development, and any requirement of an Environmental Planning Instrument, Act or Regulation. State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55), also requires Council to consider the suitability of land for a proposed development, including proposals to rezone land.

In recognition of this duty of care, Council has adopted two policies on managing land contamination. These consist of *section 2.1.13 – Contaminated Land* in Development Control Plan No.1, and the *Policy for Managing Contaminated or Potentially Contaminated Land in Lake Macquarie*. These policies apply to every property in the City, and Council advises, on all s149 certificates, that it has adopted these policies.

A consequence of these policies and SEPP 55, is that if contamination is, or may be present, the proponent must investigate the site and provide Council with the information it needs to carry out its planning functions. In determining the level of investigation required, previous site soil testing results are taken into consideration, as will soil testing undertaken as part of the Lead Abatement Strategy (LAS) being undertaken by the receivers for Pasminco. If a landholder doesn't participate in the LAS, and has previously not had any soil testing undertaken on their property, the landholder will need to undertake site investigations, at their own expense, if they propose a new development on their property.

The letter from the OEH has advised Council that where a property is within the LAS area, and there is an existing residential use, it is acceptable for there to be up to 1000 mg/kg lead in the soil, provided unbuilt upon areas of the site are kept in a grassed/mulched state. The OEH recommends that Council put in place an education program to ensure residents within the LAS area understand the importance of retaining a grass or mulch cover. The level of 1000 mg/kg differs from the National Environmental Protection (Assessment of Site Contamination) Measure 1999. The OEH staff have advised that their recommendation is based on a scientific review. Council staff have requested a copy of this review information in order to make an informed recommendation to Council.

Council's current approach, based on the National Environmental Protection Measure, is to require remediation so that lead levels in soil are 300 mg/kg or less, for residential and other sensitive development with gardens/accessible soil. The OEH has indicated that the investigation level of 300 mg/kg is still appropriate for areas outside the LAS grid area.

All of these matters will be considered in a report to Council, on s149 Planning certificate notations, shortly.

Please contact me if you have any questions in relation to this matter

Regards

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