Circular to Ministers and Churchwardens

Environmental Legislation Review - Relevance for General Church Usage

1. Introduction

This review was conducted for the Property Trust by Douglas Partners Pty Ltd, Environmental Engineers. It provides a brief review of the obligations of the Church under the Contaminated Land Management Act 1997 (NSW) and the Protection of the Environment Operations Act 1997 (NSW).

2. Protection of the Environment Operations Act 1997

The Protection of the Environment Operations Act (PEA) commenced on 1 July 1999. It repeals the Clean Air Act 1961, Clean Waters Act 1970, Pollution Control Act 1970, Noise Control Act 1975, and Environment Offences and Penalties Act 1989.

In general, the PEA covers:

- the preparation of protection of the environment policies;
- the issue and terms of environment protection licences (for a list of scheduled activities);
- the issue of environment protection notices by councils or Environmental Protection Authority ("EPA") (including clean-up notices, prevention notices and prohibition notices);
- environment protection offences; and
- undertaking Environmental Audits (to evaluate compliance of activities with legal requirements and/or to determine whether an activity may be improved in order to protect the environment and minimise waste).

Normal church operations are considered to have a low potential for land, water, noise or air pollution, and are not scheduled activities. As such it is anticipated that there are few implications for normal church operations as a result of the PEA.

However, there are potential implications for heavy industrial use e.g. a service station site,

particularly if substantial land/water contamination is uncovered when the existing buildings are demolished, any underground storage tanks, etc. are removed, or when sites are redeveloped.

Possible relevant implications of the PEA were identified as follows:

- PEA covers the issue of clean-up notices, prevention notices and prohibition notices where pollutants may be or are being discharged with potential to cause harm to the environment or public health. Care should be taken in ensuring that works are conducted according to good environmental practice, and in a manner that minimises pollution (hence avoiding an Environment Protection Notice). This could be achieved in a variety of ways including preparation of an Environmental Management Plan (EMP) prior to conducting works, maintenance of site records, appointment of appropriately licensed contractors, and conduct of works according to the requirements of relevant authorities including WorkCover, EPA, DUAP and local Council;
- Licences are generally issued only for scheduled activities (such as livestock intensive industries and mining). However, in the event that you are required to conduct works which impact on waters, it is expected that you will be able to obtain a licence to discharge. This situation may arise if works are being conducted, and discharge of accumulated water from an excavation is required;
- If an activity or incident occurs which results in possible material harm to the environment, this should be reported to the appropriate regulatory authority. (This could be avoided if the redevelopment works are conducted in a professional manner);
- Offences include leaks and spills that may harm the environment, and causing water, air or noise pollution.

Unfortunately the PEA does not provide precise “trigger levels” or definitions of incidents that cause pollution or harm to the environment etc, and it may actually (in theory) be “triggered” in an extreme case by a complaint.

Typically a “common sense approach” usually provides an appropriate benchmark for the situation. For example, if chemicals are used in a small quantity commensurate with household use (as opposed to an industrial scale spillage) it is not likely to result in an incident which requires reporting to the authority, the issue of an environment protection notice or the committal of a punishable offence. When in doubt as to a particular activity or incident, you should contact the local Council or telephone the EPA pollution hotline on 131 555. EPA publications are also available from this number.

3. Contaminated Land Management Act 1997

In general, the Contaminated Land Management Act (CLMA) 1997 covers:

- Investigation and remediation of contaminated land; and
- Audit of investigation or remediation.

Under this Act the EPA can order that an investigation or remediation be conducted on a site where they have "reasonable grounds to believe the land is contaminated ... in such a way as to present a significant risk of harm”.

These guidelines are relevant in the event a church-owned property is required to be investigated for contamination. It is considered this Act may have implications if a site is to be redeveloped, particularly if site history is not known or known to be industrial or known to be a service station site. The Act may also have implications for sites that have the potential to cause significant risk of harm, such as a building containing friable asbestos (i.e. asbestos present in a loose form that may result in airborne fibres) or peeling lead based paint (i.e. in poorly maintained buildings). It is considered that investigations and remediation will generally not be required where there has been normal and continuous church use of the site.

An accredited Site Auditor under Part 4 of the CLMA may be required to review any site investigation and remediation work conducted on your properties. A site auditor produces a site audit statement, which is a written statement on the findings of a site audit. Further details of this process may be found in the EPA publication *Contaminated Sites: Guidelines for the NSW Site Auditors Scheme (1998).* Audits may either be required by a consent authority (eg. local council) or may be undertaken voluntarily where you want an independent review of information relating to possible or actual contamination of land. Typically voluntary audits are conducted prior to property sale.

Section 60 of the CLMA, which came into effect on 1 July 1999, requires the Property Trust to report to the EPA any properties which have been contaminated in such a way as to present a "significant risk of harm" to human health or the environment. Whilst further details of this process may be found in the EPA's *Contaminated Sites: Guidelines on Significant Risk of Harm from Contaminated Land and the Duty to Report (1998),* no quantified guidelines or descriptions are provided in the legislation or by the authority, and the assessment is necessarily based on site specific considerations. Again, normal church activities would typically be of low potential for contamination.

4. Other relevant Legislation

Whilst there is a range of Environmental Legislation for NSW, Douglas Partners considered the following to be relevant -

The Environment Planning and Assessment Act (EP&AA) 1979 in general deals with planning and developments. We note that under the EP&AA it may be possible to interpret certain remedial works as "contaminated soil treatment works" and hence the site may be classified as a designated development. Under this Act designated developments require the preparation of an Environmental Impact Statement and require an associated development approval process including public participation. This means that if remedial work (say bioremediation of hydrocarbon impacted soil) is required on site then local Council may consider this a designated development.

State Environmental Planning Policy (SEPP) No. 55 is basically a planning approach to remediation of contaminated land. It specifies -

- when remedial work needs consent (most do as it is generally part of a development which requires development consent); and
- that remediation is to be conducted according to certain standards and notification requirements.

Dangerous Goods Act (1975) regulates the storage of dangerous goods, however it is not anticipated that normal church operations would involve storage of goods in such large quantities as would require licensing under the Act. (The actual quantities are dependent upon chemical type and concentration). This again can only be assessed on a case by case basis, however all underground storage tanks in service would have to be licensed under this Act.

A list of NSW environmental legislation is attached for your reference.

If you require any further information please contact Andrew Sillar 9265-1682 or *abs@sydney.anglican.asn.au*.

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