

POLLUTION ABATEMENT NOTICE

No. 2020/8

(Issued pursuant to section 77 of the *Waste Management and Pollution Control Act*)

Issued to: Department of Infrastructure, Planning and Logistics

Address: Energy House, 18-20 Cavenagh Street, Darwin, 0800

In relation to premises: part of Lot 6364, Town of Darwin, 10 Lambell Terrace, Larrakeyah as delineated by the red boundary line and titled Zone 1 in **Attachment A** ("the premises")

I, Paul Purdon, delegate of the Northern Territory Environment Protection Authority ("the NT EPA"), believe that the Northern Territory Department of Infrastructure, Planning and Logistics ("DIPL"):

(i) is the owner or occupier of land that is polluted.

Pursuant to section 77(b) of the Waste Management and Pollution Control Act 1998 (NT) ("the Act"), I am authorised to issue DIPL this Pollution Abatement Notice, which requires it to take remedial action to rehabilitate the premises for the intended use.

This Pollution Abatement Notice is structured as follows:

- A. Factual background
- B. Key legislative provisions
- C. Reasons for the belief formed
- D. Requirements for compliance

Section 80 of the Act requires compliance with this Pollution Abatement Notice. Non-compliance with a Pollution Abatement Notice is an offence.

An application for review of this Pollution Abatement Notice can be made within 7 days after the date on which it was issued. An "*Application for a Review of a Decision*" form is available on the NT EPA website.

- PART A -

Factual background

1. Lot 6364, Town of Darwin covers a total area of approximately 7.96 hectares delineated by the blue boundary line in **Attachment A** and has been segregated into two zones, Zone 1 and Zone 2, as presented in **Attachment A**.
2. The premises covers an area of approximately 1.42 hectares.
3. The subject premises is part of a larger site which was used as an institution for part-aboriginal people living in and around the Darwin Township from 1912 to 1938. It was subsequently used to house defence force personnel until 1941, and was then used for the Darwin hospital. The hospital operated until 1987 following which it operated as the University College of the Northern Territory. The buildings were demolished in the late 1990s. It is understood that asbestos was used in the construction of these buildings.
4. The "*Beautifying Myilly Point project*" (the project) is a part of the Northern Territory Government's plans to activate Myilly Point as community space and to breathe life into an important link between the Central Business District, the Gardens and Mindil Beach. Zone 1 of the project is referred to as, "*Beautifying Myilly Point - Stage 1 of the Playground Precinct*".
5. The proponent for the project is the Department of Infrastructure, Planning and Logistics.
6. Zone 1 of the project is located on the corner of Kahlin Avenue and Lambell Terrace and incorporates a playground and carpark precinct.
7. Zone 2 of the project incorporates the remaining areas of Lot 6364 i.e. it excludes Zone 1 of the project and is proposed to incorporate a running track.
8. The premises has been subject to a series of environmental assessments, consistent with the requirements of the *National Environment Protection (Assessment of Contaminated Sites) Measure, 1999* (as amended) and the NT Contaminated Land Guideline.
9. Environmental assessments conducted at the premises have identified the presence of contaminated fill material at various depths overlying natural bedrock.
10. The contaminated fill material varies in depth from 0.2m to 1.1m below the ground surface and comprises of anthropogenic materials including but not limited to concrete rubble, bituminous materials, fibre cement sheet debris, vinyl floor tile and lining debris, polyethylene piping, scrap metal, ceramic pipe debris, blue metal gravel and bedding sands.
11. Asbestos and asbestos containing material (ACM) such as ACM debris, tiles and pipes has been confirmed within the compacted fill material within the premises.
12. An assessment of the management and disposal options has been undertaken in consultation with the proponent, NT EPA officers and the project's environmental auditor.
13. The preferred environmental option in dealing with the excavated impacted material from the premises contaminated with ACM is for the appropriate

burial within a properly engineered containment cell in a designated section of the premises, which will subsequently be used as the car park for the playground.

14. The engineered containment cell will contain approximately 3,000m³ of contaminated fill, which will include asbestos impacted fill material and ACM as identified within the premises.
15. DIPL has requested this Pollution Abatement Notice.

- PART B -

Key legislative provisions

16. Section 77 of the Act empowers the NT EPA to issue a pollution abatement notice, in the approved form, to a person:

(a) *who is the owner or occupier of land that is polluted.*

17. Definitions relevant to section 77 of the Act, including:

contaminant means a solid, liquid or gas or any combination of such substances and includes:

- (a) noise, odour, heat and electromagnetic radiation;
- (b) a prescribed substance or prescribed class of substances; and
- (c) a substance having a prescribed property or prescribed class of properties;

land includes water and air on, above or under land;

occupier means:

- (a) in relation to premises – a person who occupies or controls the premises, whether or not he or she owns them; or
- (b) where different parts of premises are occupied by different persons, in relation to a part of premises – the person who occupies or controls that part of the premises, whether or not he or she owns the premises, but does not include a mortgagee in possession of the premises unless the mortgagee assumes active management of some or all activities on the premises;

pollute means:

- (a) emit, discharge, deposit, or disturb, directly or indirectly, a contaminant or waste; or
- (b) cause, permit, or fail to prevent, directly or indirectly, the emission, discharge, deposition, disturbance or escape of a contaminant or waste;

pollution means:

- (a) a contaminant or waste that is emitted, discharged, deposited or disturbed or that escapes; or
- (b) a contaminant or waste, effect or phenomenon, that is present in the environment as a consequence of an emission, discharge, deposition, escape or disturbance of a contaminant or waste;

waste means:

- (a) a solid, a liquid or a gas; or
- (b) a mixture of such substances, that is or are left over, surplus or an unwanted by-product from any activity (whether or not the substance is of value) and includes a prescribed substance or class of substances

18. The Act is publicly available at <http://www.austlii.edu.au/> as well as on the NT EPA website.

- PART C -

Reasons for the belief that DIPL is the owner or occupier of land that is polluted, pursuant to section 77(b) of the Act

19. The Northern Territory of Australia is the owner and DIPL is the occupier of Lot 6364, Town of Darwin that is polluted.
20. Pollution is defined in section 4 of the Act as:
 - (a) a contaminant or waste that is emitted, discharged, deposited or disturbed or that escapes; or
 - (b) a contaminant or waste, effect or phenomenon, that is present in the environment as a consequence of an emission, discharge, deposition, escape or disturbance of a contaminant or waste.
21. The asbestos and/ or ACM has been identified within the compacted contaminated fill material as per the report prepared for DIPL titled, Phase 1 Environmental Site Assessment, Old Hospital Site, 10 Lambell Terrace, Larrakeyah, April 2018 and the report prepared for DTA Contractors Pty Ltd titled, Additional Site Investigation, Myilly Point Playground Precinct, Cnr Kahlin Avenue and Lambell Terrace, Larrakeyah NT, January 2020.

- PART D -

Pollution Abatement Notice Requirements

In accordance with s79(1)(a), and s79(1)(d) of the Act, you are required to:

- (1) Comply with the general environmental duty specified in s12 of the Act; and
- (2) Take the following remedial actions to return the polluted land as far as possible to a condition so that it is fit for the intended use of the land.

Construction of Containment Cell Requirements

1. Before commencing construction of the containment cell within the premises, you must provide to the NT EPA a report with detailed plans, technical specifications and a construction quality assurance plan ("design documents"), for the design and construction of the containment cell and any other infrastructure associated with the cell.
2. The containment cell referred to in requirement 1 must be designed and constructed and must be consistent with the intent of the Victorian EPA Publication 788.3, dated August 2015 and titled: "*Best Practice Environmental Management: Siting, Design, Operation and Rehabilitation of Landfills*" (landfill BPEM) as amended.
3. The report referred to in requirement 1 must include an assessment and endorsement of the design of the containment cell as being suitable for the purpose by an environmental auditor accredited under the NSW or Victorian environmental auditor schemes.
4. During construction of the containment cell, dust must not be emitted beyond the boundaries of the premises.
5. During construction of the containment cell, noise (including vibration) that has the potential to cause environmental harm (including environmental nuisance) must not impact on the surrounding sensitive receptors. The construction works must comply with the NT EPA noise guideline titled *Northern Territory Noise Management Framework Guideline, September 2018*.
6. During construction of the containment cell, no waste water (including contaminated stormwater) is to be discharged from the premises.
7. During construction of the containment cell, you must undertake an environmental monitoring program that enables you and the NT EPA to determine compliance with the requirements of this notice and the monitoring program must be made available to NT EPA officers upon request.
8. You must notify the NT EPA 7 days prior to the commencement of the construction works covered by this notice via pollution@nt.gov.au.
9. You must notify the NT EPA not more than 14 days after completion of construction covered by this notice via pollution@nt.gov.au.

Containment Cell Operational Requirements

10. Prior to the placement of impacted soil material within the containment cell you must provide to the NT EPA:
 - a) written endorsement by an accredited environmental auditor on the level of compliance of construction in accordance with the intent of the landfill BPEM requirements; and
 - b) written endorsement by an accredited environmental auditor of an Environment Management Plan (EMP), which addresses all aspects of the placement of impacted soil material within the containment cell.
11. The EMP referred to in requirement 11(b) must include, but not be limited to, detailed information on:
 - a) waste to be accepted within the containment cell;
 - b) waste prohibited from disposal within the containment cell;
 - c) waste disposal practices;
 - d) asbestos disposal method(s);
 - e) containment cell operation;
 - f) dust control and monitoring;
 - g) stormwater, surface water, and groundwater management;
 - h) measures to ensure staff and contractor awareness of pollution abatement notice requirements;
 - i) signage and fencing;
 - j) noise management; and
 - k) reporting requirements e.g. contraventions of the pollution abatement notice, requirements of section 14 of the Act;
12. Only the impacted soil material identified within Zone 1 is to be placed within the containment cell. **Attachment B** illustrates the proposed layout of Zone 1.

Post Closure Containment Cell Requirements

13. By 31 October 2020 you must provide to the NT EPA a report detailing the exact boundary coordinates of the containment cell and any associated infrastructure and the final quantities for each type of waste material contained in the cell, for the purposes of registering the premises on the NT EPA Contaminated Land and Environmental Audit Results register **and** the land title.
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Notice Issued By:



Paul Purdon

17/19/20

Date

5:40pm

Time

**Delegate of the
Northern Territory Environment Protection Authority**

Important Notice

Failure to comply with this notice is an offence under section 80 of the *Waste Management and Pollution Control Act* and may incur significant penalties and/or other statutory action.

This notice takes effect on the date on which it is served upon you. Pursuant to section 108 of the *Waste Management and Pollution Control Act*, **you have the right to apply for a review of the decision to issue you with this Pollution Abatement Notice. If you intend to apply for a review, YOU MUST MAKE AN APPLICATION NOT LATER THAN 7 DAYS after the date you were served with this notice.** For information on how to lodge an application for review, contact the Northern Territory Environment Protection Authority, telephone 8924 4041.

Pursuant to section 112 of the *Waste Management and Pollution Control Act* the person issued with this notice must fulfil certain obligations before selling, leasing, sub-leasing, giving or exchanging land, premises, a vehicle or business which is the subject of this Notice.

Attachment A – Site locality and approximate location of Zones



Attachment B – Proposed Zone 1 Layout

