

Your ref:  
Our ref: PXV:KMH:

22 July 2020

Mr Graeme Skerritt  
Pathways Property Group  
PO Box 502  
ST LEONARDS NSW 1590

Dear Mr Skerritt

**ADVICE IN RELATION TO PERMISSIBILITY OF DEMOLITION AND REMEDIATION WORKS  
UNDER STATE ENVIRONMENTAL PLANNING POLICY NO 55 – REMEDIATION OF LAND**

1. You have asked us to provide advice on the permissibility of the work proposed under the remediation action plan prepared by EI Australia dated 22 November 2018 (the **RAP**). Specifically, whether *State Environmental Planning Policy No 55 – Remediation of Land* (**SEPP 55**) permits the work under the RAP, including 'demolition' to be carried out at 4-16 Northwood Road and 274-274A Longueville Road, Lane Cove (the **Land**) without requiring development consent to be given by Lane Cove Council (the **Council**).

**SNAPSHOT**

- Demolition is capable of being remediation work for the purposes of SEPP 55.
- The remediation work is best categorised as category 2 remediation work under SEPP 55 and does not require development consent.

**DISCUSSION**

**Is demolition 'remediation work' for the purposes of SEPP 55?**

2. Under SEPP 55, 'remediation' is defined to mean:<sup>1</sup>

*(a) removing, dispersing, destroying, reducing, mitigating or containing the contamination of any land, or*

*(b) eliminating or reducing any hazard arising from the contamination of any land (including by preventing the entry of persons or animals on the land).*

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<sup>1</sup> SEPP 55, cl 4.

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3. This definition encompasses demolition of existing buildings and structures. This was considered by the parties in *WRF Property Pty Limited v Armidale Dumaresq Council and Another* [2003] NSWLEC 223 which concerned whether proposed remediation work required development consent. It was agreed by the parties that (at [71]):

*... each of the measures, including the demolition of existing buildings and structures, is concerned with "removing, dispersing, destroying, reducing, mitigating or containing" contamination within the definition of "remediation" contained in cl 4 of SEPP 55.*

4. In our view, demolition under the RAP is capable of being characterised as work concerned with removing, reducing or containing contamination of the Land.

**Does the remediation work require development consent?**

5. Under SEPP 55, remediation work is categorised as either:<sup>2</sup>
- a. category 1 remediation work, which can only be carried out with the consent of Council; and
  - b. category 2 remediation work, which can be carried out without the consent of Council.
6. The RAP states that the remedial works proposed are category 2 remediation works under SEPP 55.<sup>3</sup> The physical works proposed under the RAP are:
- a. Site demolition - removal of all onsite structures to access underlying soil requiring remediation;<sup>4</sup>
  - b. Removal of all service station infrastructure, both above and below ground, including removal of 4 x UST containing petroleum, LPG decanting cylinder, waste oil separator, hydraulic hoist and waste oil pits;<sup>5</sup>
  - c. Excavation of soil; and
  - d. Soil and groundwater investigation.<sup>6</sup>
7. Work will be category 2 remediation work if it is a work not classified as category 1 remediation work.<sup>7</sup> Remediation work will be category 1 work if it is designated development, or other development identified in clause 9 of SEPP 55. From our review of the documents provided with our instructions and the controls relevant to the Land we say:
- a. the development does not appear to be designated development under schedule 3 of the EPA Regulation (assuming that any excavated soil that is contaminated will be removed for treatment at another site);
  - b. the Land is not declared to be a critical habitat, and we are not instructed with any documentation that indicates the proposed work is likely to have a significant effect on a critical habitat or a threatened species, population or ecological community;
  - c. the development does not require development consent under another State environmental planning policy or a regional environmental plan;

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<sup>2</sup> SEPP 55, cl 8.

<sup>3</sup> RAP Part 5.1.1.

<sup>4</sup> RAP page 16.

<sup>5</sup> RAP page 17.

<sup>6</sup> RAP page 21.

<sup>7</sup> SEPP 55, cl 14.

- d. the remediation work does not appear to be proposed on Land that falls into one of the classifications in clause 9(e) of SEPP 55; and
  - e. we are not instructed with any documentation that indicates the proposed work is proposed to be carried out in a manner that does not comply with a policy made under the contaminated land planning guidelines by the Council.
8. Accordingly, we do not consider the remediation work to be Category 1 work. Consequentially, it is category 2 remediation work that does not require development consent.

## CONCLUSION

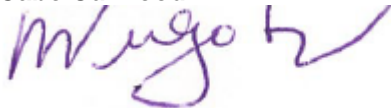
9. Demolition is capable of being remediation work for the purposes of SEPP 55.
10. The remediation work is category 2 remediation work under SEPP 55 and does not require development consent.

We trust the above remarks are of assistance. Please let us know if you would like to discuss any matter further.

We thank you for your instructions.

Yours faithfully

**McCabe Curwood**



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