Natural and Built Environment Bill Reform Series: Contamination

New rules for polluters and landowners

The Natural and Built Environment Bill (**NBE Bill**) will create new obligations for landowners and regional councils. A contaminant must be present in concentrations exceeding an environmental limit or be an unacceptable risk to human health/environment to be classed as contaminated land. The Government can step in when it comes to significantly contaminated land or contaminated sites of national significance. There are also important changes for liability insurance and fines which anyone contemplating owning contaminated land should be aware of.

In summary:

- Polluter pays principle applies to those who cause or allow contamination, and the owner of land is responsible for management of contamination.
- A landowner must notify regional council:
    - where land is used for an activity or industry listed in HAIL and provide details of any investigations;
    - where contaminated land poses an unacceptable risk to human health or the environment and provide details of management, investigation and monitoring.
- The nature, extent and severity of contamination must be detailed in a public register, along with any management and remediation.
- Government can classify a site as "significantly contaminated land" or a " contaminated site of national significance" which gives the Environmental Protection Authority (EPA) power to manage the site. The EPA must consult with the regional council and can recover costs from the council for taking action against a polluter or landowner.

Landowners of contaminated land can expect to incur costs to meet these new obligations. However, there are no offence provisions which apply to landowners who do not self-report.

General themes identified by submitters in relation to contaminated land include:

- Concern at the lack of definition in the NBE Bill of soil in relation to contaminated land. The lack of a definition across government results in the use of “soil” for a variety of use.
- Concern at the ambiguity of the wording in the NBE Bill in reference to contaminant. The NBE Bill as currently drafted does not state whether the change as a result of a contaminant is required to be negative. Without clarification there is potential for beneficial activities to be misinterpreted as contaminating land under the newly drafted clauses.
- Concern that the limits and targets for contaminated land are set too low and cannot be adjusted on a site dependent basis. There is support for site specific risk assessments to be an exception to the limits and targets.
- Concern that the polluter pays principle is purely forward looking and makes no provisions for retrospective pollution and does not provide an adequate enough framework to allow Regional and Local authorities to hold polluters accountable. As drafted the NBE Bill assumes the polluter is the current landowner rather than a tenant or previous landowners.
- Concern at the lack of definition of ‘significantly contaminated land’ and the relationship/ threshold trigger between contaminated land sites of national significance in the NBE Bill.

This publication is intended only to provide a summary of the subject covered. It does not purport to be comprehensive or to provide legal advice. No person should act in reliance on any statement contained in this document without first obtaining specific professional advice. If you require any advice or further information on the subject matter of this article, please contact the partner/solicitor in the firm who normally advises you.

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(Continued)

Want to know more?

Please contact a member of our Environments, Planning and Natural Resources Team if you would like to know more about the proposed changes for contaminated land in the NBE Bill.

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