

# A strategic approach for the identification and approval of redevelopment on potentially contaminated sites in Victoria

*You just approved a sensitive landuse where?!?*

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# Introduction

- Transition of site to a more sensitive land use requires confirmation that the land is fit for the intended use.
- Disconnect between planning and environmental practices.
- Result is that contamination risk is not consistently identified or managed.
- Technical support and capacity building required for key decision makers.



# The Victorian Perspective

- The disconnect between planning and environment practice has long been lamented.



*“The Department of Planning and Community Development (DPCD), the Environment Protection Authority (EPA) and Councils are **not effectively managing contaminated sites, and consequently cannot demonstrate that they are reducing potentially significant risks to human health and the environment to acceptable levels.**” (VAGO, 2011)*

- DPCD is now DELWP

# The Victorian Perspective



*“80 per cent of situations involving contaminated sites are dealt with through the planning element of the framework, and the remaining 20 per cent are dealt with through the environment protection element.” (VAGO, 2011)*

# The Victorian Perspective

Examples where the approval authority did not follow guidelines, as well as instances where insufficient guidance is available to the decision maker.

Legislation Reform and Connected Processes

Capacity  
Building

Reduce Risk

Reduce or  
Avoid Cost



# Redevelopment of Potentially Contaminated Land



Victorian *Planning and Environment Act*  
1987



Victorian *Environment Protection Act* 1970



*National Environment Protection*  
*(Assessment of Site Contamination)*  
*Measure, Amended 2013*

# Current Situation

- “Polluter pays” model (however; *Caveat emptor*).
- Redevelopment of a contaminated site may require a subsequent owner, occupier, mortgagee or even local government, to bear the cost of clean-up.
- Site assessment process consolidates the available information on the potential for contamination at a site.
- Usually triggered by transactional due diligence or redevelopment via planning approval.
- Environmental audit provides assurance that the site is appropriate for its intended future use however, statements also carry conditions.

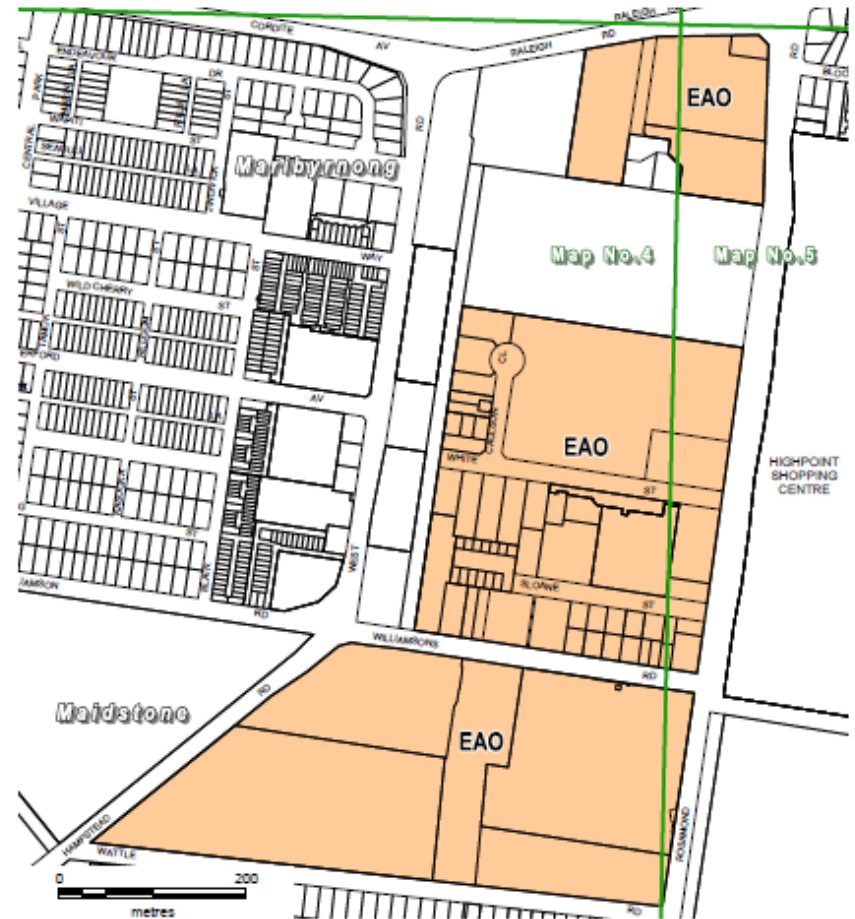
# Current Situation

- Ministerial Directive No. 1 (+ *Practice Note*) provides that where land is identified as being potentially contaminated, “*an assessment is necessary before a decision is made about the future use or development of that land*” and therefore requires:
  - i) A site assessment; or
  - ii) An environmental audit.
- Continue to be examples where contaminated land is redeveloped without adequate consideration of its appropriateness for future use.
- Examples where Council maintained institutional knowledge that reasonably indicated that land was likely to be contaminated.



# Planning: Environmental Audit Overlay

- Purpose: “ensure that potentially contaminated land is suitable for a use which could be significantly adversely affected by any contamination.”
- Where an EAO has been applied, it is clear that there is actual or potential contaminated land
- If no EAO exists ≠ absence of contamination. Some planning schemes in Victoria identify very few properties by EAOs.



# Options for Legislative Reform

- A risk-based approach requires information to be available in order to assess risk given a proposed end use.
- Risk-based assessment may result in a variety of options being appraised
  - Each with differing risk profiles
  - Range of resultant recommendations
- Complex and potentially technically challenging
  - E.g. vapour intrusion, emerging contaminants

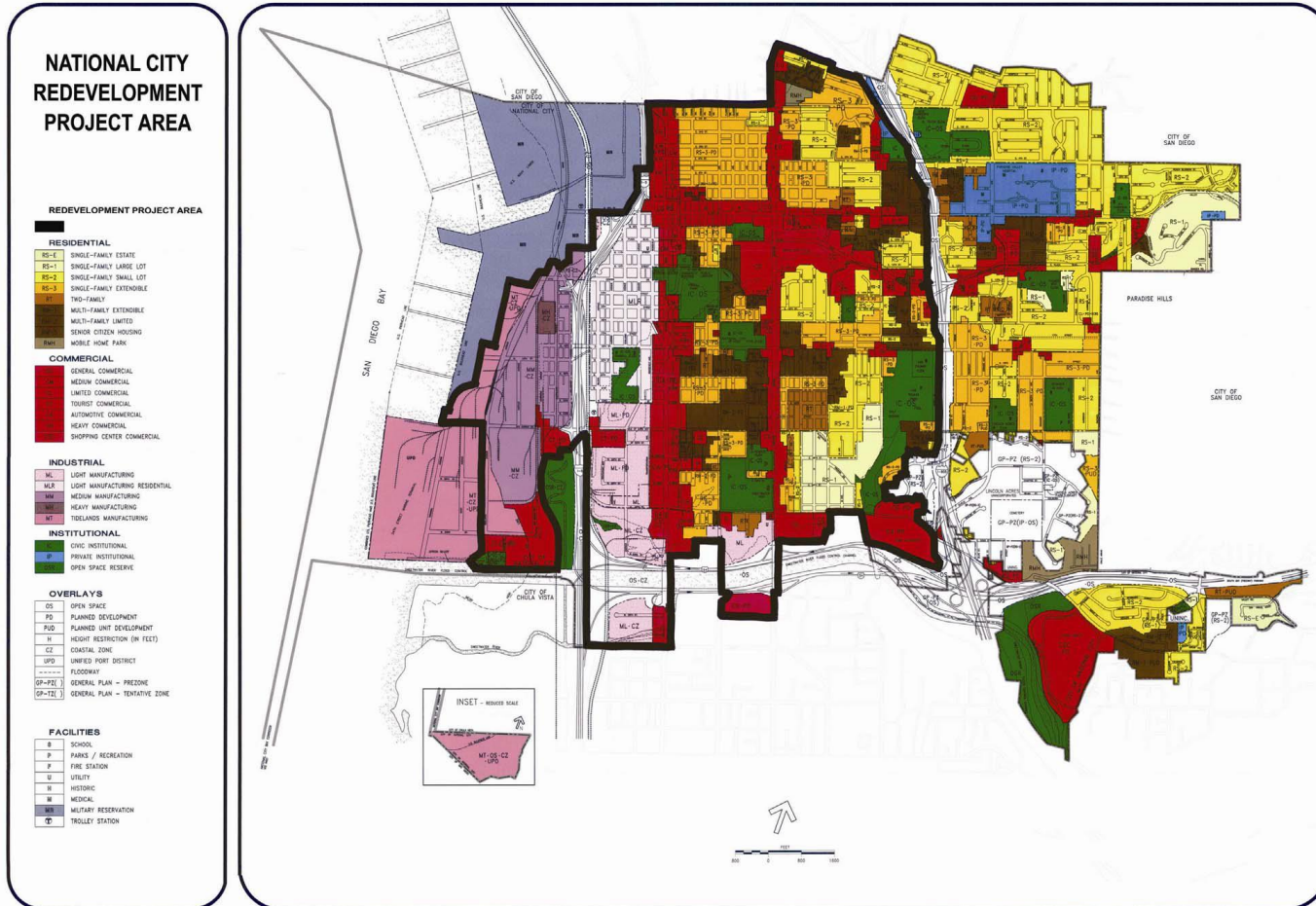
# Current Status of Legislative Reform

- Major legislative reform was (and is) expected.
- Independent Inquiry into the EPA underway.



- Risk-based approaches are preferred by key stakeholders in Victoria, including EPA, DHHS and DELWP.
- EPA has consistently stated its intention to be a “modern regulator” and focus on addressing the greatest risks to the environment.
- The “Cleaner Environments” initiative promised to be risk-based and enable more efficient Brownfield redevelopment. (May not have progressed.)

# Case Study: Brownfield Redevelopment Areas (USA) – National City, CA



# Case Study: Brownfield Redevelopment Areas (USA) – City of Roseville, MN



# Conclusion

- Difficult to plan for or mitigate risks that are not identified. “*We do not know what we do not know*”.
- Regulatory reforms in combination with resourcing in the environment and planning spheres.
- Current reviews of legislation (SEPPs, EP Act) and EPA Inquiry - greater definition of roles and resourcing.
- Appropriate environmental due diligence during transactions.
- Capacity building across local government for assessment of planning applications.

# Thank You

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