

Feature

Toxic Property



CHEAP AND RISKY

As developers look to disused industrial sites for residential development, past contamination is becoming all too evident. The costs of remediating sites are astronomical and the question now is not just who is to blame, but who is to pay? By **Jacqui McArthur**

As the smoke stacks and churning turbines of industrial wastelands disappear under new residential and commercial precincts in Australia's cities and coastal towns, warning signs of big problems to come are surfacing.

Agent Orange, DDT, 'gender bending' phthalates and nasty cocktails of PCBs and dioxins have, at one time, laced the ground zero of Australia's most prime real estate, Sydney Harbour. Arsenic-tainted sheep dips and pesticide-contaminated farming lands have also been the foundation for a number of coastal hinterland estates of the sea change variety.

Increasingly, large land deals are being scuttled by contamination issues as all sides traverse the delicate legalities of 'polluter pays'. As one property insider put it: "Everyone pays, and often twice" when it comes to the purchasing of toxic property. No amount of marketing savvy and business nouse can overcome the dangers of what may lurk in corroded underground storage tanks or 100-year-old sheep dips.

The pressure is on for governments and industry to aid greater awareness of potential contaminants and remedies for them. Agents are calling for it, buyers want to

know, sellers are weakened in negotiations without it and investors run a mile without transparency on the issue.

Poisoned sales

So many industrial deals of late have been affected by these 'transactions in the toxic',

tainty in the market will curb deals well into the coming decades, Kaufman says.

Current legislation means the owners of the land may not be the only people or companies responsible for decontamination and future damage caused. "With legislation founded on identifying responsibility for the

"You can have a lowered price, but then if the site isn't cleaned up despite it being in the sale contract and the buyer goes broke, you may have to pay twice to clean it up" — James Kaufman, Jones Lang LaSalle

that Jones Lang LaSalle national industrial director, James Kaufman, recently endorsed a whitepaper on the matter. "We've lost customers, I'm sure, by telling them how it is: it takes time and it is expensive. That's the last thing they want to hear," says Kaufman. He warns that an expensively litigious future is awaiting the Australian property industry, unless environmental assessments are routinely undertaken for each property deal.

Without a widespread awareness of the time needed and the expense of environmental surveys and remediation, ongoing uncer-

contamination, where the 'polluter pays' it can still default back to the entity that has the financial capacity to pay for the clean-up," Kaufman says. "Costs accelerate when the source of contamination is unclear.

"Although tenants are required to clean up their own contamination, the liability can default to the land owner if the tenant can't pay, or is out of business, or cannot be proved to be the polluter," he says.

Kaufmann also recommends tenants undertake an environmental assessment before occupying a site that may have contamina- >>

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According to JLL, if a site isn't cleaned up properly, it can cost the seller

tion and again at the end of the lease, lest they be accused of polluting the property.

Selling your way out of the problem is not the best option, according to the JLL whitepaper produced with environmental consultants EES and solicitors Allens Arthur Robinson.

"You can have a lowered price, and believe me the prices are lower on these deals, but then if the site isn't cleaned up despite it being in the sale contract and the buyer goes broke, you may have to pay twice to clean it up," Kaufman says.

And there is the rub for agents and sellers. Industrial deals these days can take the form of 'my environmental consultant versus your environmental consultant', as clean-up costs form the strongest negotiation tool of modern times. Wide-ranging assessments of what is on the site and how much it takes to eradicate it have provided for light entertainment for property observers. Discrepancies can be in the tens of millions of dollars.

Brown for Botany Bay

Some of the country's most famous examples

of contaminated land, despite their differences in chemical concoctions or geographical locations, have this in common; stratospheric costs and long-running legal campaigns. The most notorious examples of the polluting past catching up can be found on prime Sydney waterfronts: Botany Bay and Homebush Bay.

Chemical giant Union Carbide manufactured the herbicide 2,4,5-T (Agent Orange) for many years. Dioxin was a highly dangerous by-product. Often described as the most toxic human-made substance, the chemical's generally accepted margin of safety level in residential areas is just one part per billion. But oil found near the Homebush site contained 6500 times that, while other tests found lesser hot spots with readings in the hundreds of parts per billion. Also, dioxin was leaching into Homebush Bay, on the Parramatta River. More than \$100 million later the area, which included other key industrial sites, is still overshadowed by pollution concerns.

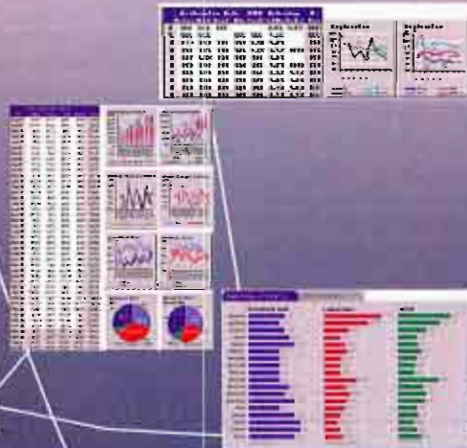
Over at Botany Bay, the woes of chemical company Orica are confounding even tried and true remediation efforts, adding to the

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cost and trying the patience of residents and businesses living beside the contamination.

Orica is responsible for cleaning up contaminated plumes, which cover about two square kilometres, leaching the chemical 1,2-dichloroethane (EDC). EDC was used in the manufacture of PVC at the site, which was formerly operated by ICI.

Orica had spent 12 months experimenting with treating and cleaning the contaminated plumes moving towards Botany Bay at about 150 metres a year. But in October, it was found that neither bioremediation – when naturally occurring bacteria that feed on the chemical are encouraged to gather at the most polluted area – nor transporting contaminated water to Lidcombe for treatment was successful.

The Lidcombe facility faced breaching its licence if it continued to treat the tainted water because the treatment process was producing overly high emissions levels. Orica will now have to pump out the contaminated water, treat it and eventually replace it.

However, not all chemical bogeys are found in the most obvious industrial zones. New South Wales legislators now have the common petrol station in their sights.

The Department of Environment and Conservation (DEC) is considering regulations to deal with the threat of leaks from petrol tankers and holding containers. Petrol stations now represent more than a quarter of the most toxic sites in the state.

More than 200 sites, including petrol stations, pose “a significant risk of harm to the environment or human health”, according to the DEC, with Botany Bay cited as Sydney’s most toxic municipality – 25 clean-up notices are listed for 13 sites in the area.

More than 50 cases of contamination at petrol stations and surrounding areas have been reported since 1986, but now DEC’s register lists all sites that have been issued with a clean-up notice, or that have entered into a voluntary remediation agreement with the department since 1986.

With the perennial push by progressive developers making former industrial lands good pickings for commercial and residential projects, it is no surprise environmental consultants are experiencing a boom. Initial environmental tests – an ESA Phase I – cost

between \$2000 and \$4000. A site assessment and report can take up to six weeks or longer if contamination issues are identified.

On a large site of several hectares, costs can range from \$15,000 per hectare to \$25,000 per hectare. Smaller sites start from about \$8000. Remediation processes can be notoriously expensive and until work begins, sometimes unquantifiable.

Environmental consultancy Environmental and Earth Sciences’ Ian Brookman, says business is good. Brookman posits that big legal moves and the greater corporate gover-

National Toxics Network (NTN) co-ordinator Mariann Lloyd-Smith.

“Opponents of robust registries that clearly show the toxic sites and their past histories say the real estate industry would die in the ditch if all was revealed. It just doesn’t happen,” says Lloyd-Smith. A toxics campaigner for 25 years, Lloyd-Smith says that in her experience, high-quality registries of contaminated sites and contaminating practices can only help communities and the property industry.

When it was found that some cattle tick



Jones Lang LaSalle

The Department of Environment and Conservation is considering regulations to deal with the threat of petrol leaks ... Petrol stations now represent more than a quarter of the most toxic sites in the state

nance rules are helping to make many more aware of the dangers of ignoring contamination legacies.

“I think it may affect a lot of levels of business – companies being tighter on environmental controls in operating procedures and many more people wanting a sustainable approach to development,” Brookman says.

Solutions, both commercial and environmental, lay in transparency, according to

dip sites in northern NSW had up to 10% pure DDT in scooping mounds, a register was set up with North Coast Environmental Council and the Department of Agriculture in 1993. “This register was set up so that never again could a site be bought without knowledge of contamination,” says Lloyd-Smith. “It was in the public domain for three years and the real estate industry certainly survived.”

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ROADMAP TO REDUCING YOUR RISK

A vendor or investor needs to know the extent of potential risk posed by a contaminated site.

This involves allowing sufficient time to conduct environmental assessments and establish a strategy to

deal with the issues before going to market.

The flowchart sets out the steps a vendor should follow when putting a site with contamination issues up for sale.



Source: Jones Lang LaSalle

Pressure from unknown sources meant the cattle tick dip site registry became commercial-in confidence information in 1996. This means only solicitors doing due diligence for potential buyers may have access to the history of their site and their site only, they would never know if there was a close neighbour with a grubby past penchant for arsenic or DDT.

The property industry would also be in better stead if acceptable levels came into line with world's best practice, Lloyd-Smith says. "It can catch up with us; other countries only accept lower levels of contamination. When our guidelines change to meet them, there would be many left holding land that requires expensive remediation or could be stuck in expensive litigation," she says.

Australia's National Environmental Protection Measure for Contaminated Sites for DDT is set at 200 ppm (parts per million), the US Environmental Protection Agency (region nine preliminary goals) sets it at 5.8 ppm, while the Netherlands sets the level at 4ppm.

"Some people find health investigation levels an embarrassment here – after guidelines were set in 1996 without adequate consultation, we find that inhalation and dermal absorption are discretionary for DDT and only ingestion is a factor in some areas," says Lloyd-Smith.

Contamination cases are rarely won in court, she says. However, those that do succeed make for legal precedents that further the need for registries and contamination level reviews.

Following a 1996 case, in which a developer successfully sued Armidale Council for approving a low-cost housing project on a copper chrome arsenic wood treating site, some councils have shored up regulations to remove their liability. Moves include registers of contaminated sites, compulsory third-party verification audits of remediated sites, and notations on zoning certificates and title.

For National Toxic Network and a burgeoning number of increasingly vocal community groups, these are only the beginning of urgently needed reforms. Reform is also required, they say, to avoid the new liability time bomb for the property industry that is ticking just beneath the surface. ■

