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## 1 INTRODUCTION

1. This chapter outlines Council's procedures in dealing with the assessment of known or potentially contaminated land and the remediation and subsequent validation of contaminated land.
2. This policy directly relates to the State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55), the Contaminated Land Management Act 1997 and the joint NSW Department of Urban Affairs & Planning & Environment Protection Authority publication titled *Managing Land Contamination: Planning Guidelines SEPP 55 Remediation of Land (August 1998)*. In the advent of a discrepancy between this DCP, and the above documentation, the latter will preside.

## 2 OBJECTIVES

1. The objectives of the Contaminated Land Management policy are to:-
  - a) Consider the likelihood of contamination upfront in the planning and development process;
  - b) Ensure that any proposed development of an identified contaminated site will not result in any unacceptable levels of risk to human health or the environment;
  - c) Avoid inappropriate restrictions on the development of known or potentially contaminated sites;
  - d) Ensure site investigations and remediation work are carried out in a satisfactory manner and where appropriate are subject to independent validation and/or Site Audit Statement (SAS) prepared by an EPA Accredited Site Auditor;
  - e) Ensure that ongoing responsibility for the management and monitoring of contaminated land is clearly and legally assigned (Through mechanisms such as Environmental Management Plans and Section 88B Property Title Notifications).

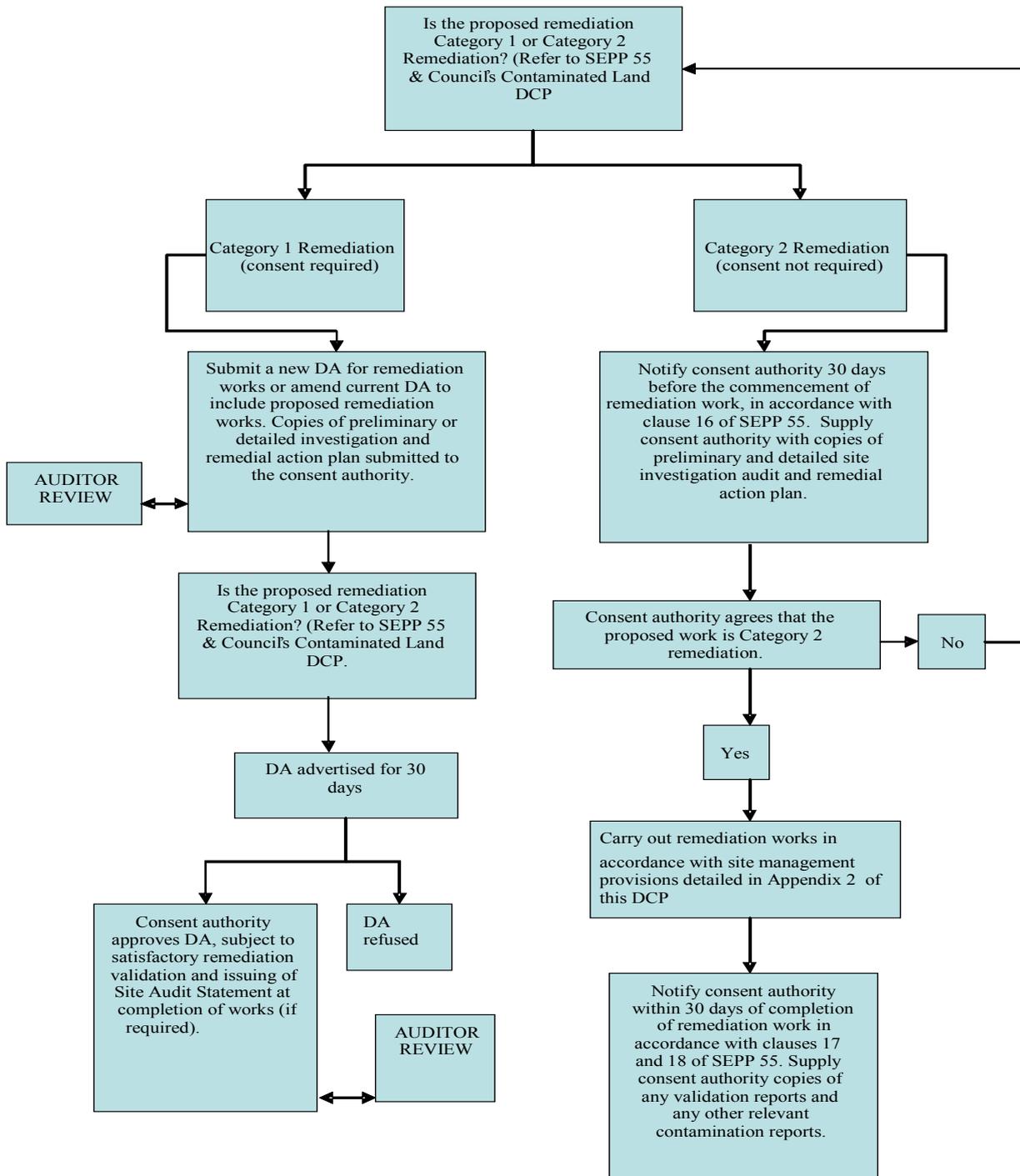
## 3 CONTAMINATED LAND MANAGEMENT ACT 1997

### **Duty to Report Contamination on Land which presents a Significant Risk of Harm to Human Health or the Environment**

1. The Contaminated Land Management Act 1997 requires that either the landowner or the person whose activities have caused contamination must notify the NSW Environmental Protection Agency as soon as practicable after becoming aware of the contamination incident or activity. Reference should be made to the NSW EPA Guidelines on the Duty to Report Contamination under the *Contaminated Land Management Act (2015)*
2. A formal notice under section 60 of the Contaminated Land Management Act 1997 is required

## 4 STATE ENVIRONMENTAL PLANNING POLICY NO. 55 REMEDIATION OF LAND (SEPP 55)

1. The aim of SEPP 55 is to provide for a state-wide planning approach to the assessment, remediation and validation of contaminated land.
2. Under SEPP 55, Council is required in determining a Development Application to consider whether land is contaminated and whether the proposed remediation of any identified contamination site will satisfactorily render the land suitable for the intended land use upon the site.
3. SEPP 55 states that a person must not carry out a category 1 remediation work except with the consent of the consent authority. Under the SEPP, a person may however carry out category 2 remediation work, without the consent of the consent authority (however the local consent authority must be informed of the intended remediation works 30 days prior to commencement).
5. For more information relating to the categories of work and the requirements refer to the SEPP.



\*\* NOTE: Development consent may be required if works such as demolition or shoring are involved.

Figure 1: Procedure for category 1 and category 2 remediation work

## 4.1 Reporting Requirements

### 4.2 General

The key principle in considering contaminated land and the likelihood of land contamination is to determine any issues as early as possible in the planning and development process. This section provides an overview of the requirements in the SEPP 55. For full detail of requirements refer to the SEPP.

### 4.3 Stages for investigation

1. There are 4 main stages associated with the investigation of a site for potential contamination and its subsequent remediation and validation, namely:-
  - Stage 1 – Preliminary Investigation;
  - Stage 2 – Detailed Investigation;
  - Stage 3 – Remediation Action Plan; and
  - Stage 4 – Validation Report.

All reporting must be completed in accordance with relevant regulations, legislation and guidance documentation. Reports must also be completed by appropriately experienced and qualified consultants with a demonstrated history of working on CLM projects.

At any stage throughout the investigation, remediation and validation process Council may request a Site Audit Statement (SAS) be prepared by an appropriately accredited NSW EPA Auditor. The costs associated with the preparation of the SAS are to be covered by the applicant. Council may request a SAS when:

- Council has reasonable grounds to believe the information provided to Council is incomplete or incorrect.
- Council wishes to confirm the information provided conforms to relevant legislations, guidelines (etc.).
- Council does not have the capability to undertake appropriate technical reviews (i.e. a site with complex contamination issues and significant risks to human health and the environment).

#### 4.3.1 Stage 1 – Preliminary Investigation

2. The main requirements of a preliminary investigation are to:-
  - i) Identify any past or present potentially contaminating activities;
  - ii) Review available historic records (i.e. including Council & NSW Government Department Records);
  - iii) Conduct a preliminary visual inspection;
  - iv) Provide a preliminary assessment of any site contamination; and
  - v) Provide the basis for a more detailed investigation if required.

For an indicative list of industries and potential contaminants please refer to SEPP No. 55 Remediation of Land and the Planning Guidelines “Managing Contaminated Land”

#### 4.3.2 Stage 2 – Detailed Investigation

1. A detailed investigation is only necessary where a preliminary investigation indicates that the land is contaminated or the site history confirms that the site is or was exposed to potentially contaminating industry or activities.
2. The requirements of the detailed investigation are:-

- i) To define the nature, extent and degree of all contamination (i.e. soil, water and soil vapour);
- ii) To assess potential risk posed by contaminants to health and environment; and
- iii) To obtain sufficient information for the development of a viable Remedial Action Plan (RAP), if required.

As part of the detailed investigation and assessment of site contamination issues, proponents are required to take into account any relevant technical standards or guideline requirements.

#### **4.3.3 Stage 3 – Remedial Action Plan**

1. The Remedial Action Plan (RAP) is based on information from the previous Preliminary Site History and Detailed Investigation stages and shall demonstrate what remediation measures are required to deal with any identified contamination in order to render the site suitable for the proposed development or land use activity. The objectives of the remediation strategy and the recommended site contamination remediation clean-up criteria must be clearly stated in the RAP.
2. If development consent is required, then a RAP must be considered by Council, prior to the determination of the Development Application.

#### **4.3.4 Stage 4 – Completion of Remediation Work - Validation Reporting, Site Auditing & Monitoring**

1. SEPP 55 requires the submission of a formal Notice of Completion of Remediation Work to Council within 30 days from the date of completion of the remediation works.
2. Upon satisfactory completion of remediation and validation works any ongoing site management requirements (such as Environmental Management Plans) must be registered on the property title (in accordance with the Conveyancing Act 1919).
3. Refer to the SEPP for more information.

### **5 PROCEDURES FOR DEVELOPMENT APPLICATIONS & COMPLYING DEVELOPMENT CERTIFICATE APPLICATIONS**

1. Where land is contaminated or has the potential for contamination Council requires the following:
  - a) A preliminary investigation report in accordance with the requirements of this policy and relevant legislation;
  - b) a Detailed Site Contamination Investigation Report is required where the preliminary investigation report reveals that the site is or was previously used by a potentially contaminating land use or soil and / or groundwater analysis reveals elevated contaminants above threshold levels;
  - c) Council may, as a matter of due diligence, request a Site Audit Statement to be provided from an accredited Site Auditor, in order to certify that the site is suitable for its intended use even if the Preliminary Investigation confirms that the site has no issues and the visual assessment of the site reveals no evidence of any contamination;
  - d) Where the Detailed Site Contamination Investigation Report indicates that the site is subject to soil strata, soil vapour and / or groundwater table contamination above threshold limits, a Remedial Action Plan will be required;
  - e) Contaminated land consultants who prepare preliminary investigation, detailed investigation, RAP's and validation reports must be accredited via one of the following:
    - the Site Contamination Practitioners Australia (SCPA) scheme;
    - the Environment Institute of Australia and New Zealand's (EIANZ) Contaminated Land Assessment Specialist Certified Environmental Practitioner (CLA Specialist CEnvP) scheme; or
    - the Soil Science Australia (SSA) Certified Professional Soil Scientist Contaminated Site Assessment and Management (CPSS CSAM) certification.
  - f) Council will not continue the assessment until satisfied with the information in the detailed report or RAP.

Council may grant a conditional Development Consent with conditions of consent relating to the preparation of a Remedial Action Plan (prior to the issuing of the Construction Certificate), completion of the remediation works (during the construction phase) and the completion of a

validation report and ‘signing’ off’ of the remediation work by the Site Auditor through a Site Audit Statement at prior to the occupation of the building or commencement of the land use stage.

Alternatively, Council may grant a “Deferred Commencement” Consent pursuant to Section 80(3) of the Environmental Planning and Assessment Act 1979, particularly where the level of contamination is in the opinion of Council significant and / or the proposed land use is a sensitive land use with respect to potential contamination impacts. The “Deferred Commencement” Consent will require the completion of a range of “pre-conditions” prior to the consent becoming operative.

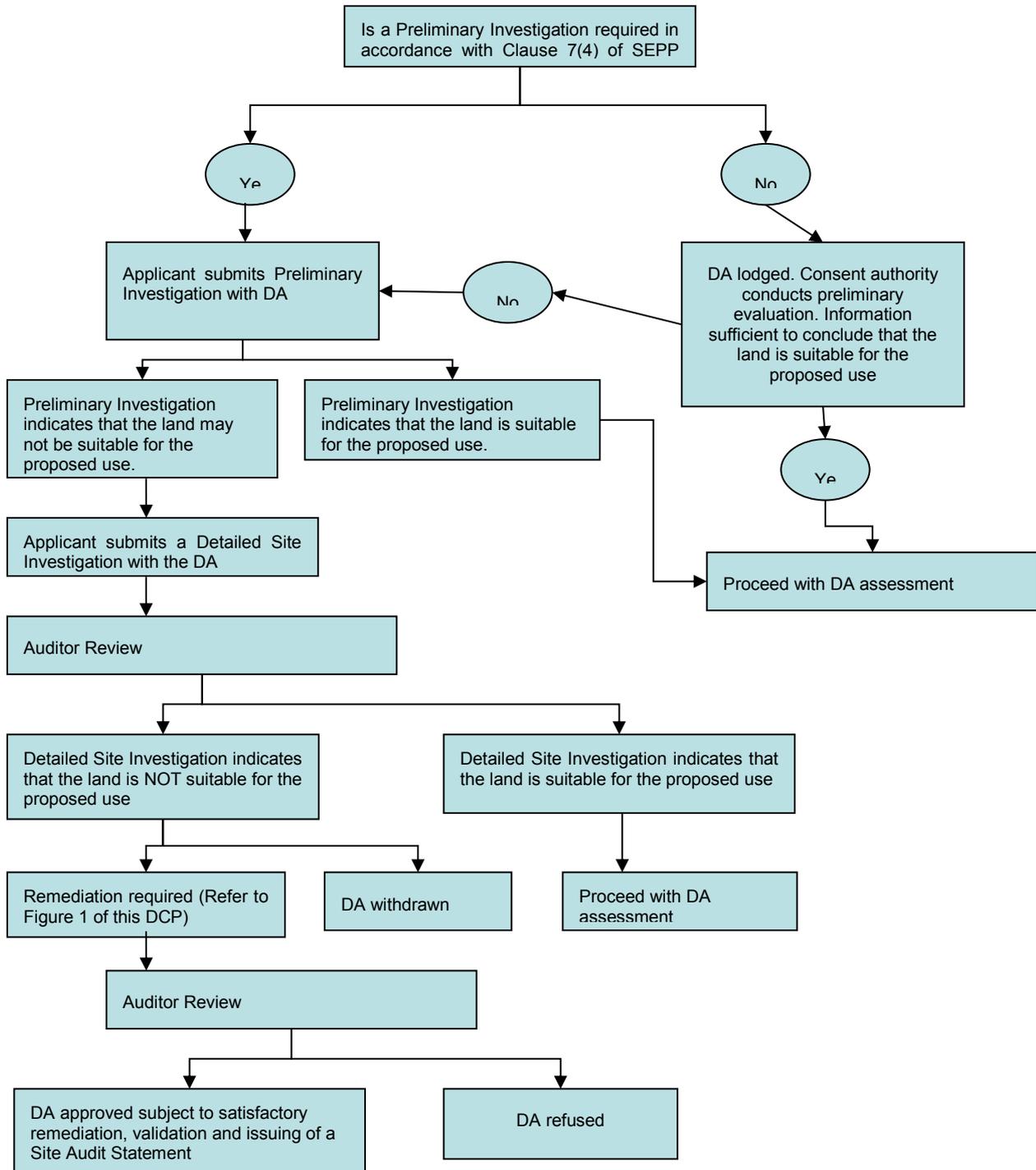


Figure 2: Council procedure for considering land contamination issues for Development Applications