

Remediation of Land SEPP

Explanation of Intended Effect

JANUARY
2018

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Director, Housing Approvals and Policy
NSW Department of Planning and Environment
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Cover Photo: Remediated parkland near Sydney Olympic Park

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Explanation of Intended Effect

Remediation of Land State Environmental Planning Policy

This Explanation of Intended Effect (EIE) has been prepared for the purposes of section 38 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) to explain the intended effect of the proposed Remediation of Land State Environmental Planning Policy (the new SEPP).

The new SEPP will repeal and replace State Environmental Planning Policy No 55 - Remediation of Land (SEPP 55).

This EIE is presented in three parts:

Part 1 - Executive summary

Part 1 explains the need for the new SEPP and contains a summary of the key policy changes.

Part 2 – Planning context and objectives

Part 2 outlines the planning context for the new SEPP and how it integrates into the overall management of contaminated lands in New South Wales.

Part 3 – Policy and provision changes

Part 3 provides information on key policy changes and the proposed provisions for the new SEPP.

Executive summary

Part 1





Part 1 – Executive summary

Our cities and regions are dynamic places where the use of land evolves to meet our social, economic and environmental needs. Planning plays an important role in this evolution by ensuring that new land uses complement our vision for an area, and that land is suitable for the intended use. Land contamination can have major health, environmental and economic impacts and is a key consideration in land use planning.

In 1998, a new framework for the management of contaminated land in New South Wales was put in place including SEPP 55 and the Managing Land Contamination: Planning Guidelines.

The Department of Planning and Environment is reviewing all State Environmental Planning Policies to ensure they remain effective and relevant. SEPP 55 has been reviewed as part of that program and this EIE implements the recommendations of that review, namely, to repeal SEPP 55 and create a new Remediation of Land SEPP.

The new SEPP will retain elements of SEPP 55, and add new provisions to establish a modern approach to the management of contaminated land.

The overarching objective of SEPP 55 is to promote the remediation of contaminated land to reduce the risk of potential harm to human health or the environment. This objective remains relevant and will be replicated in the new SEPP. The key operational framework of SEPP 55 will be maintained in the new SEPP, which will:

- require consent authorities to consider whether the site is, or is likely to be, contaminated
- permit a consent authority to require additional information to satisfy itself as to whether the land is contaminated
- retain two categories of remediation work, being work that requires consent and work that can be carried out without consent.

New provisions will be added in the new SEPP to:

- require all remediation work that is to be carried out without development consent, to be reviewed and certified by a certified contaminated land consultant
- categorise remediation work based on the scale, risk and complexity of the work

- require environmental management plans relating to post-remediation management of sites or ongoing operation, maintenance and management of on-site remediation measures (such as a containment cell) to be provided to council.

The new SEPP will not include any strategic planning objectives or provisions. Strategic planning matters will instead be dealt with through a direction under section 117 of the EP&A Act.

The proposed changes will deliver the following improvements:

- reduce the risks associated with remediation projects
- encourage proponents to better consider and plan remediation work
- better protect the community from unnecessary risks, disturbance and inconvenience
- ensure there is consistent regulation of contaminated land and facilitate enforcement of long-term environmental management plans.

The Managing Land Contamination: Planning Guidelines will be updated to reflect the proposed SEPP and current best practice. Key changes include:

- describing the preliminary and detailed site investigations processes, in line with the Commonwealth (National Environment Protection (Assessment of Site Contamination) Measure) 1999 (April 2013) (ASC NEPM)
- outlining the role of the principal certifying authority when dealing with contaminated land and site audits
- providing guidance on how to address the issue of possible contamination on land near the site of the proposed development where contamination on the near-by land is suspected, but may not have been formally investigated.

The new SEPP and Guidelines will ensure that the NSW planning system has a best practice approach to the management of contaminated land. It will add rigor by requiring all remediation work that does not require consent to be assessed by a certified contaminated land consultant. It will provide better protection to the environment and human health by ensuring that the assessment matches the risk, complexity and scale of works.

Planning context and objectives

Part 2



Part 2 – Planning context and objectives

Planning context

Urban renewal may involve the conversion of land from manufacturing or industrial to other uses including residential or educational. These uses are highly sensitive and it is critical that land contamination is considered when assessing a rezoning or determining a development application to allow such uses. The process to assess contamination must be appropriate without causing delays in the delivery of housing.

In NSW, responsibility for the management of contaminated land is shared by the Environment Protection Authority (EPA), the Department of Planning and Environment (Department) and local councils.

The EPA regulates significantly contaminated land under the *Contaminated Land Management Act 1997* (CLM Act). The EPA has power to direct that a preliminary investigation be conducted for land it suspects may be contaminated. If the EPA is satisfied that the land is contaminated and the contamination is significant enough to warrant regulation, the EPA may declare the land to be significantly contaminated land and may either approve a voluntary management proposal or issue a management order that details how the contamination will be managed.

Contaminated sites that are not regulated by the EPA are generally managed by local councils through the planning and development system, when land is rezoned or a development application is lodged. Councils perform these functions in accordance with the requirements of the EP&A Act, SEPP 55 and the Managing Land Contamination: Planning Guidelines.

The Department undertakes development assessment of remediation works where the Minister is the consent authority including State significant development.

Other legislation that plays a role in the management of contaminated land in NSW includes:

- the Protection of the *Environment Operations Act 1997* (POEO Act) under which councils manage local pollution and illegal dumping incidents
- the regulations made under that POEO Act such as the *Protection of the Environment Operations (Waste) Regulation 2014*, which regulates the disposal of waste from remediation work
- the *Work Health and Safety Act 2011*, with regard to the management of asbestos in the workplace and management of hazardous chemicals encountered in site remediation operations, such as those from disused underground storage tanks.

Remediation of Land SEPP objectives

The new SEPP will retain the following objectives from SEPP 55 as they remain relevant:

- establish a Statewide planning approach for the remediation of contaminated land
- promote the remediation of contaminated land to reduce the potential risk of harm to human health or/and the environment by:
 - making remediation work permissible, despite anything to the contrary in another environmental planning instrument
 - specifying when development consent is, and is not required, for remediation work
 - specifying considerations that are relevant in determining development application
 - requiring remediation work meet certain standards and notification requirements.

Policy and provision changes

Part 3



Part 3 – Policy and provision changes

This section describes the key policy changes proposed to be given effect to in the new SEPP.

Background

The new Remediation of Land SEPP will continue to make remediation permissible across the State. It will also continue to ensure that potentially contaminated land is appropriately investigated before development applications for new land uses are determined.

As part of the review of SEPP 55, preliminary stakeholder consultation was undertaken with councils and industry. A key finding of this preliminary consultation was that although the provisions of SEPP 55 are generally effective, greater clarity is required on the circumstances when development consent is required for remediation work.

Key policy changes

Categories of Remediation Work

The new SEPP will maintain two categories of remediation work: category 1 – works that require development consent, and category 2 – works that may be carried out without development consent.

Category 1 remediation (remediation work requiring consent) is work that presents elevated risk, either during execution or in the event of unsuccessful or incomplete remediation, because:

- it is to be undertaken in a sensitive environment, or
- it involves emerging technologies, or technologies that have not been widely used in Australia, or
- it involves technologies which, while established and proven, are complex or potentially hazardous and require the input of specialised and experienced designers and contractors, or
- it is large in scale, or extends beyond the source site, and therefore a high standard of management is required to avoid inconvenience and risk to the community, which should be given an opportunity to comment through the normal process applying to advertised development, or
- it requires an extended timeframe for completion, or
- success can only be established following a period of post-remediation monitoring, or
- post-remediation maintenance, environmental management and/or monitoring will be required, or
- it requires the imposition of site- and/or project-specific control measures and conditions.

It is proposed that category 1 remediation work be set out in a schedule that describes the new classes and incorporates the provisions of clause 9 (a) - (e) in SEPP 55. The table below details the proposed classes of Category 1 remediation works as well as the provisions that will be carried forward from SEPP 55.

Category 1 Remediation Works New classes of category 1 remediation work	
Type of Remediation Works	Reasons for including these remediation works in Category 1
(a) excavation, and removal from site, of contaminated soil, where the volume of soil to be excavated exceeds 3,000 cubic metres (m ³) or where the area of excavation exceeds 3,000 square metres (m ²)	<p>The scale of the remediation work could result in levels of dust, odour, noise, traffic and runoff that may not be manageable through standard requirements that will apply to category 2 works.</p> <p>The consent authority will be able to impose specific conditions that may be necessary because of the scale of operations.</p>
(b) removal from site of stockpiled contaminated soil, or other waste materials including asbestos waste, where the volume of soil and/or material exceeds 3,000 m ³	<p>The scale of the remediation work could potentially result in levels of dust, odour, noise and runoff that may not be manageable through the standard requirements.</p> <p>The consent authority will be able to impose specific conditions that may be necessary because of the scale of operations.</p>

Part 3 – Policy and provision changes

Category 1 Remediation Works New classes of category 1 remediation work	
Type of Remediation Works	Reasons for including these remediation works in Category 1
(c) in-situ and ex-situ remediation of contaminated soil on site	Such remediation is complex, and requires specialist expertise. There is a significant risk of impact on adjacent land and frequently a need for the long-term management of the site. This makes it appropriate for a consent authority to be involved, and to regulate, if necessary, the long-term management of the site through conditions of consent.
(d) on-site treatment of contaminated groundwater, light non-aqueous phase liquids or vapour extracted on the site	
(e) remediation of a site affected by hazardous ground gas	
(f) remediation of a coal gasification (gas-works) or an oil-shale distillation site	Such remediation is complex and frequently associated with severe odour issues.
(g) remediation of dense non-aqueous phase liquids	Such remediation is difficult and complex, and requires specialist expertise.
(h) remediation of contaminated groundwater where groundwater contamination extends beyond the boundaries of the site	This type of remediation is complex and frequently associated with severe odour issues. Such work is also likely to be regulated under Part 3 of the CLM Act.
(i) active bioremediation of contaminated groundwater	Such remediation is difficult and complex, and requires specialist expertise. The risks associated with it make it desirable that it requires development consent and can be appropriately regulated through conditions of consent.
(j) remediation of contaminated groundwater by chemical oxidation or reduction	Such remediation is complex remediation, frequently involves the use of hazardous chemicals in liquid form and requires specialist expertise.
(k) remediation of contaminated soil or groundwater by in-situ or ex-situ thermal processes on site	Such remediation is complex, and requires specialist expertise. An ex-situ thermal plant generally requires an environment protection licence.
(l) remediation of contaminated groundwater involving the use of permeable reactive barriers or vertical cut-off walls, or both	Such remediation is complex, and requires specialist expertise; it would, in most cases, require consent in any event because of the scale of excavation involved.
(m) remediation where a long-term environmental management plan is or will be required	It is desirable that a consent authority have oversight of the long-term management of the site, by monitoring and enforcing, if necessary, the environmental management plan. That is possible only where the implementation of the plan is made a condition of consent.
(n) remediation where confirmation of successful completion is dependent upon post-remediation monitoring	It is desirable that a consent authority have oversight of the long-term management of the site.

Part 3 – Policy and provision changes

Category 1 Remediation Works New classes of category 1 remediation work	
Type of Remediation Works	Reasons for including these remediation works in Category 1
(o) remediation that will result in on-site containment of contaminated soil or contaminated groundwater, or both	It is desirable that the consent authority have oversight of the long-term management of the site, including monitoring of the on-site containment. By making on-site containment category 1 remediation work, the proponent can be required to justify the adoption of this method of remediation, being a less-preferred approach under the NEPM hierarchy.
(p) remediation works associated with infrastructure for the storage, handling or management of hazardous chemicals (including petroleum) on sites containing underground storage systems or above-ground storage tanks for hazardous chemicals (including petroleum)	Such remediation is complex, and requires specialist expertise. This would, in most cases, require consent in any event because of the scale of excavation involved.
Category 1 Remediation Works Provisions to be retained from SEPP 55	
(a) designated development, including development that would be designated development but for section 77A of the Act (which provides that designated development does not include State significant development)	
(b) likely to significantly affect threatened species (within the meaning of the <i>Biodiversity Conservation Act 2016</i>) or likely to significantly affect threatened species of fish or marine vegetation (within the meaning of Division 12 of Part 7A of the <i>Fisheries Management Act 1994</i>)	
(c) carried out on land located in an environmentally sensitive area within the meaning of the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008	
(d) carried out on land that is a wilderness area under the <i>Wilderness Act 1987</i>	
(e) carried out on land on which an item listed on the State Heritage Register under the <i>Heritage Act 1977</i> is located or land that comprises such an item (or subject to an interim heritage order under that Act)	
(f) carried out on land that is identified as an item of environmental heritage or heritage item by an environmental planning instrument or land on which such an item is located or within an area identified as a heritage conservation area by an environmental planning instrument	
(g) remediation work for which another State environmental planning policy requires development consent	

Part 3 – Policy and provision changes

Category 2 remediation work will continue to be defined as set out in the table below.

Category 2 Remediation Works	
Remediation work is Category 2 work if:	
(a)	it is remediation work that is not category 1 remediation work
(b)	<ul style="list-style-type: none"> (i) by the terms of a management order within the meaning of the CLM Act it is required to be commenced before the expiry of the usual period under that Act for lodgment of an appeal against the order, or (ii) may be carried out without consent under another State environmental planning policy, or (iii) is carried out by or on behalf of the Secretary of the Department of Industry on land contaminated by the use of a cattle dip under a program administered by that Department, or (iv) is carried out under the Public Land Remediation Program administered by the Broken Hill Environmental Lead Centre.

Certification of Category 2 Remediation works – Certified Practitioners

SEPP 55 requires a proponent to notify a council prior to commencement and after completion of category 2 remediation work. It is proposed that the new SEPP will retain the notification requirements and additionally will require them to be accompanied by a certification from a certified contaminated land consultant.

A certified contaminated land consultant may be a Site Contamination Practitioners Australia (SCPA) Certified Practitioner, an Environment Institute of Australia and New Zealand’s (EIANZ) Contaminated Land Assessment Specialist Certified Environmental Practitioner or a Soil Science Australia (SSA) Certified Professional Soil Scientist Contaminated Site Assessment and Management Practitioner.

The Pre-commencement notification must include a remediation proposal that demonstrates the certified contaminated land consultant has reviewed all the relevant data relating to site contamination, and is satisfied that it is sufficient to support the remediation method and to establish the appropriate remediation category.

The following information and material will need to be provided:

- property description and street address of the land on which remediation work is to be carried out

- locality map or plan that shows the location of the land
- site plan drawn to scale that clearly shows the area of contaminated land proposed to be remediated
- name and contact information of the person submitting the proposal and responsible for carrying out the remediation
- brief description of the nature and extent of the contamination that it is proposed to remediate
- remediation plan that includes a description of the remediation method, the procedures for treatment or disposal of materials generated during remediation, the validation sampling and analysis required to demonstrate that remediation has been successful, and backfill and/or reinstatement of the site required following remediation
- any assessments of site contamination (preliminary site investigation or detailed site investigation) that have been prepared
- date when remediation is expected to commence
- expected duration of remediation work.

The Post work notification statement will specify that the work has been completed in accordance with the remediation plan, whether the remediation has constrained the land, whether the land is suitable for the intended use, and any ongoing environmental management requirements.



Part 3 – Policy and provision changes

Local Policies

Councils may have policies that specify local requirements for the management of contaminated land. Clause 9(f) of SEPP 55 gives effect to those policies, requiring development consent for any remediation work that does not comply with them.

It is not mandatory for council to have a policy and this has resulted in an inconsistent approach to remediation work across the State.

This provision will not be replicated in the new SEPP and the reliance for determining the approval pathway for remediation work will be category 1 or 2 as outlined in the new SEPP. This will establish a consistent approach across the State and ensure that best practice is applied in all areas.

Standard Operational Requirements – Category 2 works

Standardised operational requirements will be introduced for category 2 remediation work to ensure that the remediation work will not have an adverse effect on the community and the environment and will be carried out in a consistent manner across the State.

These operational requirements relate to the:

- hours of operation
- soil management
- noise control
- dust control, including wheel wash (where applicable)
- odour
- tree protection.

Attachment D provides a comprehensive list of all the operational requirements that need to be met.

Discretion to consent authority

Clause 7 of SEPP 55 requires an applicant seeking to change the use of land to provide the consent authority with a preliminary investigation into whether the land concerned is contaminated in specified circumstances, such as where a potentially contaminating activity has been carried out. The new SEPP will allow the consent authority to waive this requirement where they have knowledge that allows them to be certain of the suitability of the land for the proposed use.

Strategic Planning

The current provision in SEPP 55 (clause 6) that sets out the matters to be considered by a planning authority when preparing an environmental planning instrument will be transferred to a section 117 direction to ensure consistency with the current legislative framework.

This direction will be supported by the revised Contaminated Land Planning Guidelines, which will provide guidance on contamination issues to be addressed at the rezoning stage.

Transitional provisions

Transitional provisions for the commencement of the new SEPP and repeal of SEPP 55 will be included.

The provisions will continue the operation of SEPP 55 for development applications already within the planning system (whether for category 1 remediation work or for other development to which clause 7 of SEPP 55 currently applies) and remediation work carried out without development consent, where notice of that proposed work has already been given to the local council at the time of commencement of the new SEPP.

Attachments



Attachment A - Planning Framework

The components of the planning system related to the draft Remediation of Land SEPP development are summarised in the Table 1 below.

Table 1

Land use planning instrument	Description
Environmental Planning and Assessment Act 1979	<p>The <i>Environmental Planning and Assessment Act 1979</i> (EP&A Act) is the legislative umbrella for land use planning in NSW. It provides for environmental planning instruments, which establish planning controls. The Act also provides for the determination of development applications and ensures the assessment of proposed development addresses appropriate matters.</p> <p>Sections 24 and 26 of the EP&A Act provide for the making of environmental planning instruments, including state environmental planning policies, and their contents.</p>
Regional plans and district plans	<p>Regional and district plans may be developed to identify future needs at a regional and district scale. These plans focus on strategic planning in the district or region, having regard to economic, social and environmental matters.</p> <p>All regional plans have been released and five draft district plans covering the Greater Sydney Region have been exhibited.</p>
Local environmental plans and development control plans	<p>Local environmental plans (LEPs) guide planning decisions for local government areas. They do this through zoning and development controls, which provide a framework for the way land can be used. LEPs are a key planning tool to shape the future of communities and ensure local development is undertaken appropriately.</p> <p>LEPs, and amendments to LEPs, begin with a planning proposal, usually prepared by the local council. Community consultation is essential to the process and the relevant planning authority, usually the local council, will review all submissions before a final LEP is made. The final LEP, made by the Minister for Planning or the Greater Sydney Commission is published on the NSW legislation website. Development control plans (DCPs) often provide additional guidance to give effect to the aims of a LEP and to facilitate development that is permissible under the LEP.</p>
Ministerial Directions	<p>The Minister may give a direction under section 117 of the EP&A Act to a public authority, including a council, in relation to the preparation of planning proposals.</p> <p>A council must comply with a direction given by the Minister.</p>

Attachment B – Proposed changes to the existing clauses in SEPP 55

Summary

Table 2 is a clause by clause analysis of SEPP 55 that details the changes proposed to each clause. The final changes and contents of the new SEPP will be decided following the consideration of comments and submissions received in response to this EIE and during the drafting process.

Table 2

SEPP 55 clause	New SEPP clause
<p>Clauses 1 to 5: Formal clauses relating to the application and interpretation of the policy.</p>	<p>These clauses will be updated and incorporated into the new SEPP.</p>
<p>Clause 6: Contamination and remediation to be considered in zoning or rezoning proposal</p> <p>This clause sets out matters to be considered by a “planning authority” when preparing an environmental planning instrument</p>	<p>This clause will not be continued in the new SEPP as it is not consistent with current legislative drafting practices.</p> <p>The effect of this clause will instead be achieved by a section 117 direction. The direction will be supported by the revised Contaminated Land Planning Guidelines, which will provide guidance on contamination issues to be addressed during rezoning processes.</p>
<p>Clause 7: Contamination and remediation to be considered in determining development application</p>	<p>The substance of clause 7 will be incorporated into the new SEPP, together with the list of potentially contaminating activities currently contained in the Managing Land Contamination: Planning Guidelines. Similarly, the purpose of a “preliminary site investigation” and “detailed site investigation” will be set out in the SEPP (rather than left to the Guidelines) and will be updated to reflect the processes in the ASC NEPM.</p> <p>A new provision will be introduced to give a consent authority a discretion not to require a report of an investigation if it knows that the land is not contaminated or is otherwise suitable for the proposed use. The consent authority must have sufficient evidence or information about the status of the land to properly exercise this discretion.</p>
<p>Clause 8: Remediation work permissible</p> <p>This clause makes remediation work permissible across NSW, despite anything to the contrary in another EPI.</p>	<p>This clause will be continued in the new SEPP.</p>
<p>Clause 9: Category 1 remediation work: work needing consent</p>	<p>The types of remediation work that will be classified as category 1 are proposed to be set out in a schedule in the new SEPP. As outlined above, it is proposed to make additional types of remediation work category 1.</p>

Attachment B – Proposed changes to the existing clauses in SEPP 55

SEPP 55 clause	New SEPP clause
<p>Clause 10: Consent authority in relation to remediation work</p>	<p>This clause will be continued, but amended to reflect the repeal of the <i>Western Lands Act 1901</i> and the abolition of the office of Western Lands Commissioner (upon the repeal of the <i>Crown Lands Act 1989</i>).</p>
<p>Clause 12: Refusal of consent to category 1 remediation work</p> <p>Clause 12 currently precludes a consent authority from refusing consent to category 1 remediation work unless satisfied that there would be a more significant risk of harm to human health or the environment from the carrying out of the work than there would be from the use of the land (without the work) for any lawful purpose.</p>	<p>This clause will be recast to provide that a consent authority must consider, when determining a development application for category 1 remediation work, whether the use of the land in an un-remediated state, for an existing lawful purpose would result in a greater risk of harm to human health or the environment than would result from the carrying out of the remediation work.</p>
<p>Clause 13: Advertising of development application</p>	<p>The requirement for advertising a DA for category 1 remediation work will be retained, but may be transferred to the EP&A Regulation.</p> <p>Note. This is subject to proposed changes to public exhibition requirements in the <i>Environmental Planning and Assessment Amendment Bill 2017</i>.</p>
<p>Clause 14: Category 2 remediation work: work not needing consent</p>	<p>Category 2 remediation work will be any remediation that is not category 1. The additional types of category 2 remediation work, currently set out in clause 14 (b), will also be retained. These include, for example, remediation work that, because of the terms of a management order under the CLM Act, must be commenced before the expiry of the usual period for appealing the order.</p> <p>The reference to remediation under a program recommended by the Board of Tick Control (existing clause 14 (b) (iii)) will be updated, as the Board has been abolished. Instead, reference will be made to remediation work carried out by or on behalf of the Secretary of the Department of Industry on land contaminated by the use of a cattle dip.</p>
<p>Clause 15: Remediation work that is ancillary to other development (such as designated development)</p>	<p>This clause deals with remediation work carried out in conjunction with other development. It will be substantially retained, but updated to reflect legislative changes. It will also deal with circumstances where category 1 remediation work is undertaken for the purpose of development that may be carried out without consent.</p>
<p>Clause 16: Prior notice of category 2 remediation work</p>	<p>This clause will be continued with significant amendment to reflect the new role of certified contaminated land consultants.</p>

Attachment B – Proposed changes to the existing clauses in SEPP 55

SEPP 55 clause	New SEPP clause
Insert a new Clause: To deal with plans of remediation	The clause will specify matters to be addressed in a plan of remediation. These requirements are currently contained in the Managing Land Contamination: Planning Guidelines and the guidelines under the CLM Act.
Clause 17: Guidelines and notices: all remediation work	The clause will be substantially continued and expanded to require a copy of any environmental management plan to be supplied to the consent authority.
Clause 18: Notice of completion of remediation work	This clause will be continued in the new SEPP.
Clause 19: Relationship to other environmental planning instruments	This clause will be continued but updated.
Clause 19A: Application of SEPP to certain development at Barangaroo subject to specified Part 3A approvals	This clause is no longer required and will not be continued in the new SEPP.
Clause 20: Transitional provisions	New transitional provisions will ensure that remediation work that is underway or for which notice has been given to the council when the new SEPP commences is not affected. Any development application that was lodged, but not determined, when the new SEPP commences will be determined as if the SEPP had not commenced.
Clause 21: Clean-up notice remediation—special provision This clause allows development to be carried out without consent if it is for the purpose of complying with a clean-up notice specified in Schedule 1 to the SEPP. The only clean up notice specified relates to Orica Australia Pty Ltd issued in 2003.	This clause and the associated Schedule will be updated to reflect the revocation of the clean-up notice to Orica and its replacement by an approved voluntary management proposal.
Schedule 1 Specified clean-up notices	See above

Attachment C – Potentially contaminating activities

It is proposed to introduce a new Schedule or table into the new SEPP that lists potentially contaminating activities (currently set out in the Guidelines) as follows:

Insert a new Schedule or table	Development for the purposes of any of the following:
	<ul style="list-style-type: none"> • acid or alkali manufacture, formulation and use • agriculture or horticulture • airports • asbestos production or disposal • chemicals manufacture and formulation • defence works • drum re-conditioning works • dry cleaning establishments • electrical manufacturing (transformers) • electroplating and heat treatment premises • engine works • explosives industry • firefighting training and use of firefighting foam • gas works • iron and steel works • landfill sites • metal treatment • mining or extractive industries • oil production or storage • paint manufacture and formulation • pesticide manufacture and formulation • power stations • railway yards • scrap yards • service stations • sheep or cattle dips • smelting and refining • tanning or associated trades • waste storage or treatment • wood preservation

Attachment D – Operational Requirements for Category 2 remediation

Key Principles

Understanding the objectives of remediation

A remediation plan must include a written statement of the objectives of the proposed remediation, and be provided to everyone involved in the project.

Management of remediation work

Remediation work must be managed to protect the safety of site personnel and members of the public and prevent damage to the environment. Remediation work must be carried out in a manner that minimises inconvenience to, and disturbance of, neighbours and other users of the area surrounding the site.

Operational requirements

Site Preparation and Establishment

Protection of adjoining areas and the public

A temporary hoarding or temporary construction site fence must be erected between the remediation site and adjoining land before the works commence and must be kept in place until after completion of the work.

Site Access, Signage and Contact Information

Access is to be restricted solely to authorised staff and contractors who have appropriate site safety induction and any personal protective equipment required for the remediation work. The site supervisor must control site access and induct authorised visitors on an 'as needed' basis.

Signage, explaining the purpose of the work and displaying site manager, contractor and consultant details and contact numbers, must be erected near the entry to the remediation area. The signage must remain displayed throughout the duration of the works.

Vehicle Exit Points

Vehicle entry and exit points must be stabilised with suitable aggregate to prevent erosion and tracking of sediment onto roads and footpaths. An appropriate system such as a wheel-wash

and shakers must be installed at the exit point to prevent the tracking of soil and other materials onto public roads.

Tree protection measures

Appropriate measures must be adopted to safeguard trees and generally protect vegetation during remediation.

Where it is proposed to undertake works within the canopy drip line of a protected tree (being a tree that requires a permit or development consent for pruning or removal), then the advice of an arborist must be sought on suitable protection measures and those measures must be implemented.

Services within Remediation Area

Any drains, sewers or water services must be disconnected and sealed at the boundary of the remediation area by a licensed plumber, in accordance with the requirements of the relevant authority.

Site and Works Management during Remediation

Hours of Operation

Works must only be undertaken during the following times:

- Monday – Friday: 7am - 6pm
- Saturday: 8am - 1pm
- No work permitted on Sundays or Public Holidays.

Vehicles

All vehicles entering or leaving the site must have their loads covered.

Before leaving the site, all vehicles must pass through the site's vehicle cleaning facility (e.g. a wheel-wash) and be cleaned of soil, sand and other materials, to avoid tracking these materials (whether contaminated or not) onto public roads.

Any materials, such as soil, mud or earth, tracked onto the roadway, must be removed by means such as sweeping and shovelling, but not washing.

Attachment D – Operational Requirements for Category 2 remediation

Earthworks, retaining walls and structural support

Any excavation must be carried out in accordance with Excavation Work: Code of Practice (SafeWork NSW 2015), or subsequent revisions of that code.

Any excavation left open overnight or when the site is unattended must be individually fenced with barrier mesh.

Management of on-site water

Water must not be allowed to accumulate in any excavation, but must be removed by pumping. Excavation pump-out water must be transported to an appropriately licensed facility for disposal, or discharged to a sewer under a trade waste agreement.

Run-off and erosion controls

Sediment control structures as described above must be maintained throughout remediation work to prevent run-off of any potentially contaminated water or soil to the surrounding environment.

Dust Control

- Work must be programmed to minimise any exposed soil surface at any time.
- Work must be delayed or limited during periods of high wind to prevent materials becoming airborne.
- Dust generation must be controlled by water spraying, particularly on haulage roads and high volume non-tarmac areas.
- Shade cloth must be placed on perimeter fences and fence extensions of immediate works zones.
- Operators must monitor the dust conditions within the site along the site boundary during work likely to generate dust to ensure on-site work is not causing off-site impacts.

Stockpile Management

- Stockpiles of potentially contaminated soil should be placed on hardstand or otherwise on polyethylene sheeting.
- Stockpiles must be bunded to prevent runoff of potentially contaminated soil.

- Stockpiles must be stabilised by compacting and contouring to control wind exposure and allow access for the water truck.
- Stockpiles should not exceed the height of the fencing in order to reduce dust and odours spreading to the surrounding environment.
- Stockpiles should be clearly labelled with a unique identification number and a record of the volume and origin of soil to enabling tracking of soils from excavation to final disposal or re-use on site.

Noise and Vibration Control

Remediation works must be carried out in such a way as to minimise disturbance to neighbours and other members of the public. In any event, noise levels are to be maintained below the maximum levels specified in Australian Standard AS 2436 - Guide to noise and vibration control on construction, demolition and maintenance sites, Protection of the *Environment Operations (Noise Control) Regulation 2017* and the EPA's Interim Construction Noise Guideline 2009.

Waste Management

Any soil or other solid material excavated during remediation that is not suitable for re-use on site, or is surplus to site requirements, must be removed from the site as waste. Prior to removal from the site, waste must be classified in accordance with the Waste Classification Guidelines (EPA 2014).

Removal of Underground Storage Tanks

The removal of USTs is to be undertaken in accordance with the requirements of SafeWork NSW, as set out in the Code of Practice - Demolition Work (September 2016) and the Excavation Work Code of Practice (July 2015).

Tank removal is to be conducted in accordance with Australian Standard AS 4976-2008: The removal and disposal of underground petroleum storage tanks.

Any contained fluids are to be removed from the tank, and the tank is to be degassed, prior to removal from the ground.

Attachment D – Operational Requirements for Category 2 remediation

Note. *Protection of the Environment Operations (Underground Petroleum Storage Systems) Regulation 2014* requires a report to be prepared following decommissioning of underground petroleum storage systems.

Unexpected Finds

Where unexpected contamination is discovered during work, all work in that area must stop and a certified contaminated land consultant advised of the find. Work may only re-commence after the certified contaminated land consultant has assessed the land and determined if it requires remediation and if so, how that should be undertaken.

Importation of Fill

Material imported for use as backfill must be:

- VENM (virgin excavated natural material) classified as such in accordance with the Waste Classification Guidelines, Part 1: Classifying Waste (EPA 2014), or
- ENM (excavated natural material) meeting the requirements of the Excavated Natural Material Exemption 2014, and
- compatible with the existing soil characteristics of the site.

Validation

Site Clearance

Following completion and validation of remediation, the remediation site must be cleared of all remediation equipment and materials, and all waste. The site surface should be reinstated to a condition compatible with the proposed end use of the site, and if necessary stabilised in that condition so that it is not subject to damage by erosion.

Reporting and Notification of Completion

At the completion of remediation work, a validation report must be prepared, or reviewed and approved, by a certified contaminated land consultant. The front cover of the validation report is to include the details of the consultant's certification including the logo or seal of the body through which they are accredited.

Archaeology discovered during excavation

If any object of interest due to its age or association with the past is uncovered during the course of the work:

- (a) all work must stop immediately in that area, and
- (b) the Office of Environment and Heritage must be advised of the discovery.

Note. Depending on the significance of the object uncovered, an archaeological assessment and excavation permit under the *Heritage Act 1977* may be required before further work can continue.

Aboriginal objects discovered during excavation

If an Aboriginal object (including evidence of habitation or remains) is discovered during the course of the work:

- (a) all excavation or disturbance of the area must stop immediately, and
- (b) the person making the discovery must advise the Chief Executive (within the meaning of the *National Parks and Wildlife Act 1974*) of the discovery in accordance with section 89A of that Act.

Note. If an Aboriginal object is discovered, an Aboriginal heritage impact permit may be required under the *National Parks and Wildlife Act 1974*.

Attachment E – Summary of Contaminated Land Planning Guidelines

The Managing Land Contamination: Planning Guidelines (1998) have been updated to reflect legislative changes and new Commonwealth and State government policies as well as the changes proposed to be made by the new SEPP.

These guidelines will be known as the Contaminated Land Planning Guidelines and are currently on exhibition in line with the requirements of section 145C of the EP&A Act.

The key changes proposed to these Guidelines are summarised below.

Guideline structure and content

In comparison with the 1998 Guidelines, the structure has been streamlined and the content significantly updated. The draft Guidelines cover the following topics:

- identifying and evaluating contamination issues, assessing rezoning and development proposals, control of remediation and post-remediation management
- recording and managing contamination and remediation information for future reference, including decisions to prevent future contamination and harm, although the primary emphasis in the Guidelines is on dealing with existing contamination within the planning framework
- appendices providing supplementary information, including guidance on:
 - identifying potentially contaminating past activities, industries and associated chemicals
 - initial evaluation of contamination checklist
 - planning for different types of remediation work
 - conditions of consent for remediation work.

Evaluation and investigation of possible contamination

Section 3 dealing with Investigation, Assessment and Management of Contaminated Land sets out the matters a planning authority should consider at each stage of the investigation and assessment process.

Section 3 of the draft Guidelines describes the progress of the assessment of site contamination through preliminary and detailed site investigations. This section has been amended in line with the National Environment Protection (Assessment of Site Contamination) Measure) 1999 (April 2013) (ASC NEPM) which is now the core technical

reference document for the assessment of contaminated land in Australia and also State requirements (principally guidelines made or approved by the EPA under the CLM Act).

Section 4 explains the procedures a planning authority should follow when considering contamination in the development assessment and rezoning process. A new checklist for undertaking the initial evaluation has also been included.

The use of suitably qualified and experienced consultants

The new SEPP does not require an audit at any stage of the investigation and remediation process. Many councils require proponents to provide the results of site audits, due to a lack of in-house expertise to assess technical reports on contamination and remediation.

The draft Guidelines place greater emphasis on the use of suitably qualified and experienced consultants and clarify the circumstances in which a formal review is desirable. It also notes that the Environment Protection Authority recognises a number of schemes for certifying contaminated land consultants.

Clarification of the role of Principal Certifying Authorities

The draft Guidelines describe more comprehensively the role of councils and principal certifying authorities when dealing with contaminated land and the site audits.

Section 149 certificates to record information on contaminated land

The draft Guidelines emphasise the importance of accurate information being recorded in section 149 certificates.

The draft Guidelines confirm that section 149 (2) should not be used to indicate that the use of land is restricted due to contamination where:

- land was previously used for a purpose which caused contamination but has been remediated to an extent that no restriction on development for a purpose permissible within the relevant land use zone is now necessary, or
- there is no evidence to suggest that a potentially contaminating activity may have been carried out on the land.

Attachment E – Summary of Contaminated Land Planning Guidelines

Contamination of adjacent land

The draft Guidelines have been updated to address the issue of possible contamination on land near the site of a proposed development where contamination on the near-by land is suspected, but may not have been formally investigated.

Category 1 and 2 Remediation

The guidelines set out the processes for category 1 and 2 remediation work and identify the steps the proposed remediation would be required to follow.

Changes to appendices

A new appendix presents a checklist for the initial evaluation of possible contamination risk. The checklist sets out how to consider previous evidence of contamination, previous investigation and past remediation.

Another appendix to the Guidelines lists activities that may cause contamination (these will also be reproduced in the new SEPP). It is accompanied by a list of the chemicals associated with these activities to assist the evaluation process.

