



CONTAMINATED LAND MANAGEMENT POLICY

IMPORTANT NOTE

This policy has been prepared in accordance with the provisions of the Environmental Planning and Assessment Act 1979.

This policy was adopted by a resolution of Council on **14 December 2005** and came into force on **14 December 2005**.

This policy has been developed as a guide to the areas where further investigation may be required before any redevelopment takes place. Council also advises that there may be land uses unknown to council that are not mapped and that an enquirer should also conduct their own investigations.

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GLOSSARY

Category 1 Remediation Work under SEPP 55

Remediation work that needs development consent.

Category 2 Remediation Work

Remediation work that does not need development consent under SEPP 55.

Contaminated Land

land in, on or under which any substance is present at a concentration above that naturally present in, on or under the land and that poses, or is likely to pose, an immediate or long-term risk to human health or the environment.

Contamination

concentration of substances above that naturally present that poses, or is likely to pose, an immediate or long-term risk to human health or the environment.

Detailed Investigation

an investigation to define the extent and degree of contamination, to assess potential risk posed by contaminants to health and the environment, and to obtain sufficient information for the development of a remedial action plan if required.

Preliminary Investigation

an investigation to identify any past or present potentially contaminating activities and to provide a preliminary assessment of any site contamination.

Remedial Action Plan

a plan which sets remediation goals and documents the process to remediate a site.

Remediation Order

a direction from the EPA under the Contaminated Land Management Act to remediate.

Remediation Work

a work means a work in, on or under contaminated land, being a work that: (a) removes the cause of the contamination of the land, or (b) disperses, destroys, reduces, mitigates

or contains the contamination of the land, or (c) eliminates or reduces any hazard arising from the contamination of the land (including by preventing the entry of persons or animals on that land).

SEPP

State Environmental Planning Policy 55 – Remediation of Land (unless otherwise stated).

Site Audit

an independent review by a site auditor of any or all stages of the site investigation process conducted in accordance with the Contaminated Land Management Act.

Site Auditor

a person accredited by the EPA under the Contaminated Land Management Act to conduct site audits.

Site Audit Statement

a certificate issued by a site auditor stating for what use the land is suitable.

Site History

a land use history of a site which identifies activities or land uses which may have contaminated the site, establishes the geographical location of particular processes within the site, and determines the approximate time periods over which these activities took place.

Site Investigation Process

the process of investigating land which may be, or is, contaminated, for the purpose of providing information to a planning authority.

1. INTRODUCTION

Land contamination is most often the result of past uses. It can arise from activities that took place on or adjacent to a site and be the result of improper chemical handling or disposal practices, or accidental spillages or leakages of chemicals during manufacturing or storage. Activities not directly related to the site may also cause contamination; for example, from diffuse sources such as polluted groundwater migrating under a site or dust settling out from industrial emissions.

When carrying out planning functions under the EP&A Act, a planning authority must consider the possibility that a previous land use has caused contamination of the site as well as the potential risk to health or the environment from that contamination. Decisions must then be made as to whether the land should be remediated, or its use of the land restricted, in order to reduce the risk.

Failure to consider the possibility of contamination at appropriate stages of the planning decision process may result in:

- inappropriate land use decisions
- increased risk to human health
- detrimental effects on the biophysical environment
- impacts on the safety of existing and new structures
- delay in realising developments
- substantial fall in the land value and the passing on of unanticipated
- development costs to other parties.

1.1 PURPOSE

In some situations, the use of land can result in its contamination by chemicals, posing a risk to human health or the environment and precluding later development of a site for particular uses. The purpose of this Policy is to establish ‘best practice’ for managing land contamination through the planning and development control process.

1.2 KEY PRINCIPLES

The planning and development control process as provided for in the *Environmental Planning and Assessment Act 1979* (EP&A Act) plays an important role in the management of land contamination. The integration of land contamination management into the local planning and development control process will enable Council to:

- consider the likelihood of land contamination as early as possible in the planning and development control process

- link decisions about the development of land with the information available about contamination possibilities
- adopt a policy approach that will provide strategic and statutory planning options based on the information about contamination
- exercise statutory planning functions with a reasonable standard of care.

1.3 WHERE DOES THIS POLICY APPLY?

This policy applies to all land within the Gloucester Local Government Area.

1.4 STATUTORY FRAMEWORK

This policy has been developed from the State Environmental Planning Policy No. 55—Remediation of Land (SEPP 55) and in conjunction with the *Contaminated Land Management Act 1997* (CLM Act) and the Gloucester Local Environment Plan 2000.

2.0 STATUTORY REQUIREMENTS

2.1 INITIAL EVALUATION BY THE PLANNING AUTHORITY

An initial evaluation is essential to determine whether contamination is an issue and whether sufficient information is available to carry out a planning function in good faith. The purpose of the initial evaluation is for the planning authority, before a planning function is exercised, to determine whether land contamination is relevant to the decision being made and whether further information is required from the proponent.

The initial evaluation can be based on **readily available factual information** and should be carried out **regardless of the nature of the proposed use or the current use**. Readily available information may include: current zoning and permissible uses, records from previous rezonings, development applications and building applications for the site, property files, information provided by the proponent such as a development application or rezoning request or an investigation, and the knowledge of council staff.

Council has a contaminated land register, for the initial evaluation, which should be regularly updated to identify potentially contaminated land and activities (Table 1).

Table 1. Some Activities that may Cause Contamination

- acid/alkali plant and formulation
- agricultural/horticultural activities
- airports
- asbestos production and 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
- gas works
- iron and steel works
- landfill sites
- metal treatment
- mining and extractive industries
- oil production and storage
- paint formulation and manufacture
- pesticide manufacture and formulation
- power stations
- railway yards
- scrap yards
- service stations
- sheep and cattle dips
- smelting and refining
- tanning and associated trades
- waste storage and treatment
- wood preservation

Source: ANZECC & NHMRC 1992 *The Australian and New Zealand Guidelines for the Assessment and Management of Contaminated Sites*. For information on chemicals commonly associated with these activities see Appendix A.

Note: It is not sufficient to rely solely on the contents of this Table to determine whether a site is likely to be contaminated or not. The Table is a guide only. A conclusive status can only be determined after a review of the site history and, if necessary, sampling and analysis.

2.2 IS THE INFORMATION SUFFICIENT TO CONSIDER OPTIONS AND MAKE PLANNING DECISIONS?

2.2.1 INSTANCES WHERE NO FURTHER INFORMATION IS REQUIRED

If, after carrying out an initial evaluation, none of the enquiries suggest that the land might be contaminated or that further enquiry is warranted, the planning process should proceed in the normal way.

2.2.2 INSTANCES WHERE FURTHER INFORMATION IS REQUIRED

After carrying out an initial evaluation, if there are indications that contamination is, or may be, present and the planning authority has insufficient information on which to make a planning decision, the proponent should be asked to provide further information.

A planning authority may need to seek further information when:

- the subject site or land in the vicinity is, or may be, associated with activities listed in Table 1 but it is not known whether contamination exists
- the land was, or is, regulated by the EPA or other regulatory authority in relation to land contamination, and there is insufficient information available about the nature and extent of contamination
- the land has been investigated or remediated but there is insufficient information available about the nature and extent of contamination, or the circumstances have changed
- there are restrictions on, or conditions attached to, the use of the site by regulatory or planning authorities that are, or may be, related to contamination, but there is insufficient information available about the nature and extent of contamination
- council records have demonstrated that the land is associated with complaints about pollution or illegal dumping of wastes but it is not known whether contamination exists
- a use such as residential, educational, recreational, hospital or childcare is proposed on the land and records on the site history are unclear about whether the land has been used in the past for a purpose listed in Table 1.

A site history may be 'unclear' if there are significant gaps in historical information, or land uses are not described in sufficient detail to identify the presence or absence of uses listed in Table 1 during periods in which such uses were permissible under the zoning.

2.3 INFORMATION TO BE PROVIDED BY THE PROPONENT

If contamination is, or may be, present the proponent must investigate the site and provide the planning authority with the information it needs to carry out its planning functions. The appropriate level of investigation will depend on the circumstances and may involve one or more of the stages described below in the *site investigation process*.

2.3.1 A SUMMARY OF THE SITE INVESTIGATION PROCESS

Stage 1—Preliminary Investigation. The main objectives of a preliminary investigation are to identify any past or present potentially contaminating activities, provide a preliminary assessment of any site contamination and, if required, provide a basis for a more detailed investigation. A preliminary investigation is not necessary where contamination is not an issue.

Stage 2—Detailed Investigation. A detailed investigation is only necessary when a preliminary investigation indicates that the land is contaminated or that it is, or was, formally used for an activity listed in Table 1 and a land use change is proposed that has the potential to increase the risk of exposure to contamination. A detailed investigation will also need to be conducted as part of a remediation proposal. The objectives of a detailed investigation are to define the nature, extent and degree of contamination; to assess potential risk posed by contaminants to health and the environment; and to obtain sufficient information to develop a remedial action plan (RAP), if required.

Stage 3—Remedial Action Plan. The objective of an RAP, or plan of remediation, is to set objectives and document the process to remediate the site.

Stage 4—Validation and Monitoring. The objective of validation and monitoring is to demonstrate whether the objectives stated in the RAP and any conditions of development consent have been achieved. SEPP 55 requires a notice of completion for all remediation work. Validation is an important prerequisite of this notice.

It should be emphasised that not every site will require all four stages of investigation. An investigation may proceed directly to Stage 2 for example, if it is clear early on that the land has been used for an activity listed in Table 1 and the proposed change of use would increase the risk from contamination.

Proponents may also choose not to proceed with the proposal and terminate the site investigation process at any stage. If a proponent decides to proceed with the proposal and provide the necessary information for consideration by the planning authority, they should engage suitably qualified contaminated land professionals who are experienced in contaminated site assessment and management.

2.4 EVALUATION OF THE INFORMATION PROVIDED BY THE PROPONENT

The EP&A Act and SEPP 55 require a planning authority to consider the suitability of land for a proposed development. Ultimately, a planning authority needs to be satisfied that a site is suitable for its proposed use or can and will be made suitable, based on what they know of the site. This will involve an evaluation or review of the information submitted by the proponent.

In some cases, the planning authority will have the technical expertise to conduct the appropriate evaluation internally. In other cases, it will be necessary for an independent expert to assist in the evaluation. In the 1995 Guidelines this was referred to as an *independent review*. An independent review is carried out by a third party such as another consultant who is qualified to deal with the type of land contamination in question and who is independent of both the proponent and the proponent's consultant.

2.5 WHAT IS A SITE AUDIT?

A *site audit* is an independent review of any or all stages of the site investigation process, conducted in accordance with the CLM Act. A site audit may review a preliminary investigation, a detailed investigation, a remedial action plan, or a validation report.

A site audit will lead to the provision of a certificate called a *site audit statement*, stating for what use the land is suitable. Only site auditors accredited by the EPA can issue site audit statements.

They are environmental professionals with demonstrated expertise and broad experience in the assessment and remediation of contaminated sites and have a good understanding of relevant NSW legislation, regulations and guidelines.

Site auditors can assist a planning authority by commenting on or verifying information provided by a proponent in relation to site assessment, remediation or validation—such as whether they have adhered to relevant standards, procedures and guidelines. Engaging a site auditor can also provide greater certainty about the information on which the planning authority is basing its decision, particularly where sensitive uses are proposed on land that may be contaminated and a statement about the suitability of the site is required.

2.6 WHEN IS A SITE AUDIT NECESSARY?

As a general principle, a site audit is only necessary when the planning authority:

- believes on reasonable grounds that the information provided by the proponent is incorrect or incomplete
- wishes to verify the information provided by the proponent adheres to appropriate standards, procedures and guidelines
- does not have the internal resources to conduct its own technical review.

If a planning authority considers that it needs a site audit in order to make its planning decision, the cost should be borne by the proponent and not the planning authority.

3. MAKING THE DECISION

3.1 REZONING DECISIONS

SEPP 55 requires consideration of contamination issues when rezoning land. If a rezoning allows a change of use that may increase the risk to health or the environment from contamination, then the planning authority must be satisfied that the land is suitable for the proposed use or can be remediated to make it suitable.

It must be emphasised that the level of investigation must be appropriate to the potential risk from contamination. An investigation is not necessary at the rezoning stage if there is no reason to suspect contamination.

3.2 SPOT REZONINGS

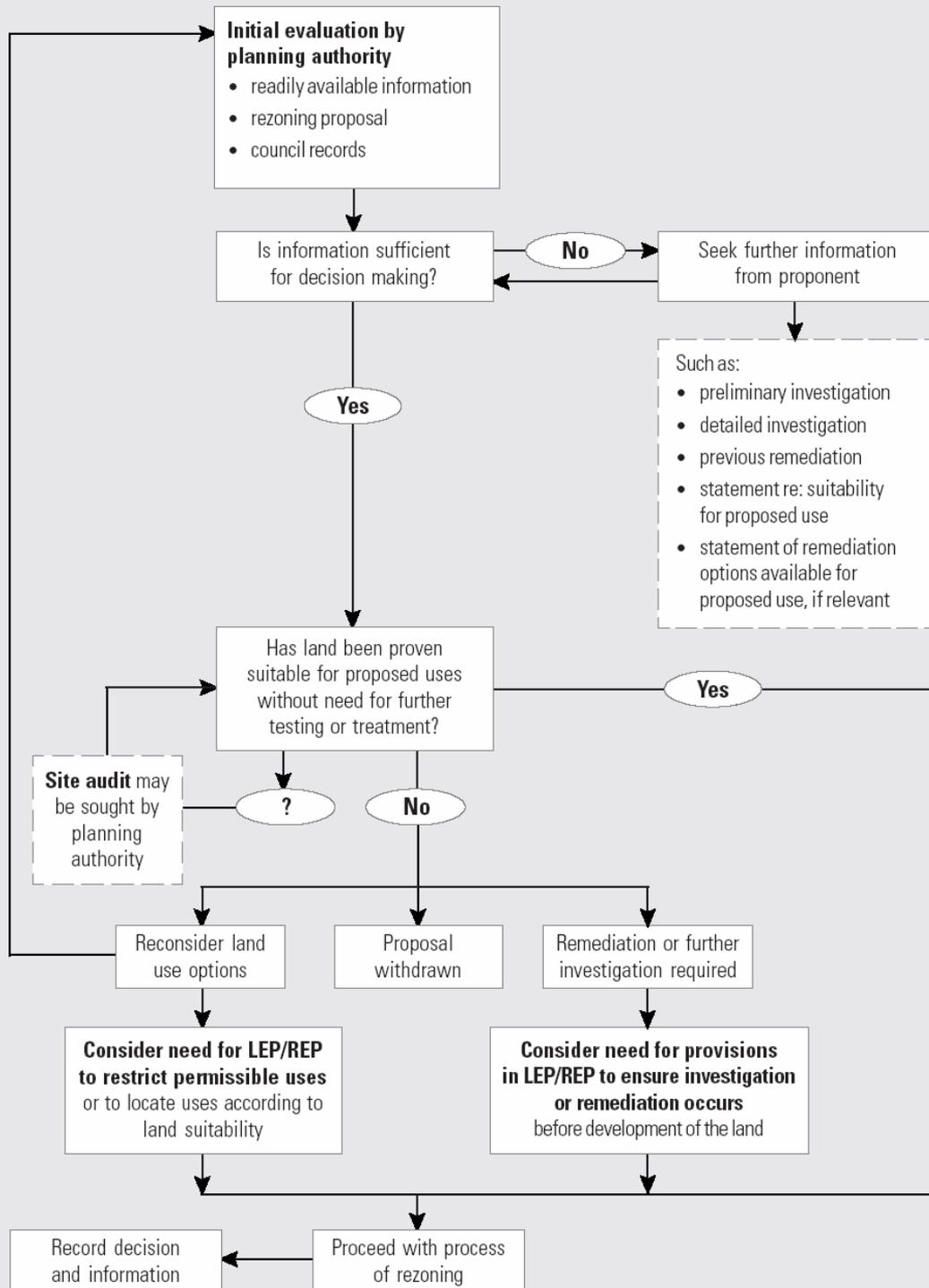
When a spot rezoning is requested there is usually a specific development or land use associated with the proposal. In such cases it would not be appropriate to proceed with the rezoning unless the land was proven suitable for that development or it could be demonstrated that the land can, and will be, remediated to make the land suitable.

The rezoning should be treated like a development application in considering contamination issues. It may even be necessary for a *detailed investigation* to be carried out at the rezoning stage.

3.3 GENERALISED REZONINGS

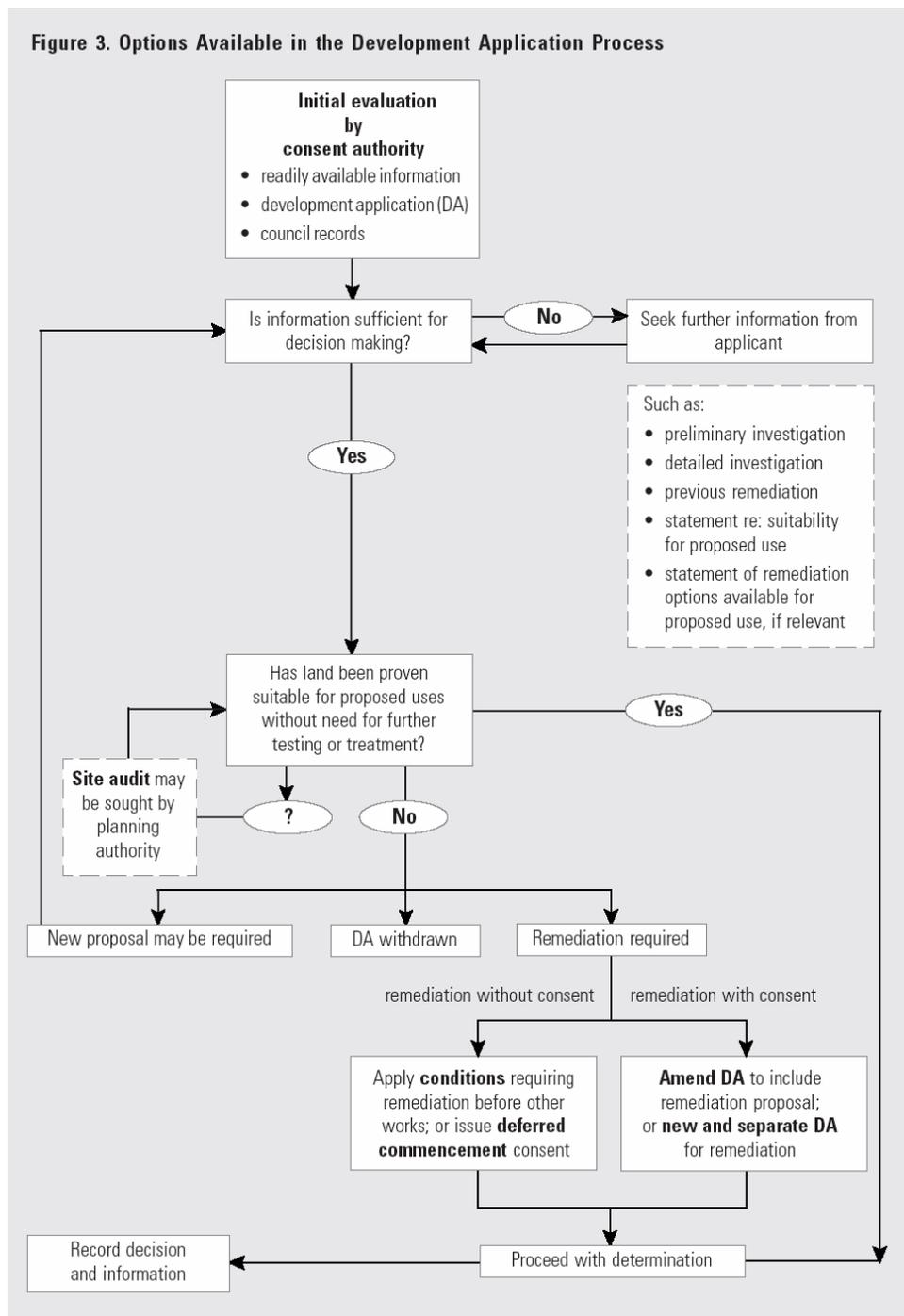
Rezoning that cover a large area, for example, more than one property, usually describe proposed land uses very generally both in type and location. This makes it difficult for a planning authority to be satisfied that every part of the land is suitable for the proposed use(s) in terms of contamination at the rezoning stage. In these cases, the rezoning should be allowed to proceed, provided measures are in place to ensure that the potential for contamination and the suitability of the land for any proposed use are assessed once detailed proposals are made. However, if the rezoning includes the identification of locations for sensitive uses, such as childcare centres, then it may be appropriate to determine the suitability of the land in those locations at the rezoning stage.

Figure 2. Options Available in the Rezoning Process where the Specific End Use is Known



4.0 DEVELOPMENT APPLICATIONS

When assessing DAs, the EP&A Act requires consent authorities to consider certain matters. From 1 July 1998, s. 90(1) of the Act was replaced by s. 79C(1), which requires consent authorities to consider ‘...the suitability of the site for the development.’ The risk to health and the environment from contamination must be included in this assessment.



4.1 CONTROL OF REMEDIATION WORK

Remediation is generally considered beneficial as it improves the quality of the environment, reduces health risks and restores land to productive use. However, in some situations remediation work itself has the potential for environmental impact and the planning process must ensure that these impacts are adequately identified and mitigated.

SEPP No. 55—Remediation of Land provides consistent state wide planning and development controls for the remediation of contaminated land.

In summary, the SEPP ensures that:

- land use changes do not occur until planning authorities consider whether the land is contaminated and whether it needs to be remediated to make it suitable for the proposed use
- remediation of contaminated land is permissible throughout the State
- remediation requires consent only where it has the potential for significant environmental impacts or does not comply with a council's policy for contaminated land
- most remediation proposals which require consent are advertised for public comment
- all remediation is carried out in accordance with appropriate standards and guidelines
- applications for remediation are not refused without substantial justification
- councils are notified at commencement and completion of remediation.

4.1.1 WHEN IS CONSENT REQUIRED FOR REMEDIATION?

Development consent is generally only required for remediation work where there is potential for significant environmental impacts from the work.

Remediation work which requires development consent is known as category 1 work. Category 1 refers to work:

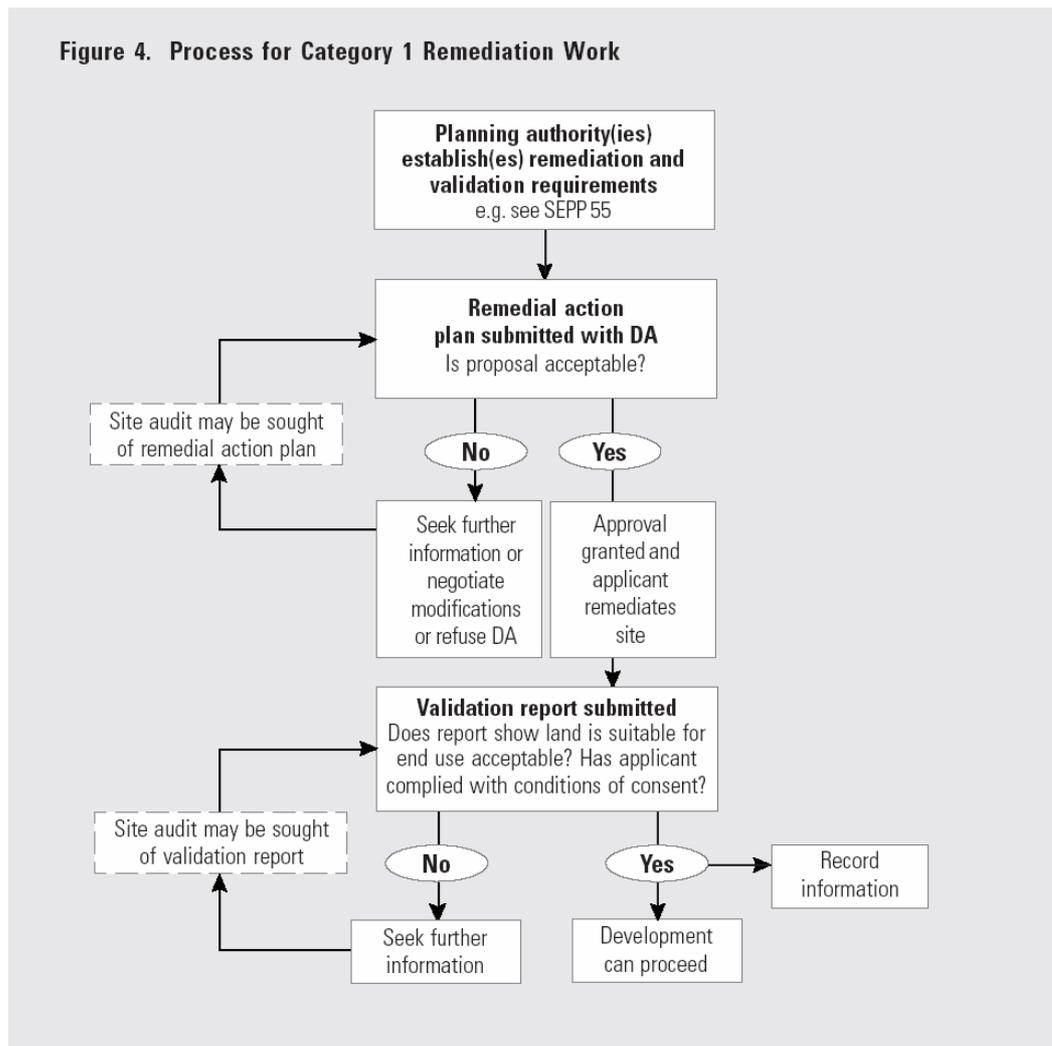
- which is designated development under Schedule 3 of the EP&A Regulation or under a planning instrument
- proposed on land identified as critical habitat under the *Threatened Species Conservation Act 1995*
- where consideration of s. 5A of the EP&A Act indicates the remediation work is likely to have a significant effect on threatened species, populations, ecological communities or their habitats
- proposed in an area or zone identified in a planning instrument as being an area of environmental significance such as scenic areas, wetlands. These are listed in the SEPP
- which requires consent under another SEPP or a regional environmental plan.

All other remediation work may be carried out without development consent and is known as category 2 work. However, if the work is proposed to be carried out in a manner which is inconsistent with a council's policy on contaminated land (made in accordance with these Guidelines), then the work becomes category 1 and needs development consent.

SEPP 55 requires that local councils be notified 30 days before category 2 remediation works commence. This notification will provide councils with the information needed to verify that the work is not category 1 by reference to the criteria summarised above.

If councils consider that the work needs consent under the SEPP, s. 76 of the EP&A Act provides councils with the power to prevent the work from proceeding. The 30-day limit does not prevent council intervention after that time for a breach of the Act or non-compliance with the SEPP.

4.1.2 PROCESS FOR CATEGORY 1 REMEDIATION WORK



4.1.3 WHEN IS A REMEDIAL ACTION PLAN REQUIRED?

Ideally, a remedial action plan (RAP) should be prepared for all remediation proposals, as a guide to the objectives of the remediation and to assist in the planning of work. However, an RAP is a mandatory requirement only for category 1 remediation work. For this work the RAP must be submitted to the consent authority with a development application for approval.

An RAP must be prepared by an appropriately qualified consultant in accordance with the EPA's guidelines.

4.1.4 MAINTAINING A RECORD OF REMEDIATION WORK

An important category of land use information that should be maintained is information on remediation work. SEPP 55 requires that the relevant consent authority, usually the council, be notified prior to and at the completion of remediation work. This notification is required of all remediation work, regardless of whether or not consent is required.

5. HOW SHOULD SECTION 149 PLANNING CERTIFICATES BE USED?

Under s. 149 of the EP&A Act, a person may request from a council a planning certificate containing advice on matters about land that are prescribed in the Regulation. One such prescribed matter is the existence of a council policy to restrict the use of land. This is taken to include restrictions on land use due to risks from contamination.

It should be noted that a s. 149(2) planning certificate does not, in itself, restrict the use of land. It is simply the mechanism for recording the fact that a council policy applies which restricts the use of land.

The EP&A Act was amended in 1996 so that councils do not incur any liability for advice provided in good faith under s. 149(2) or s. 149(5) relating to contaminated land, provided it is provided substantially in accordance with the Planning Guidelines in force at the time.

5.1 WHAT INVESTIGATION IS REQUIRED WHEN ISSUING SECTION 149 PLANNING CERTIFICATES?

Ultimately, the responsibility for investigating the potential for contamination during the sale of land rests with vendor and purchaser (vendor disclosure and 'buyer beware'). However, a council has an obligation under s. 149 of the EP&A Act to provide certain information relevant to contamination when requested. This means that council records should be checked before a planning certificate is issued.

Property Details	Address	Business Name	Type of Activity
Lot 22 DP 809039	30 Barrington Street		Service station / storage depot
Lot 4 DP 564410	Oak Street	Gloucester Council Depot	Council Depot
Lot 290 DP 753171	Oak Street	Gloucester Council Depot	Council Depot
Lot 28 DP 606093	Bucketts Way	Fenning Timbers Pty Ltd	Timber Mill
Lot 1 DP 546120	50-52 Church Street	Furniture One	Underground fuel tanks
Lot 41 DP 839968	7 Philip Street		
Lot 10 DP 847084	99 Church Street	Gloucester Video	Underground fuel tanks
Lot 441 DP 192505	King Street	Dairy Farmers	Dairy/Store/UST
Lot 2 DP 851382	Railway Street	Dairy Farmers	Dairy/Store/UST
Lot 436 DP 753171	Railway Street	Dairy Farmers	Dairy/Store/UST
Lot 123 DP 580344	5 Philip Street	Elders Produce	Agriculture Chemicals
Lot 1 DP 782649	34-38 Queen Street	Dyers Crossing Produce	Agriculture Chemicals
Lot 2 DP 545173	81 Philip Street	Newcombe Coachlines	Bus/Fuel Depot
Lot 16 DP 247181	13-15 Britten Street	Caltex Service Station	Fuel Depot
	Kendall Street	Blue Ribbon Bus Company	Fuel Depot
Lot 50 & 51 DP 262098	6-8 Lowe Street	National Parks	Fuel Depot
Lot 3 DP 782793	139-141 Church Street	Caltex Service Station	Fuel Station
Lot 102 DP 882429	1 Park Street	Mobil Service Station	Fuel Station
Lot 2 DP 547482	89-91 Church Street	Autolec	Fuel Station
Lot 1 DP 571352	17 Denison Street	Gloucester Machinery	Fuel Depot
	Billabong Lane	Valley Fuel	Fuel Depot
Lot 2 DP 547483	Hume Street	Valley Fuel	Fuel Depot
Lot 10 DP 657518	29 Bridge Street	Stratford Store	Fuel Station
	3460 Bucketts Way	Stans Service Station	Fuel Station
	Argyle Street	Barrington Store	Fuel Station
Title 93	750 Thunderbolts Way	Gloucester Shire Council	Landfill
Title 6 Lot B DP 116316	Bucketts Way	Gloucester Coal	Coal Mine
Title 3 Part 1 DP 198031	Bucketts Way	Gloucester Coal	Coal Mine
Lot 1 DP 234517	114 Maslens Lane	Gloucester Aero Club	Fuel Storage
Lot 5 DP 868549	Irrawang Road	Old Landfill	Old Landfill Site
Lot 6 DP 976696	High Street		Service Station / UST
Lot 1 DP 537529	42 Clement Street		Service Station / waste oil
Lot 11 DP 847084	95-97 Church Street	Bradley Brothers	Service station /UST
Lot 9 DP 192505	1-3 Market Street		Service Station
Lot 8 DP 192505	Denison Street	Gloucester Shire Council	Fuel Depot / UST
Part Lot 40	Bowens Road		Old Landfill
	Park Street	Turner Holden	Old Fuel Depot
	Denison Street	Valley Motors	Old Fuel Depot