

Site Contamination Policy

Date this document was adopted

non-legislative

PURPOSE

The Site Contamination Policy (the Policy) and the associated Site Contamination Operating Guidelines (the Operating Guidelines) will assist the City of Adelaide, in understanding legislative and regulatory obligations relating to site contamination. Additionally, relevant national and state guidance will be referenced where appropriate to ensure comprehensive understanding and compliance.

The Policy clarifies the role of the City of Adelaide, the South Australian Environment Protection Authority (the EPA), site contamination practitioners and other statutory bodies in the identification, investigation and remediation of site contamination in the City of Adelaide.

The South Australian Environment Protection Authority (EPA) has its own guidance to assist private landowners, developers and the general community in managing site contamination, which this policy aligns with.

STATEMENT

Scope

The Policy applies to contamination present on or below the surface of land in the City of Adelaide local government area, where the City of Adelaide (CoA) is a landowner or custodian, lessee or licensee of land, or a statutory authority under the *Planning, Development and Infrastructure Act 2016* (SA).

The Policy does not relate to hazardous materials present in buildings and structures but may include the presence of remnant building materials, including but not limited to, asbestos within soils and the natural environment.

The Policy provides a framework to mitigate, remediate or manage site contamination (as defined in Section 5B of the *Environment Protection Act 1993 (the EP Act)* (SA)) that poses a risk to human health and the health of natural environmental systems on property that is:

- Owned by CoA - where CoA owns, occupies and manages land, including land where CoA is the landlord
- Controlled by CoA – including dedicated Crown land and other land for which the CoA is custodian, occupier, user, lessee or license
- Private land – where the development of land (by application) or statutory land-use planning (by process) triggers a change of use that may invoke consideration of site contamination.

Policy Objectives

The Policy sets objectives and requirements to assist CoA in minimising its risk and developing a culture of best practice in preventing, managing, and monitoring site contamination.

The objectives of the Policy are:

- To protect public health and the natural environment from land subject to potentially contaminating activities or known site contamination.
- To achieve compliance with the requirements of all relevant legislation.
- To prevent contamination occurring on public or private land or in groundwater or water bodies within the CoA local government area.
- To effectively manage the CoA's risks associated with site contamination.
- To ensure site contamination is considered early in decision-making, design and development processes so that sites are suitable for their intended use.
- To ensure all stages of site contamination management (investigation, assessment, remediation and auditing) are undertaken by appropriately qualified professionals.
- To enable CoA to fulfil its responsibilities regarding the consideration of applications for rezoning, development, and building activities.
- To provide accurate information in response to requests for information pursuant to Section 7 of the *Land and Business (Sale and Conveyancing) Act 1994 (SA)*.
- To provide consistent, truthful, reliable and accessible information to the community (including private landowners, development proponents, occupiers and users of CoA land) regarding the legacy of site contamination, legislative requirements, remediation activity and land-use planning processes for public and private land.
- To ensure due diligence is undertaken regarding the presence or potential presence of site contamination in relation to any development of land involving the CoA and land to be acquired, vested in, or placed under the care, control, and management of the CoA.

The following requirements are to be applied generally.

Legislative Requirements

General environmental duty (GED) under section 25 of the EP Act requires that a person takes all reasonable and practicable measures to prevent or minimise environmental harm.

CoA commits to review, manage and implement practices to comply with the requirements of relevant legislation.

CoA will inform owners and occupiers of private land of their legislative requirements in relation to site contamination to encourage owners and occupiers of land to comply with their legislative requirements.

Without limiting the scope of the above, CoA will comply with its obligations under Sections 83 and 83A of the *Environment Protection Act 1993 (SA)* to report any relevant environmental incidents or harm to groundwater to the Environment Protection Authority (EPA).

CoA will comply with its obligations under the *Planning, Development and Infrastructure Act 2016 (SA)* when:

- Developing land
- Changing land use.

CoA will comply with its obligations under the *Land and Business (Sale and Conveyancing) Act 1994 (SA)* and *Land and Business (Sale and Conveyancing) Regulations 2010 (SA)* when:

- Selling land that is owned by CoA
- Responding to any request from the vendor of land within the CoA local government area.

CoA will ensure that appropriate practices and procedures of internal control and risk management are in place for the management of site contamination, including risk identification, assessment and implementation of controls.

Prevention

In accordance with s25 of the EP Act CoA will implement procedures and practices to prevent or minimise the actual contamination of land or water or environmental harm from works undertaken by CoA and its contractors.

Management and Remediation

CoA commits to implementing practices to manage or remediate (as defined by EP Act) risks to human health, the natural environment and the Corporation arising from legacy contamination or where a change in land use triggers site contamination provisions under the *Environment Protection Act 1993 (SA)*.

CoA commits to engaging suitably qualified professionals in the assessment, remediation and auditing of land identified as contaminated.

Wherever practicable, CoA commits to adopting environmentally sustainable practices when managing and remediating site contamination.

Purchase, Transfer and Divestment of Ownership of Land and Leasing or Occupying Land

To the extent that it is legally able to do so (in accordance with s103C, s103D and s103E of the EP Act), CoA will not purchase or accept responsibility for; sell, dispose of or divest; enter a lease as lessee or occupy any land:

- Which is contaminated or is reasonably suspected to be contaminated
- Where an activity has occurred which may have caused site contamination on the land
- Which has been subject to any activity to remediate known or suspected site contamination.

Unless:

- Legislative, environmental and human health risks can be established to an extent satisfactory to CoA and full disclosure is made and an acceptably prudent transfer of financial and environmental risks can be established.

Or

- Site management and remediation costs and risks (if any) are accepted by the vendor or a third party, or some other legally binding arrangement is entered into that will remediate or limit any risk to CoA to a satisfactory degree.
- For leases as lessees or occupiers of land only, CoA may choose to undertake a condition assessment (or more formal dilapidation survey) of the land at the commencement and termination dates of a lease.

Environmental Site History Register

CoA has developed an Environmental Site History Register which contains information including environmental site history information for parcels of land where legacy contamination exists, potentially contaminating activities have occurred, or site contamination management practices have been undertaken.

CoA will provide correct and required documentation or information to the EPA for the purposes of the Public Register (as required under Section 109 (i) of the *Environment Protection Act 1993* (SA)).

CoA will provide access to documents and information relating to a site's history, including private land, in compliance with the *Freedom of Information Act 1991* (SA).

CoA may disclose documents and information relating to the history of a site where, in doing so, it assists in the identification, assessment and remediation of site contamination on that site.

CoA will manage the collection, use, storage and disclosure of any known information relating to site contamination on public and private land and historical land uses in accordance with the CoA Privacy Policy.

Records related to site history will be maintained in accordance with the *State Record Act 1997* (SA), ensuring their preservation for the necessary duration to meet legal and operational requirements.

Risk Management

CoA will ensure that appropriate practices and procedures of internal control and risk management are in place for its management of site contamination including risk identification, assessment and implementation of controls.

CoA is committed to environmentally responsible practices within the Adelaide Park Lands. CoA will prioritise the removal of contamination to an appropriate and legal offsite waste disposal location and avoid capping/landscaping of contamination within the Adelaide Park Lands where practicable.

Development assessment and change of land use

CoA addresses any obligations of site contamination in the performance of its functions under the Planning, Development and Infrastructure Act 2016 (SA) and Planning and Design Code.

Roles and Responsibilities

The Chief Executive Officer has ultimate responsibility for site management across the local government area in accordance with the Policy.

The Director, City Shaping has responsibility for reviewing the Policy and Operating Guidelines.

The Director, City Services has responsibility for the development of appropriate management practices, ownership of the Environmental Site History Register and a proactive culture to manage site contamination across the CoA through embedding Policy and Operating Guidelines.

Associate Directors and the Chief Operating Officer are responsible for:

- Implementing the Policy.
- Managing land owned by CoA in accordance with legislative requirements regarding site contamination.
- Protecting the health and safety of employees, contractors and the community at sites where contamination exists, as far as is reasonably practicable.
- Prudent and diligent land-use planning across the CoA.
- Providing documentation and information to the EPA for inclusion on the Public Register (as per the requirements of section 109 (i) of the Environment Protection Act 1993 (SA)).

The Infrastructure and Public Works Committee is responsible for considering matters relating to site contamination on CoA owned land.

Relevant members of the Administration are responsible for keeping the Environmental Site History Register current and record keeping of associated documentation.

Relevant members of the Administration need to be alert to the detection of actual or potential contamination issues prior to any work or activity commencing on any land owned, occupied or managed by CoA.

The role of the EPA is to:

- Administer the *Environment Protection Act 1993* (SA) and its Regulations.
- Develop Environment Protection Policies and associated Codes of Practice or Standards.
- Develop Guidelines in relation to the assessment and remediation of site contamination.
- Record information on the Public Register (as per section 109 of the *Environment Protection Act 1993* (SA)).

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- Provide a response to development applications referred via the *Planning, Development and Infrastructure Act 2016 (SA)*.
 - Contribute to Form 1 statements under the *Land and Business (Sale and Conveyancing) Act 1994 (SA)*.
 - Ensure that investigations are consistent with the risk-based *National Environment Protection (Assessment of Site Contamination) Measures 1999 (NEPM)*.

The *Environment Protection Act 1993 (SA)* contains specific provisions in relation to site contamination including:

- Section 5B - Definition of site contamination.
- Section 83A - Notification of site contamination of underground water.
- Part 10A - Special provisions and enforcement powers for site contamination.
- Section 109 - Public register.

The role of the State Planning Commission (the Commission) is to:

- Safeguard community health by providing a consistent state-wide planning approach to site contamination assessment.
- Specify *site contamination assessment steps that must be taken when a change to more sensitive land use is proposed (including an application for land division)*.

Policy Restrictions / Limitations

The Policy does not take precedence over statutory responsibilities assumed by the State Government, CoA or the Administration.

At times there will be matters not able to be dealt with by this Policy. These matters will either be referred to the EPA for decision or advice, or legal advice will be sought.

Monitoring and Implementation

The Associate Director, Park Lands, Policy and Sustainability is responsible for the review of the Policy and will report on the outcome of the review and make recommendations for amendment, alteration or substitution of a new Policy as necessary.

The Associate Director, Infrastructure; Associate Director, City Operations and Chief Operating Officer are responsible for the implementation and embedding of the Policy into standard work practice within relevant programs and will report on the outcome and make recommendations for amendment, alteration or substitution of standard work practices as necessary.

Measures of success

Where land is developed for more sensitive use (including land division), all reasonable and practicable measure to prevent or minimise environmental harm is undertaken. CoA project briefs, job specifications or works orders include direction regarding site contamination risks and appropriate management processes.

The Policy is supported by Operating Guidelines that are adopted into standard work practices within relevant programs across CoA.

The risks regarding site contamination are well established prior to the acquisition, transfer or divestment of CoA owned or managed land.

OTHER USEFUL DOCUMENTS

Related documents

- Site Contamination Operating Guidelines
- Geotechnical and Soil Waste Classification Guidelines
- Acquisition and Disposal of Land and Assets Policy
- Adelaide Park Lands Management Strategy
- Asset Management Plan – Park Lands and Open Space
- Asset Management Policy
- Community Land Management Plans
- Emergency Management Plans
- Emergency Management Procedure
- Enterprise Risk Management Framework
- Management of Asbestos Procedure
- Privacy Policy
- Work Health and Safety and Return to Work Policy

Relevant legislation

- Crown Land Management Act 2009 (SA)
- Environment Protection Act 1993 (SA)
- Environment Protection Regulations 2023 (SA)
- Freedom of Information Act 1991 (SA)
- Local Government Act 1999 (SA)
- Landscape South Australia Act 2019 (SA)
- Land and Business (Sale and Conveyancing) Act 1994 (SA)
- Land and Business (Sale and Conveyancing) Regulations 2010 (SA)
- National Environment Protection (Assessment of Site Contamination) Measure (NEPM) 1999 (Commonwealth)
- Planning, Development and Infrastructure Act 2016 (SA)
- South Australian Public Health Act 2011 (SA)
- Work Health and Safety Act 2012 (SA)

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GLOSSARY

Throughout this document, the below terms have been used and are defined as:

Contaminated Site

Section 5B of the *Environment Protection Act 1993 (the EP Act)* (SA) defines site contamination in the following terms:

5B—Site contamination

For the purposes of this Act, **site contamination** exists at a site if—

- (a) chemical substances are present on or below the surface of the site in concentrations above the background concentrations (if any); and
- (b) the chemical substances have, at least in part, come to be present there as a result of an activity at the site or elsewhere; and
- (c) the presence of the chemical substances in those concentrations has resulted in—
 - (i) actual or potential harm to the health or safety of human beings that is not trivial, taking into account current or proposed land uses; or
 - (ii) actual or potential harm to water that is not trivial; or
 - (iii) other actual or potential environmental harm that is not trivial, taking into account current or proposed land uses.

City of Adelaide or CoA: City of Adelaide within the meaning of the *Local Government Act 1999* (SA).

EPA: South Australian Environment Protection Authority

General Environmental Duty: General environmental duty requires a person to not undertake an activity which pollutes the environment unless that person takes all reasonable and practicable measures to prevent or minimise environmental harm.

The Commission: the State Planning Commission

NEPM: *National Environment Protection (Assessment of Site Contamination) Measure 1999* - the national guiding document in relation to the assessment of site contamination. The NEPM contains the following Schedules:

- Schedule A: a flow chart that outlines the recommended process for the assessment of site contamination; and
- Schedule B: provides guidelines for the assessment of site contamination.

Operating Guidelines: Site Contamination Operating Guidelines as approved by the City of Adelaide's Chief Executive Officer.

Remediate: as defined in section 3 of the *Environment Protection Act 1993* (SA):

"Remediate a site means treat, contain, remove or manage chemical substances on or below the surface of the site so as to—

- (a) eliminate or prevent actual or potential harm to the health or safety of human beings that is not trivial, taking into account current or proposed land uses; and
- (b) eliminate or prevent, as far as reasonably practicable—
 - (i) actual or potential harm to water that is not trivial; and
 - (ii) any other actual or potential environmental harm that is not trivial, taking into account current or proposed land uses,and remediation has a corresponding meaning..."

ADMINISTRATIVE

As part of the Council’s commitment to deliver the City of Adelaide Strategic Plan, services to the community and the provision of transparent information, all policy documents are reviewed as per legislative requirements or when there is no such provision a risk assessment approach is taken to guide the review timeframe.

This Policy document will be reviewed every five years unless legislative or operational change occurs beforehand.

The next review is required in September 2029.

Review history:

Trim Reference	Authorising Body	Date/ Decision ID	Description of Edits
ACC2011/144976	Council	11 June 2013	
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