



Understanding Category 1 and Category 2 Remediation Works

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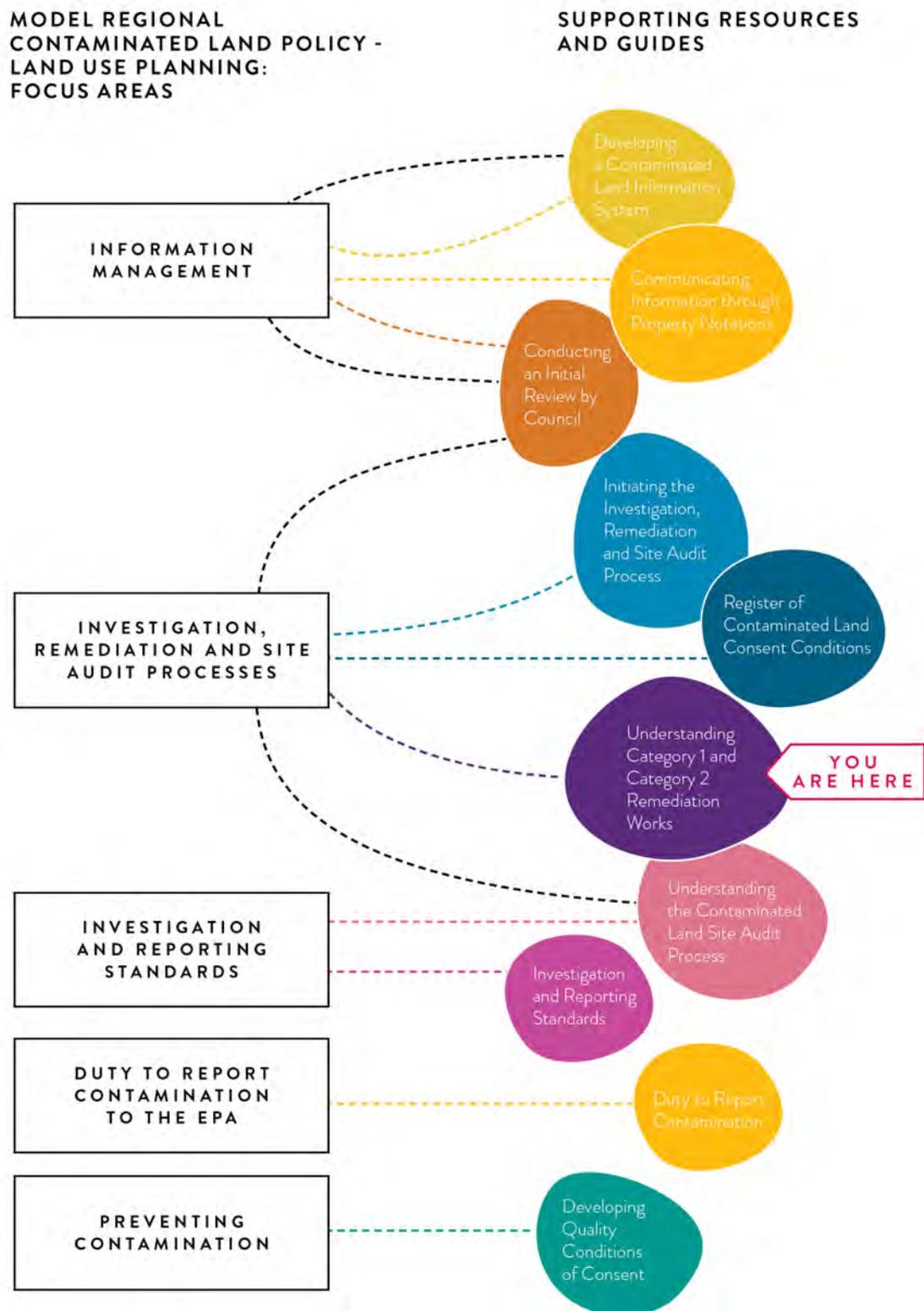
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This document forms part of a series of Contaminated Land Resources and Guides, produced as part of the Contaminated Land Capacity Building Program, as outlined in the figure below.



1. Introduction

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 55 provides consistent state-wide planning and development controls for the remediation of contaminated land. It identifies two categories of remediation works:

- Category 1 Remediation Works, which is remediation works that require development consent; and
- Category 2 Remediation Works, which does not require development consent, but must be notified to Council prior to commencement and upon completion.

This document outlines the context and triggers for Category 1 and Category 2 Remediation Works.

2. Category 1 Remediation Works

Remediation work which requires development consent is known as Category 1 Remediation Work. The triggers for Category 1 from SEPP 55, Clause 9 are included in Attachment A.

Section 9(f) allows Councils to nominate additional types of remediation works as Category 1 in a policy made under the contaminated land planning guidelines:

- *“For the purposes of this Policy, a category 1 remediation work is a remediation work... that is... carried out or to be carried out on any land in a manner that does not comply with a policy made under the contaminated land planning guidelines by the Council for any local government area in which the land is situated...”*

The *Model Regional Contaminated Land Policy - Land Use Planning* (Hunter Joint Organisation, 2020) includes site management requirements in Attachment D, which were established to prevent Category 2 work from adversely impacting on the environment and public amenity. It is stated in the Model Policy, that if the requirements can not be met, the remediation is considered to be Category 1 Remediation Works.

Advisory Note:

Council may have elected additional triggers for Category 1 remediation Works in its Policy in accordance with Clause 9(F) of SEPP 55, or amended the ones in the Model Policy. Council must ensure that Planning Staff is aware of any such additions.

All Category 1 remediation work must be completed in accordance with:

- The Contaminated Land Planning Guidelines
- The National Environment Protection (Assessment of Site Contamination) Measure 1999 (ASC NEPM, amended 2013)
- Guidelines published under the CLM Act 1997 (the up to date list is available on <http://www.epa.nsw.gov.au/clm/guidelines.htm>)
- A Remedial Action Plan approved by the consent authority

SEPP 55 Clause 13 defines Category 1 Remediation Works as advertised development, unless it is designated development or state significant development. SEPP 55 requires the period for inspection of the development application and associated documents to be 30 days after publication in a newspaper of a notice concerning the application and the making of submissions in relation to it.

If a Category 1 Remediation Work is ancillary to other development, it must still be treated in accordance with the requirements for Category works even if the other development does not require consent. Where Category 1 Remediation Works is designated development, and ancillary to other development, it does not cause the other development to require development consent as a consequence, nor does it render the other development as designated development.

In accordance with Clause 12 of SEPP 55, Council must not refuse development consent for Category 1 Remediation Work unless it is satisfied that the proposed remediation works will pose a more significant risk of harm to human health or the environment than if the land were not remediated in the manner proposed in the Remedial Action Plan.

3. Category 2 Remediation Works

Remediation works that can be carried out without development consent are known as Category 2 work. However, if any works proposed as Category 2 are carried out in a manner that is inconsistent with Council's policy on contaminated land, then the work becomes Category 1 and requires development consent (in accordance with Clause 9(f) of SEPP 55).

The *Model Regional Contaminated Land Policy - Land Use Planning* (Hunter Joint Organisation, 2020) includes site management requirements in Attachment D, which were established to prevent Category 2 Remediation Works from adversely impacting on the environment and public amenity. Remediation Works that do not comply with these requirements are to be classified as Category 1 remediation work and require development consent, if the requirements were adopted into the local policy.

Advisory Note:

The Site Management Requirements from Attachment D of the Model Regional Contaminated Land Policy - Land Use Planning (Hunter Joint Organisation, 2020) may have been amended by Council when adapting it to a local policy. Council must consider any amendments when reading this document.

Where Category 2 Remediation Works is ancillary to designated development that requires development consent, the Proponent can choose to make the works part of the development application for the designated development (rather than making it the subject of its own development application), or treat it as Category 2 Remediation Works.

SEPP 55 requires that the local Council be notified at least 30 days before Category 2 Remediation Works commence. This provides Councils with the information needed to verify that the works are not Category 1. The notification also serves as a basis for updating Council's Contaminated Land Information Register. The minimum content of the notification is established by SEPP 55 Clause 16(3), and must:

- Be in writing
- Provide the name, address and telephone number of the person who has the duty of ensuring that the notice is given
- Briefly describe the remediation work
- Show why the person considers that the work is Category 2 remediation work
- Specify, by reference to its property description and street address (if any), the land on which the work is to be carried out
- Provide a map of the location of the land
- Provide estimates of the dates for the commencement and completion of the work

In accordance with the Model Policy, the notification is also to include the Remedial Action Plan and any Investigation Reports.

SEPP 55 also identifies that all Category 2 Remediation Works are to be carried out in accordance with:

- The contaminated land Planning Guidelines; and
- Any guidelines made or adopted under the *Contaminated Land Management Act 1997*.

If Council determines that the work does require development consent, s76 of the *Environmental Planning and Assessment Act 1979* provides Councils with the power to prevent the work from proceeding. Also, the 30-day limit does not prevent Council intervention after that time for a breach of the Act or non-compliance with SEPP 55.

4. Notice of Completion for all Remediation Works

Council must also be notified within 30 days of completion of all Remediation Works. In accordance with SEPP 55 Clause 17 and 18, the notice must:

- (a) "be in writing prepared and signed by the person who carried out the work, and*
- (b) provide the person's name, address and business telephone number, and*
- (c) provide details of the person's qualifications to carry out the work, and*
- (d) specify, by reference to its property description and street address (if any), the land on which the work was carried out, and*
- (e) provide a map of the location of the land, and*
- (f) state when the work was completed, and*
- (g) specify the uses of the land, and the substances, that contaminated it in such a way as to present a risk of harm to human health or some other aspect of the environment, and*
- (h) specify the uses of the land immediately before the work started, and*
- (i) briefly describe the method of remediation used in the work, and*
- (j) specify the guidelines that were complied with in the work, and*
- (k) specify the standard of remediation achieved (in the light of the use proposed for the land), and*
- (l) show in what manner the work (if a category 1 remediation work) complied with the conditions of the relevant development consent, and*
- (m) state what action must be maintained in relation to the land after the completion of the remediation work if the standard of remediation achieved is to be maintained.*

Note : A site audit statement (within the meaning of Part 4 of the Contaminated Land Management Act 1997) may be given in partial compliance with this requirement."

In accordance with the Model Policy, the notification is to include a Validation Report.

Attachment A - Category 1 Remediation Works

State Environmental Planning Policy No 55—Remediation of Land, Clause 9 defines Category 1 Remediation Work as:

“Category 1 remediation work: work needing consent

For the purposes of this Policy, a category 1 remediation work is a remediation work (not being a work to which clause 14 (b) applies) that is:

- (a) designated development, or*
- (b) carried out or to be carried out on land declared to be a critical habitat, or*
- (c) likely to have a significant effect on a critical habitat or a threatened species, population or ecological community, or*
- (d) development for which another State environmental planning policy or a regional environmental plan requires development consent, or*
- (e) carried out or to be carried out in an area or zone to which any classifications to the following effect apply under an environmental planning instrument:*
 - i. coastal protection,*
 - ii. conservation or heritage conservation,*
 - iii. habitat area, habitat protection area, habitat or wildlife corridor,*
 - iv. environment protection,*
 - v. escarpment, escarpment protection or escarpment preservation,*
 - vi. floodway,*
 - vii. littoral rainforest,*
 - viii. nature reserve,*
 - ix. scenic area or scenic protection,*
 - x. wetland, or*
- (f) carried out or to be carried out on any land in a manner that does not comply with a policy made under the contaminated land planning guidelines by the Council for any local government area in which the land is situated (or if the land is within the unincorporated area, the Western Lands Commissioner).*

Note.

See Section 5A of the Environmental Planning and Assessment Act 1979 for the factors to be taken into account in assessing whether there is likely to be a significant effect as referred to in paragraph (c) above. The terms used in that paragraph are defined in that Act by reference to both the Threatened Species Conservation Act 1995 and the Fisheries Management Act 1994.”