



## **COUNCIL POLICY**

### *Site Contamination Policy*

**Approved by: Council [insert date]**

**Next Review Date: October 2016**

#### **Responsible Officer**

Position: Program Manager, Sustainable City

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# 1. INTRODUCTION

The *Environment Protection Act 1993* (the EP Act) defines site contamination in the following terms:

**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.*

The Site Contamination Policy and Operating Guidelines will assist Council, land owners, developers and contractors to comply with their obligations under the EP Act and other relevant legislation and minimise risk in relation to contamination.

## 1.1 Scope

The Site Contamination Policy and Operating Guidelines apply to contamination present on or below the surface of all land within the Adelaide City Council Local Government Area where Council is a land owner or custodian, lessee or licensee of land or statutory authority under the *Development Act 1993* (D Act). The Policy and Operating Guidelines do not relate to hazardous materials present within buildings.

The Site Contamination Policy provides a framework to mitigate, eliminate or manage site contamination risks to the natural environmental, human health and the Council in the following areas:

- Council owned land;
- Council controlled land – dedicated Crown land and other land for which the Council is custodian, land which the Council occupies or uses as a lessee or licensee; and
- Private land – Council's role under the D Act in development assessment and proposing any Development Plan Amendment.

The Asbestos Management Policy and related procedures and processes provide specific policy relating to asbestos.

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## **2. LEGISLATIVE AND CORPORATE POLICY CONTEXT**

In adopting this policy, it is recognised that there are specific legislative requirements to be met as well as other corporate goals.

### **2.1 Legislative Provisions**

Relevant legislative requirements are contained within the following Acts and Regulations:

- *Local Government Act 1999*
- *Development Act 1993*
- *Development Regulations 2008*
- *Environment Protection Act 1993*
- *Environment Protection Regulations 2009*
- *Natural Resources Management Act 2004*
- *Land and Business (Sale and Conveyancing) Act 1994*
- *Land and Business (Sale and Conveyancing) Regulations 2010*
- *Freedom of Information Act 1991*
- *Work Health and Safety Act 2012*
- *Public and Environmental Health Act 1987*
- *South Australian Public Health Act 2011*
- *National Environment Protection (Assessment of Site Contamination) Measure (NEPM) 1999*
- *Crown Land Management Act 2009*

### **2.2 Corporate Policy Context**

This Policy is to be implemented in conjunction with the *City of Adelaide Strategic Plan 2012-16* and other relevant policies, strategies and operating guidelines including:

- Adelaide (City) Development Plan
- Adelaide Park Lands Management Strategy
- Community Land Management Plans
- Work Health and Safety & Injury Management Policy
- ACC Emergency Response Plan
- Asbestos Management Policy and associated procedures
- Privacy Policy
- Risk Management Framework
- Sale and Disposal of Land and Other Assets Policy

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### 3. POLICY OBJECTIVES

The Policy provides guiding principles and procedures to assist Council in minimising its risk and developing a culture of best practice in the field of preventing, managing and monitoring site contamination. The objectives of the Adelaide City Council Site Contamination Policy and Operating Guidelines are:

1. To achieve compliance with the requirements of all relevant legislation;
2. To prevent (where possible and appropriate in light of the current and proposed use of the land) the causation of additional site contamination;
3. To protect public health and the environment through the management of site contamination in the City;
4. To effectively manage the Council's risks associated with site contamination;
5. To enable site contamination to be considered at a sufficiently early stage in the planning, design and development process so as to ensure that the site is suitable for the proposed use;
6. To ensure (where possible and appropriate) the remediation of site contamination occurs to ensure the site is suitable for the intended use;
7. To enable Council to fulfil its responsibilities relating to the consideration of applications for rezoning, development and building activities;
8. To provide accurate information in response to requests for information pursuant to section 7 of the *Land and Business (Sale and Conveyancing) Act 1994*;
9. To ensure that the community (including land owners and developers), occupiers and users of Council land (including lessees and licensees) and Council officers are aware of the implications of site contamination and the legislative requirements in relation to site contamination by providing consistent and reliable information; and
10. To ensure that appropriate levels of due diligence are undertaken in relation to developments of land involving the Council and land to be acquired, vested in, or placed under the care, control and management of, the Council, in relation to the presence or potential presence of site contamination at the land.

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## 4. POLICY STATEMENTS

Adelaide City Council will allow for the following requirements to be applied generally within the Council.

### 4.1 Legislative Requirements

- 4.1.1 Council commits to review, manage and implement its policies and practices to comply with the requirements of all relevant legislation.
- 4.1.2 Council will inform owners and occupiers of private land on their legislative requirement in relation to site contamination to encourage owners and occupiers of land to comply with their legislative requirements.
- 4.1.3 Without limiting the scope of the above, Council will comply with its obligations under sections 83 and 83A of the EP Act to report any relevant environmental incident or harm to groundwater, to the South Australian Environment Protection Authority (EPA).
- 4.1.4 Council will comply with its obligations under the *Land and Business (Sale and Conveyancing) Act 1994* and *Land and Business (Sale and Conveyancing) Regulations 2010* when:
  - a. selling land that is owned by Council; or
  - b. responding to any request from the vendor of land within the Council area.
- 4.1.5 Council will ensure that appropriate practices and procedures of internal control and risk management are in place for management of site contamination including risk identification, assessment and implementation of controls.

### 4.2 Site Contamination Prevention

- 4.2.1 Council commits to review, manage and implement its policies and practices to prevent site contamination or environmental harm as a consequence of site contamination (where possible and appropriate in light of the current and proposed use of the land).

### 4.3 Site Contamination Management and Remediation

- 4.3.1 Council commits to review, manage and implement policies and practices that manage or eliminate risks to Council, natural environment and human health arising from site contamination.
- 4.3.2 Wherever practicable, Council commits to adopt environmentally sustainable practices when managing and remediating site contamination.

### 4.4 Purchase, Transfer and Divestment of Ownership of Land

- 4.4.1 To the extent that it is legally able to do so, Council will not purchase or accept responsibility for any land which;
  - a. is contaminated or is reasonably suspected to be contaminated; or
  - b. an activity has occurred on which may have caused site contamination to the land;
  - c. has been subject to any activity to remediate known or suspected site contaminationunless:
  - d. legislative, environmental and human health risks can be established to an extent satisfactory to Council and full disclosure is made and an acceptably prudent transfer of financial and environmental risks can be established; or
  - e. 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 eliminate or limit any risk to Council to a satisfactory degree.

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- 4.4.2 Council will not sell, dispose of or divest any land, which;
- a. is contaminated or is reasonably suspected to be contaminated; or
  - b. an activity has occurred on which may have caused site contamination to the land;
  - c. has been subject to any activity to remediate known or suspected site contamination
- unless:
- d. legislative, environmental and human health risks can be established to the extent satisfactory to Council and full disclosure is made of information known to Council and an acceptably prudent transfer of financial and environmental risks can be established; or
  - e. site management and remediation costs and risks (if any) are accepted by the recipient, purchaser or a third party, or some other legally binding arrangement is entered into that will eliminate or limit any risk to Council to a satisfactory degree.

#### **4.5 Leasing or Occupying Land**

- 4.5.1 Council will not enter into a lease as lessee or occupy land which:
- a. is contaminated or is reasonably suspected to be contaminated; or
  - b. an activity has occurred on which may have caused site contamination to the land;
  - c. has been subject to any activity to remediate known or suspected site contamination
- unless:
- d. legislative, environmental and human health risks can be established to the extent satisfactory to Council and full disclosure is made to Council of these risks and an acceptably prudent transfer of financial and environmental risks can be established; or
  - e. site management and remediation costs and risks (if any) are accepted by the lessor, or some other legally binding arrangements are made that will eliminate or limit any risk to Council to a satisfactory degree.
  - f. Council may choose to undertake a condition assessment (or more formal dilapidation survey) of the land at the commencement date of a lease as well as the termination date of a lease.

#### **4.6 Site Contamination Register**

- 4.6.1 Council will maintain a Site Contamination Register of Council owned and/or managed land where there is evidence, or a reasonable suspicion, that site contamination exists or that remediation activities have been undertaken.
- 4.6.2 Council will disclose information on the Site Contamination Register in accordance with the Privacy Policy and the Operating Guidelines.
- 4.6.3 Council will comply with its obligations under sections 83 and 83A of the EP Act to report any relevant environmental incident to the South Australian EPA.

#### **4.7 Risk Management**

- 4.7.1 Council 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.

#### **4.8 Development assessment and re-zoning of land**

- 4.8.1 Council will consider the issue of site contamination in the performance of its functions under the D Act and *Development Regulations 2008*.

#### **4.9 Policy Review**

- 4.9.1 The Adelaide City Council Site Contamination Policy will be reviewed in October 2016.

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## 5. DEFINITIONS

**Adelaide City Council or Council:** Adelaide City Council within the meaning of the Local Government Act 1999.

**EPA:** South Australian Environment Protection Authority.

**Contamination:** Occurs when a solid, liquid, gas, odour or substance or property of any substance, including asbestos, is present on land and its presence makes or may make the land or any part of it unsafe, unfit, undesirable or harmful for habitation or occupation by any person or for a particular purpose or cause damage to the land or any part of it.

**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: that provides guidelines for the assessment of site contamination.

[Please note that the NEPMs are currently under review- for more information visit:  
<http://www.scew.gov.au/nepms/assessment-of-site-contamination.html> ]

**Operating Guidelines:** Site Contamination Operating Guidelines as approved by the Executive Leadership Group of the Council, as amended from time to time.

**Remediate:** as defined in the EP Act:

*To 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.*

**Site contamination:** as defined in the EP Act: *Where the Council deems it appropriate in the context, site contamination may also include contamination.* Refer to Page 3 of this Policy.

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## 6. ROLES AND RESPONSIBILITIES

- 6.1 The Council is responsible for the implementation of the Site Contamination Policy and Operating Guidelines in its capacity as land owner/custodian, agent (WHS) and relevant statutory authority (Development Assessment)
- 6.2 The EPA is responsible for:
- administration and enforcement of the EP Act;
  - providing advice to Council especially for site contamination;
  - meeting jurisdictional responsibilities under the NEPM, and contributing to its review;
  - providing advice on planning and development issues;
  - working cooperatively with the Department of Health;
  - providing advice through the Land Titles Office; and
  - establishing and maintaining a [Public Register](#).

## 7. POLICY RESTRICTIONS / LIMITATIONS

- 7.1 The Site Contamination Policy and Operating Guidelines do not take precedence over statutory responsibilities assumed by the State Government, Council or the Administration.
- 7.2 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.

## 8. MONITORING AND IMPLEMENTATION

The Program Manager Sustainable City will review the effectiveness and currency of this Policy before October 2016 and will report on the outcome of the evaluation and make recommendations for amendment, alteration or substitution of a new Policy as necessary.

### 8.1 Key Performance Indicators

#### **Acquisition, Transfer and Divestment of Council Owned or Managed Land**

1. Risks associated with site contamination are established prior to the acquisition, transfer or divestment of all Council owned or managed land.

#### **Contaminated Site Management - Council Owned or Managed Land**

2. All project briefs and work instructions give appropriate direction on site contamination risks and management processes.
3. All projects eliminate or suitably mitigate health risks to workers arising from site contamination.

#### **Private Land – Development Assessment**

4. All development applications involving a change to a sensitive land use eliminate or suitably mitigate site contamination risks to the natural environment and human health.