

21 April 2018

Mark Schofield
Director, Housing Approvals Policy
Department of Planning and Environment
PO Box 39
Sydney NSW 2001

RE: ADDENDUM – ASBG’s SUBMISSION ON THE SEPP 55 REVIEW – CERTIFIED CONTAMINATED LAND PRACTITIONERS

Dear Mark

The Australian Sustainable Business Group (ASBG) welcomes the opportunity to provide additional comment on the Department of Planning and Environment’s [Remediation of Land State Environment Planning Policy](#) (RL SEPP) and the [Contaminated Land Planning Guidelines](#). Member feedback from the review has identified confusion over the meaning and application of what ASBG called *Certified Contaminated Site Practitioners* (CCSP) in our submission, between the NSW Environment Protection Authority and the Department of Planning’s draft documents. Firstly, it may have been clearer if ASBG used the term *Certified Contaminated Land Consultant* in our submission, but that would diminish the issues raised by members. A better approach would be for a consistent meaning and application of roles of *Certified Contaminated Land Consultant* and or *Certified Contaminated Land Practitioner* across NSW.

NSW EPA’s Policy

The EPA’s [Contaminated Land Consultant Certification Policy](#) sets out the recognised certification schemes, and includes both the:

- Certified Environmental Practitioners Scheme - Site Contamination
- Certified Professional Soil Scientist - Contaminated Site Assessment and Management

There is a difference between the draft RL SEPP as it refers to practitioners, where as the EPA policy refers to consultants, which is a subset of practitioners. There are also issues between the RL SEPP and the EPA Policy in its objectives and requirements for reporting to the EPA – see extract from the EPA’s policy:

Policy objectives

The objectives of the Contaminated Land Consultant Certification Policy are to:

- *support initiatives aiming to improve the minimum standard of contaminated land work in NSW*

- *clarify the EPA's position with respect to the certification of contaminated land consultants*
- *support the development and implementation of nationally consistent certification schemes in Australia*
- *encourage consultants to become certified and encourage the use of certified consultants by the community and industry.*

Requirements for reporting to EPA

The EPA requires all reports submitted to the EPA to comply with the requirements of the Contaminated Land Management Act 1997 (CLM Act) to be prepared, or reviewed and approved, by a certified consultant. The requirement includes reports associated with a:

- *preliminary investigation order*
- *management order*
- *voluntary management proposal*
- *ongoing maintenance order.*

Draft Remediation of Land SEPP on Certified Practitioners / Consultants

The draft RL SEPP uses the terms *Certified Contaminated Land Consultant (CCLC)*, and *Certified Practitioners* as a sub heading under *Part 3 Certification of Category 2 Remediation works – Certified Practitioners*: It differs from the EPA policy on CCLC – extract from the RL SEPP:

A certified contaminated land consultant may be a:

- *Site Contamination Practitioners Australia (SCPA) Certified Practitioner, [[not used by the EPA's Policy and now incorporated into the EIANZ scheme below, where SCPA certified practitioners continue to use the SCPA badge]]*
- *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. [bullets added for clarity]*

Use of the term *consultant* can conflict with the *practitioner* terms referred to in the accrediting bodies. This may cause legal complications because consultants are only one several types of contaminated land practitioners, which could include regulators, researchers, contractors, contaminated land auditors and others.

Draft Contaminated Land Planning Guidelines (CLPG) on Certified Practitioners / Consultants

The CLPG refers to Certified Contaminated Land *Consultant* over 20 times in the first 3 chapters, but then refers to Certified Contaminated Land *Practitioner* generally from Chapter 4 onwards. Examples of consultants, auditors and practitioners use in the CLPG include:

Figure 3 from the CLPG states:

- *Planning Authority may seek an independent review of the ASC or Remediation Plan by a certified practitioner or an accredited site auditor*
- *A certified practitioner must notify the planning authority 30 days before the commencement of remediation works and provide the planning authority with the remediation plan and other information required by the Remediation of Land SEPP*

Appendix 3 Planning pathways for different types of remediation work extracts include:

- *Validation is obtained from a certified practitioner once the remediation work is complete*
- ***Assessing Category 1 remediation works:*** *The consent authority should consider seeking advice from a certified contaminated land consultant or an accredited site auditor in determining the risk.*
- *The work is validated at completion of remediation work and a validation report prepared or reviewed and approved by a certified practitioner (required if there is an intention demonstrate compliance with the management order or and lift the declaration)*
- *The notification is submitted with a remediation plan prepared or reviewed and approved by a certified practitioner.*
- *The notification includes a statement by a certified practitioner that the proposed work meets the criteria for Category 2 remediation.*
- *Council receives a notice of completion of remediation work prepared or reviewed and approved by a certified practitioner within 30 days of completion.*

Main Issues

The draft RL SEPP and especially the draft CLPG falls outside the scope of the current EPA's Contaminated Land Consultant Certification Policy (CLCCP) because:

- The EPA's CLCCP is directed at *reports* prepared by consultants (a subset of practitioners). While the RL SEPP and CLPG are also directed at *plans, notices* and or *notifications* prepared by a range of *practitioners, auditors* or *consultants*.
- The EPA's CLCCP objective is broad (improve the minimum standards of contaminated land work in NSW) although the scope is limited only to *consultants* and *reports*. For use for RL SEPP and CLPG purposes reference to the CLCCP should be expanded to include *plans, notices* and or *notifications* and *practitioners*.
- The EPA's EPA CLCCP talks about prepare or review and approve reports while the SEPP talks about *validation* of plans. There are a range of different actions, but the term validation creates confusion with the role Auditors' plan in contaminated land. This is covered in ASBG's submission section 4.2 Validation under the SEPP. These terms should be kept unique and distinct to avoid confusion.
- There are insurance implications because practitioners, not all currently consultants, do not necessarily have insurance cover to act as consultants if the Policy categorises them as such.

ASBG recommends:

- ***Consistency in the terminology between the EPA's Contaminated Land Consultant Certification Policy, which should also include the use of practitioners, rather than just consultants in both the RL SEPP and the CLPGs***

- ***The objectives for planning purposes for Certified Contaminated Land Consultant are expanded to include coverage of plans notices and notifications and other actions required for this set under both the RL SEPP and the CLPGs to clarity and avoid confusion.***
- ***Consideration given to different actions under the RL SEPP and CLPGs according to the qualification level and insurance coverage of the Certified Contaminated Land Consultant/Practitioner.***

This last point is worth considering for cost reduction, as some actions carry a lower risk than others and require difference in expertise and corresponding insurance risk and policy expense.

Should further details and explanation of the above points be required please contact ASBG.

Yours Sincerely

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