

AUSTRALIAN SUSTAINABLE BUSINESS GROUP'S

Submission on

**Remediation of Land State Environment Planning
Policy (SEPP) and
The Contaminated Land Planning Guidelines**

April 2018



Sydney, Brisbane

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EXECUTIVE SUMMARY

The Australian Sustainable Business Group (ASBG) is pleased to comment on the Department of Planning and Environment's [Remediation of Land State Environment Planning Policy](#) (SEPP) and the [Contaminated Land Planning Guidelines](#).

ASBG considers the draft Remediation of Land SEPP (RL SEPP) to be too much of a jump in tightening and control over the currently well working SEPP 55, which it is to replace. For example, less than 10% of all sites captured under SEPP 55 are Category 1 remediation works requiring a development application. In contrast, the criteria under the RL SEPP would capture an estimated 90% of such sites. As clean up of contaminated land is to be promoted these changes appear to be dissuasive against remediation works counter to its objectives.

The methodology used for the draft Category 1 triggers is largely process and activity based. This is contrary to [NSW Guide Better Regulation](#) which requires the use outcome and risk based approach, which if properly adopted would provide a better level of flexibility, permit innovative solutions, lower costs and better health and environmental outcomes. ASBG provides a number of recommended improvements regarding the table of Category 1 criteria, but is concerned the process has too many flaws. Consequently, formation of a Working Group is recommended. A set of well informed stakeholders can greatly assist the Department in preparing a far better draft document for final public comment.

The RL SEPP should also clarify where it should not be involved. Very low risk activities such as maintenance, spill management and minor repairs where some potentially contaminated soils are generated should be clearly exempt.

Category 2 remediation work is subject in the draft to many process based rules, many of which are impractical and do not consider the wide variations that occur in remediation work. Again use of prescriptive process based conditions rather than outcome based requirements. ASBG provides a table of comments and recommended changes, but many of these are well covered under existing safety and environmental laws and guidelines.

Other recommendations include:

- Certified Contaminated Site Auditors be recognised as having the same status as Certified Contaminated Site Practitioners to the assessments and reports under the Remediation of Land SEPP (RL SEPP).
- The term 'validation' should be clarified; either replaced with an alternative terms such as "remediation confirmation", or the use of validation is clearly defined as distinctly different process to what Certified Contaminated Site Auditors mean by validation.
- Consideration given to the vast number of Development Applications requiring contaminated land assessment and how this will filter down to residential zones.

RECOMMENDATIONS

1	The Review of SEPP 55:	
	<ul style="list-style-type: none"> • Should only involve minor adjustments to its trigger thresholds via additional clarifications, with the overall proportion of captured Category 1 sites increasing marginally, i.e. <20%. • Adhere to the NSW Guide to Better Regulation and its corresponding documents..... 	2
2	A risk based approach be the main determining factor in the triggers for remediation works, with three levels capturing sites of a:	
	<ol style="list-style-type: none"> 1. High risk level that warrants the consideration from EPA initiating regulation 2. Medium level that warrants a SEPP Category 1 3. Lower risk level where Category 2 oversight is sufficient. 	6
3	Very low risk ‘remediation works’ should be not subject to Category 2 considerations, such as those considered of maintenance level actions.	7
4	In setting the Category 1 Remediation Works thresholds the RL SEPP should:	
	<ul style="list-style-type: none"> • Establish a Working Group comprised of land owners, professionals and other stakeholders with contaminated site experience to reconsider the Remediation of Land SEPP (RL SEPP) and redo the draft subject to further public consultation. • Adopt a medium risk based approach to determination of Category 1 remediation works using the above amended table as an example set of remediation activities where a medium level of risk is assessed..... 	14
5	Certified Contaminated Site Auditors be recognised as having the same status as Certified Contaminated Site Practitioners regarding their role under the Remediation of Land SEPP (RL SEPP)..	16
6	The term ‘validation’ should be clarified; either replaced with an alternative term such as “certified remediation works”, with the term <u>validation</u> is clearly defined as distinctly different process to what Certified Contaminated Site Auditors mean by <u>site validation</u>	16
7	The criteria prepared under the Category 1 table and Appendix D for Category 2 remediation work requires major revision, subject to the outcomes of the recommended working group	22
8	The Department needs to consider the application of the RL SEPP and Contaminated Land Planning Guidelines on:	
	<ul style="list-style-type: none"> • The number of investigations required if applied to the majority of Development Assessments • Application on small land holdings of both commercial and residential. 	23

1 OVERVIEW

The Australian Sustainable Business Group (ASBG) is pleased to comment on the Department of Planning and Environment's [Remediation of Land State Environment Planning Policy](#) (SEPP) and the [Contaminated Land Planning Guidelines](#).

The [Australian Sustainable Business Group](#) (ASBG) is a leading environment and energy business representative body that specializes in providing the latest information, including changes to environmental legislation, regulations and policy that may impact industry, business and other organisations. We operate in NSW and Queensland and have over 120 members comprising of Australia's largest manufacturing companies. Members were involved in the development of this submission and ASBG thanks them for their contribution.

The Department of Planning's [Remediation of Land SEPP - Explanation of Intended Effect](#) primary purpose is to *promote the remediation of contaminated land to reduce the risk of potential harm to human health or the environment*. However, ASBG member feedback is it will capture around 90% of all remediation works as Category 1 – those requiring a Development Application (DA). In contrast the current SEPP 55 captures less than 10% of all remediation works in NSW. Given the costs, lengthy timelines and other delaying issues related to obtaining planning permission under the current DA system, these changes will deter, rather than promote many remediation projects. In ASBG's view, the proposed triggers for Category 1 work has been tightened far more than necessary given the risks and benefits of promoting remediation of contaminated land.

In contrast the use of Certified Contaminated Site Practitioners (CCSP) for Category 2 remediation work has merit and is considered an effective way to effectively and cost efficiently increase the oversight of such.

In redesigning the Category 1 criteria the Department should be mindful of the *NSW Guide to Better Regulation*. Under figure 1's Reduce Existing Red Tape heading the Guide recommends *Implement an outcomes and risk-based approach to regulation*. ASBG uses this approach to assist to provide outcome and risk-based focused alternatives to the draft Remediation of Land SEPP (RL SEPP).

ASBG has a number of issues and provides alternative recommended approaches to improving SEPP 55 with some reasonable tightening in oversight of practices, in proportion to the evolving higher environmental standards by the public. These areas include:

- The primary reasons to review SEPP 55 and identification of where it has failed or other inefficiencies are noted
- The criteria used for redefining Category 1 remediation sites with outcome and risk-based approaches
- Use of Certified Contaminated Site Auditors and Certified Contaminated Site Practitioners
- Category 2 remediation requirements and the requirements listed under Appendix D, with outcome and risk-based approaches.

Overall there are fundamental issues with the draft Remediation of Land SEPP (RL SEPP). While many suggestions and recommendations are made the document requires use of additional expertise and rewriting to generate a similarly practical document that SEPP 55 is.

2 REASONS TO REVIEW SEPP 55

2.1 Primary reasons provided

At meetings with Department of Planning ASBG heard the main reasons provided for the review of SEPP 55 was that it was timely and part of the review of all SEPPs. Also that community environmental values have changed since it SEPP 55 was launched about 20 years ago. Apart from a few anecdotal references to a handful of remediation sites that have caused issues, there has been no systemic evidence of the failures of SEPP 55. Indeed the discussion papers and ASBG members both claim SEPP 55 has been very successful. Considering it has been very successful with remarkably few failures this should point to a need for minor tweaking rather than the major tightening proposed. There is no argument that some additional oversight should be employed in the Remediation of Land SEPP (RL SEPP), but this is largely achieved in the use of Certified Contaminated Site Practitioners (CCSP) for Category 2 remediation works.

To assist the Department in setting better criteria, ASBG introduces the concept of a '*medium level of risk*' which is based on professional judgement of CCSPs, so they determine when a site poses a level of risk that it should be treated as a Category 1 remediation works. While this is discussed in s2.4, there is some merit in using this *medium risk level* as a catch all method. As such, the list of criteria for Category 1 remediation works becomes one of guidance to the types of remediation works which may require a Category 1 classification. ASBG also suggests a list of worked examples focusing on the grey areas would also assist in such guidance. Overall the use of the *medium level of risk* criteria for Category 1 should not in practice increase the proportion of remediation works that are currently captured under Category 1 significantly, which ASBG considers should corresponds to no more than a 20% increase.

In order to cut red tape and give NSW businesses the freedom to innovate, the NSW Department of Finance, Services and Innovation developed:

- [NSW Guide to Better Regulation](#) and
- [Guidance for regulators to implement outcomes and risk based regulation](#)

The Guide recommends outcomes and risk based approach to regulation, permitting, in this case, remediation works to use innovative approaches to minimise risk. As a consequence, ASBG considers the prescriptive lists such as provided in the RL SEPP are not appropriate and contrary to the spirit of how regulation should be written in NSW. As a consequence, the tables for Categories 1 and 2 criteria require to either be rewritten, as ASBG has attempted, and or used as guidelines with overarching professional judgement, such as from the CCSPs to consider if the remediation works design and operation has innovative solutions which permit it to be a category 2 rather than a category 1 remediation works. It is not possible to write innovation into regulation; hence the need for professional judgement as it arises.

Recommendation 1

- *The Review of SEPP 55 should only involve minor adjustments to its trigger thresholds via additional clarifications, with the overall proportion of captured Category 1 sites increasing marginally, i.e. <20%.*
- *Adhere to the NSW Guide to Better Regulation and its corresponding documents*

2.2 What Should be the Objectives of the RL SEPP?

The Objectives of SEPP 55:

- (1) *The object of this Policy is to provide for a Statewide planning approach to the remediation of contaminated land.*
- (2) *In particular, this Policy aims to **promote** the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment:*
 - (a) *by specifying when consent is required, and when it is not required, for a remediation work, and*
 - (b) *by specifying certain considerations that are relevant in rezoning land and in determining development applications in general and development applications for consent to carry out a remediation work in particular, and*
 - (c) *by requiring that a remediation work meet certain standards and notification requirements.*

Again the focus is to promote, rather than discourage remediation of contaminated land, which RL SEPP's Category 1 list does. RL SEPP does not indicate it will change the above objectives, which is accepted. Nevertheless, the proposed substantial increase in remediation works captured as Category 1 would act as a deterrent, which is against the objectives of the SEPP.

2.3 Remediation of Land Categories

There are at least 4 if not 5 different triggers regarding planning and environmental actions under planning and environmental laws in NSW. ASBG argues there should be an additional category for minor maintenance and earth works which does not involve the RL SEPP, which is discussed in s2.4.2. While the draft Contaminated Land Planning Guidelines (CLPG) do spell out the different categories of government oversight of remediation works, there are some details that may have been missed. ASBG has relabelled these categories of all remediation works using A, B, C, D and E to assist in separating the different types.

- A.** Those that **trigger a Designated Development (DD)** under the [EP Reg schedule 3](#) and requiring an Environmental Impact Statement (EIS) process. Note this is tighter than [POEO Act Sch 1](#) s15 and 15A as it also includes sites near water, high watertable, flood plain, on sloping land or within 100m of a dwelling. As a result you can have a remediation requiring an EIS, but not requiring an EPL. Technically there are two levels here, but the latter is rare. Nevertheless, a remediation works that is also a DD will also be classed as a Category 1 under the RL SEPP.
- B.** Declaring land to be **significantly contaminated land**, is not a remediation works practice, but applies to land and usually leads to this outcome via EPA issued *Management Orders*. Some of these regulated remediations may or may not trigger the above. Though the CLPG appear to require these as Category 1 remediation works, but this is not fully clear.

The Draft RL SEPP says: *Contaminated sites that are not regulated by the EPA are generally managed by local councils through the planning and development system, when land is rezoned or a development application is lodged. Councils perform these functions in accordance with the requirements of the EP&A Act, SEPP 55 and the Managing Land Contamination: Planning Guidelines.*

So this suggests such remediations are not considered Cat 1s as the EPA is trusted to oversee the remediation. However, other planning triggers may be met, but ASBG questions the need for a full EIS process as outlined in Appendix 3 of the CLPG. This needs to be clarified, especially where urgency and

expertise is required to manage the remediation and where the time of going through a DD or EIS process would exacerbate environmental harm and public health.

- C. SEPP 55 includes the DD triggers, but has its own additional criteria under [s9](#). If a DD is triggered then the EIS process trumps the Development Application (Cat1) process as the EIS process is a more detailed DA process. Using this list's Category types C includes all A, but C has additional types.
- D. Category 2 is what is not Cat 1, but this can be confusing as there is no minimum scale to what is Cat 2, hence the addition of Category E below.
- E. ASBG recommendation that very-low risk remediation type actions such as maintenance, spill, incident management, minor earth works etc be specifically exempt (See s2.4.2). While such minor work was not considered in SEPP 55, there is a regulatory void in this area and it requires clarification as minor works could be captured by zealous Council officers in the future.

2.4 Applying a Risk Based Approach

ASBG uses the categories in s2.3 above, to make better sense of the scope of remediation works used under planning law and the CLM Act 1997. With this categorisation a risk-based approach can be considered in reference to the role of the RL SEPP. Contaminated land remediation works can be split into 3 areas:

- Site remediation of '*significant or high risk*' which is primarily dealt with by the EPA and or is a DD site – so is either a Category A, B or C site as listed in s2.3. Note, except for Category B sites these are considered Category 1 works under the RL SEPP.
- Site remediation of '*medium risk*', which only require Development Approval (DA) Category C sites as no DD, EIS, EPL, or management oversight by the EPA is involved. These are a subset of Category 1 sites under the RL SEPP.
- Site remediation of '*low risk*' which do not require a DA (Category 2 sites).

Note ASBG uses the terms *high risk*, *medium risk* and *low level risks*, but ASBG is concerned this could lead to misunderstanding. Alternatively they could be called risk level a, b and c. These terms are not meant to be proportional but relate to the separation of Category 1 and 2 remediation works in context of needing the DA process or not.

A major objective of the RL SEPP is to provide Councils with guidance on what they should do regarding remediation works, on which they have oversight issues. Permitting the use of contaminated land for the wrong land use is a major concern facing Councils and the primary reason SEPP 55 and the Guidelines were introduced. The other major responsibility is to ensure the remediation works process its self does not cause harm to the community nor the environment. So the remediation process should operate with a level of oversight that standards are met and notifications are undertaken.

While the high to very high risk sites are overseen by the knowledgeable Contaminated Sites section of the EPA, the medium-high risk sites are subject to Category 1 oversight. Remediation works of '*medium risk*' covers a broad area of sites which include those which are Designated Developments contaminated land works, but are not regulated by the EPA, down to sites which are at the margin just requiring a Category 1 Development Application. Capturing of Category 1 sites places much reliance on the DA system and the understanding by Councils those risks will be adequately managed.

In practice the DA process simply ensures the general safeguards, standards and controls on the remediation process have been prepared to a second level professionalism with risk management being the key consideration. Category 2 remediation works also require such reassurance to Councils (see Clause 16) that a professional plan for remediation has been prepared and implemented. Where doubt exists here the Council can step in. Given the strong environmental laws which cover odour, dust and noise for complaints, emissions to air and water and strict waste laws, there is a suite of enforcement actions available to Councils, which can be applied to a remediation site's operation that can result in server fines and even stop work, such as the use of Prevention Notices. Application of environmental laws has been infrequent on remediation works, demonstrating again that SEPP 55 has worked well.

ASBG considers the need to tighten SEPP 55 Category 1 should be limited, and include limited additional remediation works that may have been better suited to a Category 1 approach. Supporting this position is the drafts' use of Certified Contaminated Site Professional for oversight and design for Category 2 remediation work. Nevertheless, the key to any upgrade from SEPP 55 is to keep the risk approach intact. Consequently ASBG recommends that Category 1 triggers be based on what constitutes a medium-high level of risk associated with a remediation.

2.4.1 Medium Risk Level

The EPA under the CLM Act requires reporting of contaminated sites across NSW. Under this process they must evaluate the significance of the contamination and consider if the contamination warrants regulation. This assessment process determines if the site is of high level of risk. Nevertheless it is also a risk-based approach. Section 3.2 *Guidelines on the Duty to Report Contamination under the Contaminated Land Management Act 1997* states:

EPA must take into account:

- *whether the substances have already caused harm or are likely to cause harm (for example, in the form of toxic effects on plant or animal life)*
- *whether the substances are toxic, persistent or bioaccumulative, or are present in large quantities or high concentrations, or occur in combinations*
- *whether there are exposure pathways available to the substances (that is, routes by which the substances may proceed from the source of the contamination to human beings or into the environment)*
- *whether the uses to which the land (and any land adjoining it) is currently being put are such as to increase the risk of harm from the substances (for example, using the land for the purposes of child-care, dwellings, or production of food for human consumption)*
- *whether the approved uses of the land and land adjoining it are likely to increase the risk of harm from the substances*
- *whether the substances have migrated, or are likely to migrate, from the land because of the nature of the land or the substances themselves*
- *relevant guidelines.*

ASBG considers this approach consistent with the ASC NEMP and a basis for determining if a remediation triggers a Category 1 or not. The difference is taking a medium level of risk rather than a high level of risk.

ASBG also considers the contaminated site management industry, CCSPs and auditors, is mature and professional enough to make determinations of if a Category 1 is required given some basic guidance under the RL SEPP.

The key meaning of a medium risk¹ level in this context is does assigning a remediation a Category 1 DA process provide a greater benefit than a Category 2 assignment? Or is the DA process really necessary. Is Council, the environment and the community better off to more rapidly and cost effectively to use a Category 2 designation? Allocation of Cat1 must also be considered somewhat as a time and cost deterrence, so the balance between competing outcomes must be considered.

As a result use of a risk assessment process must be a prime function into determination of Category 1 sites, which has always been the case under SEPP 55 and the EPA's consideration of regulating a site and its remediation.

Recommendation 2:

A risk based approach be the main determining factor in the triggers for remediation works, with three levels capturing sites of a:

- 1. High risk level that warrants the consideration from EPA initiating regulation*
- 2. Medium level that warrants a SEPP Category 1*
- 3. Lower risk level where Category 2 oversight is sufficient.*

It is well noted by members that many Councils are professionally ill-equipped to deal with contaminated site remediation, and rely heavily on the EPA and contaminated site professionals. An example in point is the continuing delay of the handover of UPSS systems oversight to Councils from the EPA's management. Reliance on contaminated professionals like CCSPs is essential for effective decision making.

2.4.2 Very Low Risk Actions

In industry and business there are some very low risk actions, which could be considered remediation work, but should not be. Examples include:

- Where some contaminated soils are removed for maintenance requirements
- Spill and incident clean ups
- Other routine works, and earth works such as trench and ditch digging
- Repairs to underground petroleum storage systems
- Minor earth works where minor quantities of contaminated soils are generated.

These are adequately managed under NSW stringent waste laws in terms of off site management and their onsite management makes the external risks to nearby receptors very low. Such remediation should

¹ Note ASBG uses the term medium risk, medium-high risk and low level risks. These terms are not meant to be proportional but relate to the separation of Category 1 and 2 remediation works in context of needing the DA process or not.

be clarified under the RL SEPP as not requiring to be subject to the RL SEPP, as it is well covered under other environmental law.

***Recommendation 3:** Very low risk 'remediation works' should be clarified and not subject to the Remediation of Land SEPP (RL SEPP)*

3 CATEGORY 1 CRITERIA

3.1 Issues with Key Policy Changes

SEPP 55 is based on risks to receptors, while the draft Remediation of Land SEPP (RL SEPP) includes risks associated with process, emerging and complex technologies, scale, monitoring and time to completion. ASBG is concerned the triggers have moved from one of potential risk to the type of processes used. It should use SEPP 55 Category 1 trigger approach, which is consistent with the *Assessment of Contaminated Sites National Environment Protection Measure (ASC NEPM)*² which focuses on risk based approach for the site. This risk based approach, using investigation trigger levels requires risk assessments to be used to develop the site Remediation Plan (RP). The ASC NEPM is designed to encourage innovation and emerging technologies to promote contaminated land to be more economically and technically remediated. This is recognised in the accompanying draft Contaminated Land Planning Guidelines, under the section Risk-based assessment approach. But this is not used for the draft Category 1 remediation works.

In contrast, the proposed Category 1 triggers are activity not risk based. While ASBG accepts that scale may play a role in the level of risk, the other activity factors should not, in preference as used under SEPP 55, considerations of receptor risk. Clause 9 of SEPP 55 provides a set of sensitive receptors when considering if a Category 1 DA is required. What is required to trigger a Category 1 requirement should be based on risk levels the remediation is likely to impose on near-by receptors.

Category 1 should be technology neutral and based on the risks associated with scale of the contamination, the proximity of the receptors and the type of contamination (harmfulness) under consideration. As discussed in s3.2 of this report a risk based approach should be the primary focus to trigger a Category 1 remediation. ASBG has reviewed the table of Category 1 triggers, which are highly technology, activity and process focused. Some of the (a) to (p) provide a guide where such medium level risks arise, but ASBG recommends these are only guidance of activities in which a risk based approach is then applied. Otherwise the capture rate under the proposed Category 1 criteria is considered far too broad and will serve as a deterrent to many remediation projects.

ASBG also does not accept the considerable tightening of the Category 1 criteria is justified, especially given the increase oversight of Category 2 remediation by Certified Contaminated Site Practitioners (CCSP). This oversight approach by CCSPs tightens the control of risks associated with Category 2 works diminishing the need to place marginal sites into Cat 1. Again will a DA approach better serve the community rather than a Cat 2? A sensible balance is required.

3.2 Category 1 List Reviewed

ASBG has reviewed the draft Category 1 list from (a) to (p) in Table 1. The list is an attempt to change the criteria from a process or activity basis to one based on outcomes. Overarching this review is the use of medium level of risk, which is meant to cover the level of risk below which the EPA uses, but higher than that reasonably used for a Category 2 remediation works. In writing such criteria, care is required as to its

² This is clearly spelt out under Schedule B1 – Guidelines on investigation Levels for Soil and Groundwater

interpretation. Many Councils, which lack expertise in contaminated land may easily misinterpret the intent and meaning of such criteria. Hence, the use of outcomes and a risk based approach is recommended.

Proposed	Possible replacement	Reasons
<i>(a) excavation, and removal from site, of contaminated soil, where the volume of soil to be excavated exceeds 3,000 cubic metres (m³) or where the area of excavation exceeds 3,000 square metres (m²)</i>	(a) on site or off site treatment of contaminated soil where the volume of soil to be excavated (estimated ex-situ) exceeds 6,000 cubic metres (m ³) or where the area of excavation exceeds 6,000 square metres (m ²).	<ul style="list-style-type: none"> Aligned to be consistent with s15, Sch1, POEO Act set at 20% of the threshold. This is considered a reasonable tightening from no set level under SEPP 55. As CCSPs are used to assess Category 2 sites these are also under increased oversight also justifying the use of 20% rather than 10% of the POEO Act criteria. (a) and (b) are almost the same as excavation and removal would generally require some stockpiling, hence the change to the POEO Act Sch 1 on-site or off site treatment.
<i>(b) removal from site of stockpiled contaminated soil, or other waste materials including asbestos waste, where the volume of soil and/or material exceeds 3,000m³</i>	(b) removal from site of stockpiled contaminated soil, including asbestos waste, where the volume of soil and/or contaminated material exceeds 6,000m ³ .	<ul style="list-style-type: none"> Use of 20% of the volumes under the POEO Act Schedule 1 is as described above. “or other waste materials” was removed as it can be interpreted to mean building and demolition wastes which is not the intent. <i>Contaminated soil</i> is not defined in SEPP 55 or POEO Act and its regulations and can be interpreted to mean broad and unintended meaning, such as including C&D wastes. ASBG is concerned that the DA could delay removal of stockpiles where dust emissions are a time based issue. Asbestos contamination is one example of where the time delays with a DA can result in higher health and environmental risks. See above regarding the threshold level.
<i>(c) in-situ and ex-situ remediation of contaminated soil on site</i>	Omit	<p>This is adequately captured under the other categories especially the replacement (a) and (b).</p> <ul style="list-style-type: none"> This implies that 50 tonnes of contaminated soils associated with a former tank during replacement works would require Category 1 approval (if it could not be immediately re-used). If a site were to replace an in-ground separator for instance and there was 5 to 50m³ of contaminated soil. For these small volumes where there is negligible risk of adverse impacts on human health or the environment, it would be appropriate to continue under Category 2 with certified practitioners sign off or have maintenance level remediation exempt from the SEPP process, as discussed under s2.3.2 in this submission.

Table 1: Recommended alternative Category 1 Remediation Works

Proposed	Possible replacement	Reasons
<i>(d) on-site treatment of contaminated groundwater, light non-aqueous phase liquids or vapour extracted on the site</i>	Omit	<ul style="list-style-type: none"> • Significant triggers already exist as a DD. So this section refers to sub DD remediation works. • This should be generally considered a Cat 2, where this remediation work is restricted to on-site. Also this type of remediation for hydrocarbons is not complex, but using enhanced governance benefits from CCSP specialist advice, as per Cat 2, should adequately cover such risks. Where such remediation works are considered to trigger a medium risk level, this can be captured under many other sections in this table. • The trigger for (c), (d), (e) to meet Category 1 threshold should be where there is deemed to be a medium level of risk of off-site impact with the potential risk to off-site receptors and where therefore the EPA and or community may need to be engaged. Where NAPL has not moved off-site there is generally a low risk to off-site receptors. This is also captured under (h) where off-site migration occurs. ASBG discusses medium level of risk under s3.2. • Where it was clear in a remediation plan to be submitted for Category 2 works that long term onsite management was being proposed then this quite correctly should fall into Category 1 but this is covered in (m) so should not be stated as an assumption in the reasons for (c), (d), (e). • A generic catch all for medium level risk would adequately capture the Category 1 remediation works where appropriate
<i>(e) remediation of a site affected by hazardous ground gas</i>	Omit	The reasons are the same for (d).
<i>(f) remediation of a coal gasification (gas-works) or an oil-shale distillation site</i>	<i>(f) remediation of a coal gasification (gas-works) or an oil-shale distillation site where the remediation work represents a medium level risk to occupants and neighbours near the site, based on its overall toxicity, volume and location.</i>	<p>The clause is clarified to bring it in line with a medium level of risk.</p> <p>This clause could be also omitted as a generic catch all for medium level risk would adequately capture the Category 1 remediation works where appropriate, and place smaller gas-works remediations into Cat 2.</p>
<i>(g) remediation of dense non-aqueous phase liquids</i>	<i>(g) remediation of dense non-aqueous phase liquids if it has the capacity to treat more than 200 kilolitres per week of contaminated water or soil, where the remediation work represents a medium level risk to occupants and neighbours of the site, based on its toxicity, volume and location.</i>	<ul style="list-style-type: none"> • The 10 ML p.a. or 20 kL/week is ~ 10% of the amount under s15A Sch 1, POEO Act. Where the risk is considered more significant the clause related to medium level risk trigger. • Unlike NAPL, DNAPL are generally more persistent materials are more of an environmental concern. However, small contamination areas are considered to be adequately managed as a Cat 2. • A generic catch all for medium level risk would adequately capture the Category 1 remediation works where appropriate

Proposed	Possible replacement	Reasons
<i>(h) remediation of contaminated groundwater where groundwater contamination extends beyond the boundaries of the site</i>	(h) remediation of contaminated groundwater where groundwater contamination extends beyond the boundaries of the site and where the remediation work represents a medium level risk to occupants and neighbours of the site, based on its toxicity, volume and location.	<ul style="list-style-type: none"> The clause is clarified to bring it in line with a medium level of risk. This type of remediation work threshold needs clarification as it is too broad. Where remediation of groundwater occurs on site and there is no physical footprint or impact of this remediation system off-site then this should not require Category 1 notification, but as proposed oversight by certified practitioner under Cat 2. Hence, the addition of the medium level of risk trigger to ensure medium risk remediation work is placed under Cat 1. A generic catch all for medium level risk would adequately capture the Category 1 remediation works where appropriate for onsite groundwater remediation.
<i>(i) active bioremediation of contaminated groundwater</i>	Omit	<ul style="list-style-type: none"> As per comments in (d). Bio-remediation is one of the oldest forms of remediation and, as such, its risks are well known and can be adequately be addressed as either a Category 2 or captured under other recommended sections. If a medium level of risk is identified then such bio-remediation can be captured where necessary. A generic catch all for medium level risk would adequately capture the Category 1 remediation works where appropriate.
<i>(j) remediation of contaminated groundwater by chemical oxidation or reduction</i>	Omit	<ul style="list-style-type: none"> As per comments in (d). Chemical treatment is a well known form of remediation and as such its risks are well known and can be adequately be addressed as either a Category 2 or captured under other recommended sections. If a medium level of risk is identified then remediation works can be captured as Category 1 where necessary. A generic catch all for <i>medium level risk</i> would adequately capture the Category 1 remediation works where appropriate
<i>(k) remediation of contaminated soil or groundwater by in-situ or ex-situ thermal processes on site</i>	(k) remediation of contaminated soil or groundwater by in-situ thermal processes on site if it has the capacity to treat more than 200 m ³ per year of contaminated water or contaminated soil ex-situ or where the remediation work represents a medium level risk to occupants and neighbours of the site, based on its toxicity, volume and location.	<ul style="list-style-type: none"> The 200m³ pa is ~ 10% of the amount under s15 Sch 1, POEO Act for on-site thermal treatment of contaminated soil. Ex-situ treatment will be subject to the receiving facility's licence, planning and trackable waste requirements under environmental law. Hence was removed from (k). ASBG considers the risks for movements of waste soils off site are adequately covered under NSW waste legislation, such as licences for receival facilities, tracking requirements and substantial conditions and penalties for breaches. A generic catch all for medium level risk would adequately capture the Category 1 remediation works where appropriate.

Table 1: Recommended alternative Category 1 Remediation Works

Proposed	Possible replacement	Reasons
<i>(l) remediation of contaminated groundwater involving the use of permeable reactive barriers or vertical cut-off walls, or both</i>	(l) remediation of contaminated groundwater involving the use of permeable reactive barriers or vertical cut-off walls, or both and where the remediation work represents a medium level risk to occupants and neighbours of the site, based on its toxicity, volume and location.	The clause is clarified to bring it in line with a medium level of risk.
<i>(m) remediation where a long- term environmental management plan is or will be required</i>	(m) remediation where a long-term environmental management plan on the remediation will be likely to be required and where the scale of remediation work represents a medium level risk to occupants and neighbours of the site, based on its toxicity, volume and location.	<ul style="list-style-type: none"> • Most long term EMPs will not be known prior to the remediation as the full extent of the contamination not well known. Hence, this criteria should be restricted where it is likely that a long term EMP will be required given the scale and risks associated with the remediation prior to works commencing. • As there is no evidence provided that other remediation works granted under SEPP 55 have caused any issue, if the scale of the remediation does warrant a long term EMP, then this should not trigger a stop work to gain a DA. It would be preferable to continue on with modified RPs with the oversight of the CCSP. • Clarification as to ensuring the EMP is attached to the remediation and not other activities. • A generic catch all for medium level risk would adequately capture the Category 1 remediation works where appropriate
<i>(n) remediation where confirmation of successful completion is dependent upon post-remediation monitoring</i>	Omit This is a general requirement and feature of most remediation works.	<ul style="list-style-type: none"> • Post remediation monitoring is a pre-requisite for almost every type of remediation. Monitoring for natural attenuation or biodegradation is a form of remediation, which requires no active site or off-site works. Furthermore post monitoring is no different to assessment monitoring to evaluate if remediation is or is not required. ASBG does not believe it is the intent to make monitoring for natural attenuation or pre-monitoring to inform the need for remediation a Category 1 activity. It should be integrated into the relevant Category 1 categories and not be a stand alone criteria. • Also such a requirement may result in avoidance of post site monitoring to avoid a Category 1 trigger. • A generic catch all for medium level risk would adequately capture the Category 1 remediation works where appropriate

Proposed	Possible replacement	Reasons
<i>(o) remediation that will result in on-site containment of contaminated soil or contaminated groundwater, or both</i>	(o) remediation that will result in on-site, exsitu, containment of contaminated soil or contaminated groundwater, which exceeds 1,000 kL or a stockpiles of 6,000 m ³ or where the stockpiles and storages represents a medium level risk to neighbouring receptor surrounding the site, based on its toxicity, volume and location.	<ul style="list-style-type: none"> • The 20% of s 15A POEO Act Schedule 1 threshold is used as a starting point for assessment of the medium risk level. • This clause required modification as it can be interpreted to include in-situ contaminated soils and ground water. In-situ containment is generally covered under (h), (l) and (m). Many groundwater extractions are less hazardous than sewage, which has a POEO Act Schedule 1 s36 threshold of 750 kL per day, or 273 ML per annum. Hence, the 1,000 kL storage is considered appropriate. • Volumes are reflective of the above, with the caveat that higher risk substances can be triggered for lower volumes where they represent a medium risk level.
<i>(p) remediation works associated with infrastructure for the storage, handling or management of hazardous chemicals (including petroleum) on sites containing underground storage systems or above-ground storage tanks for hazardous chemicals (including petroleum)</i>	Omit	<ul style="list-style-type: none"> • Medium level of risk from remediation works is adequately captured under other sections: (g), (h), (k), (l), (m) and (o). • A generic catch all for medium level risk would adequately capture the Category 1 remediation works where appropriate • Most dangerous goods bulk stores of liquids are designed under a suite of Australian Standards. Contamination of land is highly variable, depending more on the age of system and how well maintained they have been. Capturing all tank and systems is an extremely conservative approach as many will be small, less than 1,000 litres (as bulk means >500L) and represent low to very low risk. • This would have significant implications for the petroleum industry, would add time and cost to line maintenance or replacement works and UPSS removal works and could actually result in a negative net benefit to the environment by leaving contamination in the ground longer than would otherwise be required. • Category 2 classification for underground tanks and systems has been hugely successful over the past 20 years in NSW, appropriate notifications being given to councils of the works, remediation action or work plans being submitted and post works validation reports submitted. With the addition of oversight from certified practitioners this process will only be more robust in the future. This category should not be carried into Cat 1. • Many hazardous chemicals stores in Australia have a low risk of leakage, compared to for example the USA, which has 10 times the leakage risk for underground tanks due to higher competition in the tank manufacturing market.

To recap ASBG is concerned the fundamental process to determine Category 1 has moved from a risk based approach to an activity and process one. It is poor regulatory practice to use a process based approach and against NSW regulation writing guidelines. As remediation of contaminated land is a risk based approach a similar method should be employed. The above table provides more a list of issues and a quick fix by attaching

a risk based methodology. ASBG would prefer if the Department took further review of the Category 1 triggers with the assistance of both land owners and contaminated site professionals.

Recommendation 4 *In setting the Category 1 Remediation Works thresholds the RL SEPP should:*

- *Establish a Working Group comprised of land owners, professionals and other stakeholders with contaminated site experience to reconsider the Remediation of Land SEPP (RL SEPP) and redo the draft subject to further public consultation.*
- *Adopt a medium risk based approach to determination of Category 1 remediation works using the above amended table as an example set of remediation activities where a medium level of risk is assessed.*

4 USE OF AUDITORS, PRACTITIONERS

Use of Certified Contaminated Site Practitioner (CCSP) is an interesting concept and one with considerable merit and required consideration on how this could be used to:

- Provide confidence for Government and the public medium level risk sites that have triggered Category 2 under SEPP 55
- Is of a level of expertise necessary that reflects the level of risk involved.

The RL SEPP requires additional clarifications regarding their use and future development as a set of useful professionals. Their use also ties in well with ASBG recommendations that remediation works require a risk based assessment to assign them as either Category 1 or Category 2 activities. The issues requiring clarification include:

- Where or when a Certified Contaminated Site Auditor (CCSA) is used
- Use of the term validation
- Level of competency of a CCSP

4.1 When an Auditor is Required?

There seems to be some misunderstanding of why sites are voluntarily remediated. There are basically two types:

- Where the site is being sold or as part of a property transaction
- When the site is being remediated without any property transactions

The RL SEPP appears to consider that all if not the majority of sites are remediated for some property transaction. However, this is not the case. There are many remediation works, such as upgrades to services stations, rented industrial sites, or ongoing actions to improve the land value where no property or even leaseholds are undertaken. Risk management is the driver for such changes. By removal of older equipment and its replacement with state of the art equipment is good business practice. Service stations and industrial sites have for many years replacing their older tanks and pipe systems with non-corrosive systems. Some remove the tank system completely. Given that around 0.5% —compared to 5% of UPSS in the USA—of petroleum underground tank systems leak there is a low risk with such, hence should remain Category 2 work.

CCSA's have considerable insurances and must follow strict guidelines for validating a site. This is generally for property transaction purposes and provides a level of legal certainty on the cleanliness of the remediated land. However, and quite rightly avoided in RL SEPP, the use of a CCSA is a choice by the land owner wishing to sell the land. Council may wish to also have such validation reports, such as if the land is to be rezoned. Such validations deal with legal uncertainty and land value. This is a separate function, although it is related, to actions under SEPP 55 and its replacement.

When a site decides, for legal or land sale reasons, to opt for a CCSA, there seems little point in also hiring a less qualified CCSP to essentially what is small part of the Auditors role in their verification process. Consequently, CCSA should have the same status as CCSPs under the RL SEPP and can work as an alternative to a CCSP.

Recommendation 5 *Certified Contaminated Site Auditors be recognised as having the same status as Certified Contaminated Site Practitioners regarding their role under the Remediation of Land SEPP (RL SEPP).*

This does not mean that CCSAs are required to undertake complete site validations nor follow their Auditor Guidelines for such purposes as required under the RL SEPP. Perhaps the clause recognising CCSPs have the term “or equivalent or better qualification” added to its definition under the RL SEPP.

Councils need to be clear when and how they use a CCSP. If the review process appears to look like a “statutory site audit” as per [s48 of the CLM Act 1997](#), Councils may find the CCSP is not qualified to do such work as only a CCSA is. This also brings in the issue of qualifications of the CCSP and the limits in which they can act as a reviewer for Councils.

4.2 Validation under the SEPP

The term *validation* appears in appendix D and on p13. However, the meaning of *validation* used under the RL SEPP is clearly different to that used by CCSAs to verify land. Use of CCSPs to validate should only be against the use of RP, based on the criteria set out under Clause 18 of SEPP 55. Here the use of *validation* is to merely demonstrate the remediation was undertaken as described in the prior notice to Category 2 remediation and the standards and control measures used to protect neighbours and sensitive environments around the area where implemented.

Recommendation 6 *The term ‘validation’ should be clarified; either replaced with an alternative term such as “certified remediation works”, with the term validation is clearly defined as distinctly different process to what Certified Contaminated Site Auditors mean by site validation.*

In addition, CCSPs may be subject to increasing insurance risks and costs if the ‘validation’ process is onerous, such as it is with CCSAs. Another reason to keep the ‘validation’ process of one which covers the Remediation plan and that it has been completed. Validation should not mean the site has no further contamination risks.

4.3 Level of competency

The CCSP is a relatively new process of deterring the level of competency to be a Site Practitioner. There is some concern this certification process is perhaps a little premature. Nevertheless, use of a professional which provides a level of confidence to Councils that remediation risks have been overseen in itself provides an upgrade to SEPP 55. As the CCPS matures there will be (already is) different levels of competency being assigned. This begs whether lower risk Category 2 sites can use less qualified CCPS and more complex ones a senior CCPS? In addition if there is a high level of acceptance of a CCPS overseeing a Category 2 site then the need to move more remediation works into Category 1 level is not required.

Again there are issues where the role of the CCSP can play and where the full process of a CCSA must take over. As discussed in s4.1, a detailed review of a remediation plan or ‘verification’ of work may trigger the need for an auditor, not a CCSP. So the terms of such reviews need careful consideration. Even then the complexity of the site may require a CCSP will specialist knowledge of a particular contaminant or remediation works.

On the certified schemes there are two:

- The CRC CARE Scheme (SCPA) is now incorporated.
- The EIANZ scheme has a General CEnvP, then specialisations including Site Contamination Specialist, SCS (Auditor); Ecology Specialist, Climate Change Specialist, and Impact Assessment Specialist, which are noted on their certification. So a Certified Environmental Professional (CEnvP) could be a Site Contaminated Specialist or a Site Contaminated Specialist (Auditor). Not all auditors are CEnvPs.

The advantage is that CCSPs will be more readily available than auditors and cost less. This would be to the advantage of landowners, Councils and assist in promoting remediation of land.

5 CATEGORY 2 REMEDIATION WORKS

5.1 Issues with Category 2 Work Appendix D Criteria

Appendix D criteria is also contrary to the NSW Governments' [Guidance for regulators to implement outcomes and risk-based regulation](#) as it establishes prescriptive and process based approaches to safety and environmental risks. A one type fits all approach is also very inefficient, inflexible, ignores innovation and will be more costly sometimes resulting in perverse outcomes, hence the reason for the Department of Finance, Services and Innovation *NSW Guide to Better Regulation* series. Good regulation should be based upon performance or outcome based criteria permitting an unlimited set of design methodologies to achieve this outcome. Under both the Work Health and Safety and Environment Protection legislation performance based regulation is used. Emissions into the environment have set criteria, and safety issues are managed using a risk based approach. Use of prescriptive approaches, even use of Australian Standards for Dangerous Goods as prescriptive design standards, were discontinued more than a decade ago due to the high requests required to deal with variables.

In addition, oversight of Category 2 remediation work by either the CCSP or equivalent and the local consent authority, should provide further confidence that overly prescriptive conditions are not required. Also Councils and the EPA have a suit of regulatory powers to prevent, rectify and punish for poor practices during remediation work.

As a consequence, Appendix D should be re-written to reflect an outcome based approach. ASBG has made comments and some recommended changes to this effect.

Table 2 Issues with Appendix D criteria cont.	
Proposed	Comments and Alternatives
Understanding the objectives of remediation	Accepted
Management of remediation work	Accepted
<p>Protection of adjoining areas and the public</p> <p>A temporary hoarding or temporary construction site fence must be erected between the remediation site and adjoining land before the works commence and must be kept in place until after completion of the work.</p>	<p>The measure is one of safety and should be outcome based not process based. Use of fences or hording should be replaced with outcome based design approaches to achieve. Sites can be much larger than the remediation area, hence fencing an entire site can be excessive.</p> <p>Recommend Changes: <i>Site security to prevent public and unauthorised access, such as temporary hoarding or temporary barriers, construction site fence, be in place between the remediation area or site and adjoining land before the works commence and be kept in place until after completion of the remediation work.</i></p>
Site Access, Signage and Contact Information	

Table 2 Issues with Appendix D criteria cont.

Proposed	Comments and Alternatives
<p>Vehicle Exit Points Vehicle entry and exit points must be stabilised with suitable aggregate to prevent erosion and tracking of sediment onto roads and footpaths. An appropriate system such as a wheel-wash and shakers must be installed at the exit point to prevent the tracking of soil and other materials onto public roads.</p>	<p>The measure is one of environmental protection and should be outcome based not process based. Use of suitable aggregate is prescriptive and should be a design option. Recommend Changes: <i>Vehicle entry and exit points must be stabilised to prevent erosion and tracking of sediment onto roads and footpaths. An appropriate system to minimise tracking of soils from the site onto public roads must be installed at the exit point to prevent the tracking of soil and other materials onto public roads. Such systems be scaled to the site's risk of off-site soil tracking.</i></p>
<p>Tree protection measures</p>	<p>Accepted</p>
<p>Services within Remediation Area Any drains, sewers or water services must be disconnected and sealed at the boundary of the remediation area by a licensed plumber, in accordance with the requirements of the relevant authority.</p>	<p>This is too prescriptive and requires an outcome based approach. Recommend Changes: <i>Any drains, sewers or water services must be protected from contamination from the remediation activity. Underground gas and electrical services will need to be protected to ensure site safety. It is recommended that liquid transport services be disconnected or isolated at the boundary of the remediation area by a suitably qualified person.</i></p>
<p>Hours of Operation Works must only be undertaken during the following times:</p> <ul style="list-style-type: none"> • Monday – Friday: 7am - 6pm • Saturday: 8am - 1pm • No work permitted on Sundays or Public Holidays 	<p>This is too prescriptive and ignores emergency or urgent remediation actions approved by the appropriate agencies. Recommended Changes: Add the sentence: “Unless otherwise approved by the appropriate Government agencies.”</p>
<p>Vehicles All vehicles entering or leaving the site must have their loads covered. Before leaving the site, all vehicles must pass through the site's vehicle cleaning facility (e.g. a wheel-wash) and be cleaned of soil, sand and other materials, to avoid tracking these materials (whether contaminated or not) onto public roads. Any materials, such as soil, mud or earth, tracked onto the roadway, must be removed by means such as sweeping and shovelling, but not washing.</p>	<p>The measure is one of environmental protection and should be outcome based not process based. Recommended Changes: <i>Before leaving the site, all vehicles exposed to contaminated soil at the site must be cleaned of soil, sand and other materials, to avoid tracking these materials (whether contaminated or not) onto public roads. Any materials, such as soil, mud or earth, tracked onto the roadway, must be removed by means which avoids stormwater contamination, such as sweeping and shovelling.</i></p>
<p>Earthworks, retaining walls and structural support Any excavation left open overnight or when the site is unattended must be individually fenced with barrier mesh</p>	<p>The measure is one of safety and should be outcome based not process based. Recommended Changes: An excavation which represents a safety risk, to employ safety control measures to prevent falls.</p>
<p>Management of on-site water Water must not be allowed to accumulate in any excavation, but must be removed by pumping. Excavation pump-out water must be transported to an appropriately licensed facility for disposal, or discharged to a sewer under a trade waste agreement.</p>	<p>This requirement is unworkable and impractical. Again an outcome based performance measure is required: Recommend Changes: Waters which accumulate on site, which represent a safety risk, to employ safety control measures to minimise drowning and health risks.</p>

Table 2 Issues with Appendix D criteria cont.	
Proposed	Comments and Alternatives
<p>Run-off and erosion controls</p> <p>Sediment control structures as described above must be maintained throughout remediation work to prevent run-off of any potentially contaminated water or soil to the surrounding environment.</p>	<p>This is more of a performance or outcome based criteria. Recommended to include a reference to various methods where run-off control as used for construction can be achieved e.g. use of the EPA's Blue Book</p>
<p>Dust Control</p> <ul style="list-style-type: none"> • Work must be programmed to minimise any exposed soil surface at any time. • Work must be delayed or limited during periods of high wind to prevent materials becoming airborne. • Dust generation must be controlled by water spraying, particularly on haulage roads and high volume non-tarmac areas. • Shade cloth must be placed on perimeter fences and fence extensions of immediate works zones. • Operators must monitor the dust conditions within the site along the site boundary during work likely to generate dust to ensure on-site work is not causing off-site impacts. 	<p>Again an outcome based performance measure is required.</p> <p>Recommended changes:</p> <ul style="list-style-type: none"> • <i>Work must be delayed or limited during periods of high wind where wind blow dust is likely to occur, to prevent such dust events affecting nearby receptors.</i> • <i>Dust generation must be controlled by various methods such as water spraying, particularly on areas where dust generation is likely.</i> • Remove the shade cloth requirement as this is a process based and is the only one method accepted, ignoring other methods. • <i>Where dust poses a risk to receptors, operators to monitor the dust conditions within the site to ensure the remediation work is not affecting nearby receptors.</i>
<p>Stockpile Management</p> <ul style="list-style-type: none"> • Stockpiles of potentially contaminated soil should be placed on hardstand or otherwise on polyethylene sheeting. • Stockpiles must be bunded to prevent runoff of potentially contaminated soil. • Stockpiles must be stabilised by compacting and contouring to control wind exposure and allow access for the water truck. • Stockpiles should not exceed the height of the fencing in order to reduce dust and odours spreading to the surrounding environment. • Stockpiles should be clearly labelled with a unique identification number and a record of the volume and origin of soil to enabling tracking of soils from excavation to final disposal or re-use on site. 	<p>Again an outcome based performance measure is required.</p> <p>Recommended changes:</p> <ul style="list-style-type: none"> • <i>Stockpiles of potentially contaminated soil be stored to prevent or minimise contamination of land on which it is placed.</i> • <i>Stockpiles be designed to prevent runoff of potentially contaminated soils and waters.</i> • <i>Stockpiles be designed to minimise dust emissions in windy conditions.</i> • <i>Where necessary actions to control odours from stockpiles be undertaken.</i> • Last point accepted.
<p>Noise and Vibration Control</p> <p>Remediation works must be carried out in such a way as to minimise disturbance to neighbours and other members of the public. In any event, noise levels are to be maintained below the maximum levels specified in Australian Standard AS 2436 - Guide to noise and vibration control on construction, demolition and maintenance sites, Protection of the <i>Environment Operations (Noise Control) Regulation 2017</i> and the EPA's Interim Construction Noise Guideline 2009.</p>	<p>Recommended changes:</p> <p><i>Remediation works must be carried out in such a way as to minimise disturbance to neighbours and other members of the public. Examples to achieve this include:</i></p> <ul style="list-style-type: none"> • <i>Noise levels are to be maintained to meet the EPA's Interim Construction Noise Guideline 2009.</i> • <i>Where receptor are nearby and likely to be disturbed, reference to the Australian Standard AS 2436 - Guide to noise and vibration control on construction, demolition and maintenance sites be considered.</i> • <i>Equipment used on the site to comply with the requirements under Protection of the Environment Operations (Noise Control) Regulation 2017.</i>

Table 2 Issues with Appendix D criteria	
Proposed	Comments and Alternatives
<p>Waste Management</p> <p>Any soil or other solid material excavated during remediation that is not suitable for re-use on site, or is surplus to site requirements, must be removed from the site as waste. Prior to removal from the site, waste must be classified in accordance with the Waste Classification Guidelines (EPA 2014).</p>	<p>Too prescriptive and open to misinterpretation.</p> <p>Recommended changes: <i>Any soil or other solid material excavated during remediation that is not suitable for re-use on site, or is surplus to site requirements, must be removed from the site for recycling, beneficially reused or disposal. Such wastes must be classified prior to removal from the site, waste in accordance with either:</i></p> <ul style="list-style-type: none"> • <i>The Waste Classification Guidelines set (EPA 2014)</i> • <i>A Resource Recovery Order and Exemption</i> • <i>Specific Resource Recovery Order and Exemption or as</i> • <i>As Virgin Excavated Natural Material</i>
<p>Removal of Underground Storage Tanks</p> <p>The removal of USTs is to be undertaken in accordance with the requirements of SafeWork NSW, as set out in the Code of Practice - Demolition Work (September 2016) and the Excavation Work Code of Practice (July 2015).</p> <p>Tank removal is to be conducted in accordance with Australian Standard AS 4976-2008: The removal and disposal of underground petroleum storage tanks.</p> <p>Any contained fluids are to be removed from the tank, and the tank is to be degassed, prior to removal from the ground.</p>	<p>The last sentence is generally covered under many safety requirements and standards. Consequently, it should be redundant for this purpose. Australian Standards are only called up in regulatory and policy matters as guidelines and one method of managing risk.</p> <p>Recommended changes: <i>The removal of USTs is to be undertaken in accordance with the requirements of SafeWork NSW, as set out in the Code of Practice - Demolition Work (September 2016) and the Excavation Work Code of Practice (July 2015).</i></p> <p><i>Tank removal is to be conducted in accordance with Australian Standard AS 4976-2008 or an equivalent process which achieved a similar level of risk management.</i></p>
<p>Unexpected Finds</p> <p>Where unexpected contamination is discovered during work, all work in that area must stop and a certified contaminated land consultant advised of the find. Work may only re-commence after the certified contaminated land consultant has assessed the land and determined if it requires remediation and if so, how that should be undertaken</p>	<p>It is recommended to continue on with modified RPs with the oversight of the CCSP, than to subject a remediation works to a Category 1 DA requirement. ASBG has concerns a Category 1 process will result in additional risks. Once remediation has commenced it should be permitted to continue and not stopped for mid stream assessment.</p> <p>Recommended changes:</p> <ul style="list-style-type: none"> • <i>Where unexpected contamination that is of a scale and nature to increase the level of risk to a Category 1 level is discovered during work, all work in that area must stop.</i> • <i>A certified contaminated land consultant or equivalent be employed to investigate.</i> • <i>Work may only re-commence after the certified contaminated land consultant has assessed the land and determined if it requires remediation and if so, how that should be undertaken.</i>

Table 2 Issues with Appendix D criteria cont.	
Proposed	Comments and Alternatives
<p>Importation of Fill</p> <p>Material imported for use as backfill must be:</p> <ul style="list-style-type: none"> • VENM (virgin excavated natural material) classified as such in accordance with the Waste Classification Guidelines, Part 1: Classifying Waste (EPA 2014), or • ENM (excavated natural material) meeting the requirements of the Excavated Natural Material Exemption 2014, and • compatible with the existing soil characteristics of the site. 	<p>There are no reasons to limit the use of fill materials to only VEMN or ENM, where many RREs have been developed for beneficial reuse of waste soils and other media. EPA has exemption clauses under its Waste Regulation which should also be recognised. Given the recycling crisis we face, beneficial use of such wastes where appropriately assessed should not be limited by narrow criteria.</p> <p>Recommended changes: <i>Off-site material imported for use as backfill must be:</i></p> <ul style="list-style-type: none"> • <i>VENM (virgin excavated natural material) classified as such in accordance with the Waste Classification Guidelines, Part 1: Classifying Waste (EPA 2014)</i> • <i>ENM (excavated natural material) meeting the requirements of the Excavated Natural Material Exemption 2014</i> • <i>Compliant with a Resource Recovery Exemption or Specific Resource Recovery Exemption which permits such waste application on to the land being remediated, or</i> • <i>Or as otherwise exempted and permitted for such use by the NSW EPA.</i>
Site Clearance	Accepted
<p>Reporting and Notification of Completion</p> <p>At the completion of remediation work, a validation report must be prepared, or reviewed and approved, by a certified contaminated land consultant. The front cover of the validation report is to include the details of the consultant's certification including the logo or seal of the body through which they are accredited.</p>	<p>See section 4.2 in this submission.</p> <p>Recommended changes: <i>The definition of validation to a Category 2 level site be defined as a validation that the Remediation Plan has been undertaken as stated and the criteria in Appendix D has been met.</i></p> <p><i>It should not be a validation that the site has been remediated to a level which provides legal confidence that the site requires no further remediation to meet its land zone and use criteria.</i></p>
Archaeology discovered during excavation	Accepted if this is the required regulated action
Aboriginal objects discovered during excavation	Accepted if this is the required regulated action

Recommendation 7 *The criteria prepared under the Category 1 table and Appendix D for Category 2 remediation work requires major revision, subject to the outcomes of the recommended working group.*

5.2 Extent of Coverage of Planning Oversight

The draft Contaminated Land Planning Guidelines (CLPG) run a close line to which types of sites are to be considered for potential contamination. Appendix 1 provides a list, gathered from the ASC NEPM, of traditionally sources of contaminated land. However, given the liabilities associated with contaminated land, groundwater and building sites, it is likely the application of the CLPG will be applied to most Development Applications. There is clear evidence of contamination under many commercial and residential sites.

Residential sites are commonly affected, for example, by asbestos, contaminate ground waters and organic chlorinated pesticides. The issue here is one of legal liability and double standards being erroneously applied.

As a consequence of tightening community environmental standards the process of site consideration will move to cover all sites, and not just those which were industrial or adjacent to such. The issue then becomes one of establishing criteria to manage these smaller sites and how they are assessed. This ties into the very low risk criteria, raised in s2.4.2. The issue becomes should residential sites be treated differently to industrial and commercial sites by using separate criteria? This would cause considerable confusion and may generate a double standard between land uses. As residential sites are at the more sensitive range of receptors, they can require higher standards as per the ASC NEPM criteria. Considering ongoing concerns on environmental contamination, it is less of a question of should it occur but when it will occur for residential sites.

No doubt the application of RL SEPP and CLPG to residential land is a pandora's box. Councils are already under resourced and the influx of remediation assessments for demolishing and rebuilding could be considerable. In addition, this will impact on the cost of residential property transfers, building costs and especially if contamination is found, remediation and disposal costs. While this review of contaminated land planning is trying to skirt around this issue, it will be required considering the huge legal and liability issues surrounding living on contaminated land and ground waters. The only saving grace is that NSW will not be the only jurisdiction facing this tsunami of work as it is in fact international. However, it will call in the need to reconsider the risk based approaches used especially those with considerable safety factors.

Recommendation 8 *The Department needs to consider the application of the RL SEPP and Contaminated Land Planning Guidelines on:*

- *The number of investigations required if applied to the majority of Development Assessments*
- *Application on small land holdings of both commercial and residential.*

6 CONCLUSION

A working group comprised of key stakeholders including land owners and contaminated site professionals will prepare a far more flexible and useful replacement for SEPP 55. ASBG provides a number of listed suggested changes, but these are considerable and should support the proposed working Group in its task ahead. Advice from the Working Group will be used to recompile the RL SEPP using the NSW Guide to Better Regulation and associated documents.

A revised and simpler set of triggers for Category 1 remediation work, using a risk based approach than one based on activity and process, will keep the SEPP 55 methodology continuing. Clarification of the role of Certified Contaminated Site Practitioners (CCSP) in their role as application, oversight and report (validation) for Category 2 work will provide confidence to Councils and local communities that remediation work has been effectively and properly undertaken. Category 2 work will be subject to outcome based conditions with the threat of regulatory actions by Councils or other regulators and failure to be provided a final report by the CCSP.

Certified Contaminated Site Auditors to be recognised as also being able to take on the role of a CCSP.