

Environment Protection Authority

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Our Ref: EN-EM-CM-090603-003



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State Planning Office
Department of Premier and Cabinet
GPO Box 123
Hobart TAS 7001

Email: yoursay.planning@dpac.tas.gov.au

Dear Sir/Madam,

State Planning Provisions Review – scoping issues

I provide a submission regarding potential amendments to C14.0 Potentially Contaminated Land Code.

I would welcome the opportunity to elaborate on these in a discussion.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Joseph Tranter', written over a light grey dotted rectangular background.

Joseph Tranter

MANAGER, ENVIRONMENTAL OPERATIONS SOUTH
Delegate for the Director, Environment Protection Authority

Encl. – Comments on C14.0 Potentially Contaminated Land Code.

Enclosure

Comments on CI4.0 Potentially Contaminated Land Code

CI4.2 Application of this Code

The additions, highlighted, are suggested as they to allow the Planning Authority to consider a broader range of information sources.

CI4.2.1 This code applies to a use listed in a Use Class in Table CI4.1 as one of the specified uses, or development, on land that:

- (c) the planning authority reasonably suspects may be contaminated by reference to:
 - (i) no change
 - (ii) no change
 - (iii) information in its possession, that the land has been used, or may have been used, for one of the potentially contaminating activities listed in Table CI4.2;
- (d) has been identified as having been used, or may have been used, for a potentially contaminating activity, or as land onto which it is likely that contamination from a potentially contaminating activity has migrated:
 - (i) no change
 - (ii) no change
 - (iii) by reference to information in the planning authorities possession.

CI4.3 Definition of Terms

environmental site assessment – this definition could usefully include the concept of the scope of an ESA being able to be scaled up (or down) depending on the risks associated with the former site uses and proposed uses. An ESA could be conducted for a minor activity on an industrial site and just be focused on the area of impact; alternatively, an industrial site changing use to residential would require a scope that reflects the complex whole of site assessment required. The definition could also usefully bring in the terms Preliminary Site Assessment and Detailed Site Assessment which are used in the Assessment of Site Contamination NEPM (environmental site assessment is not defined in the NEPM). I have not suggested wording for this here but would be pleased to provide this if you agree with such a change.

Person approved by the Director for the purpose of this code – the references to interstate legislation need updating e.g., Vic EPA have a new Act. Could this definition allow for such ongoing changes by specifying legislation “as amended/revise” or by removing the references to the specific legislation here? The site contamination practitioner definition has used this approach.

CI4.4 Use or development exempt from this Code

Issue 1 – UPSS Decommissioning

EPA has noted that Planning Authorities often consider underground petroleum storage system (UPSS) decommissioning to be Development and thus triggering the conducting of an environmental site assessment under the Code. The perverse outcome is that a site assessment must follow the removal of the UPSS under the Regulations [Ceasing Use and Decommissioning Storage Systems | EPA Tasmania](#). Requiring an ESA to also precede the works results in doubling up.

I suggest a possible clarification in highlight to address this. If you agree this is useful, we might further consider the exact wording:

CI4.4.1 – The following use or development is exempt from this code:

- (a) Development:
 - i. To investigate...etc

- ii. In accordance with a notice .etc
- iii. Required to satisfy Regulation 36 and 38 of the UPSS Regulations

Issue 2 - Certificates re insufficient increase in risk

EPA would like to raise the following issue for discussion and particularly to consider whether this subsection has presented difficulties for Planning Authorities. Our observation is that subsection C14.4.1 (d) has proven useful where minor works are occurring that do not warrant an environmental site assessment. A CEnvP SC prepared a brief report in all these cases and included soil sampling where deemed necessary. These instances seem appropriate but we would like to consider whether any boundaries should be placed around the use of this subsection, for instance, that it should not be used where a site is changing to a sensitive use. Additionally, the use of the word “certificate” should be considered as the form of this is not defined.

C14.6 Development Standards for Building and Works

Standard 14.6.1 - Excavation works - The intent of this section was to identify the site redevelopments within the same use class e.g., they are commercial redevelopments, that pose the higher risk of causing environmental harm. It is based on the supposition that a larger excavation is likely to identify a more extensive development and thus greater potential for exposure to potentially contaminated soil and groundwater both during and following the works. The contaminated sites area has developed since the drafting of the Code and it is an opportune time to consider whether a more nuanced approach would be preferable. For instance, consideration could be given to whether an environmental site assessment could be required for all use and development on potentially contaminated sites but that the level of assessment would be commensurate with the risks posed by the site contamination under the proposed use. We would welcome the opportunity to discuss this matter further.