



Department
of Industry

Dol – Lands & Water

Contaminated Land Strategy & Operating Procedures

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Document Control Sheet

Document Version Control

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Document Approval

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Related Documents

- DoI-Crown Lands Aboriginal Land Claims procedure (CL016) (CM9 DOC13/036553)
- DoI-Crown Lands Commercial Leasing Guideline (under development)
- DoI-Crown Lands Natural Resources Management Plan 2016 DOC16/127451
- DoI-Crown Lands Guideline – Sales and Disposal of Crown Land (13 April 2011) DOC11/040050
- Guideline for dealing with requests for landowner's consent to lodge applications to other authorities for development on Crown Land (Nov 2010)
- Policy for Landowner's Consent for Development on Crown Land (Aug 2010)
- Trade and Investment Enterprise Risk Management Policy (TI-G-135)



Department of Industry Enterprise Risk Management Framework (IND-P-207)
Trade & Investment Enterprise Risk Management Procedures
Crown Land Managers Portal – Reserve Management

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PART A – Contaminated Land Management Strategy

1. Introduction

Crown Lands & Water, as a division of the Department of Industry, manages the Crown land portfolio covering approximately 44% of NSW.

The portfolio is used for a wide variety of purposes and is subject to various management arrangements. The portfolio is managed in accordance with the principles of the *Crown Land Management Act 2016* including:

- that environmental protection principles be observed;
- that the natural resources of Crown land be conserved and sustained in perpetuity;
- that public use and enjoyment of Crown Land be encouraged;
- where appropriate, multiple uses of Crown land be encouraged;
- where appropriate, Crown land should be used and managed in such a way that both the land and its resources are sustained in perpetuity; and
- that Crown Land be occupied, used, sold, leased or licensed in accordance with the best interests of the state.

Due to the age and diversity of the portfolio, many properties may be affected by contamination that has the potential to pose human health, environmental and business risks. The type and extent of contamination on Crown land may range from minor rubbish dumping and spills to extensive contamination resulting from industrial practices such as gasworks, extractive industries, waste depots, agricultural chemicals (such as cattle dips) and landfills.

This document details the DoI -Crown Land's strategy for managing contaminated land risks across its portfolio, and is aligned with:

- Industry Cluster Corporate Plan 2015-2019 in relation to sustainable use and access to natural resources; *Department of Industry Lands and Forestry Strategic Plan 2015-2019 in relation to risks managed for natural resources, farming and food*; *NSW 2021 Plan* in relation to protecting our natural environment.

2. Background

Dol-Crown Lands & Water (the department) holds a range of legislative and constructive obligations relating to contamination, which is defined in the *Contaminated Land Management Act 1997* (CLM Act) as:

“..... the presence in, on or under the land of a substance at a concentration above the concentration at which the substance is normally present in, on or under (respectively) land in the same locality, being a presence that presents a risk of harm to human health or any other aspect of the environment.”

Legislative obligations are those imposed by relevant federal and state laws and contractual agreements. Constructive obligations are those created by the actions of the department where established policies or practices create a valid expectation from stakeholders that the department has accepted and will discharge certain responsibilities.

The following sections of this document outline the department’s key legislative and constructive obligations.

2.1 Legal Obligations

The primary piece of legislation that regulates contaminated land issues in NSW is the *Contaminated Land Management Act 1997* (CLM Act).

The CLM Act allocates responsibility for contamination firstly to the person who caused the contamination, followed by the person who is the owner or occupier of land. According to the CLM Act the owner or occupier is taken to be responsible if the person knew, or ought reasonably to have known, that contamination would occur, yet failed to take reasonable steps to prevent it.

Under the CLM Act a person who is responsible for contamination continues to be responsible, whether or not they have entered into a contract that allocates responsibility to another entity. In practice, this enables the regulator of the CLM Act (the NSW Environment Protection Authority (EPA)) to issue management orders to a person responsible for contamination without considering the existence or effectiveness of any contractual arrangements.

The CLM Act also imposes a duty to report contamination (above certain thresholds) to the EPA. The duty is imposed on those who caused contamination and on the current owner of the site, and is also triggered when a person *‘ought reasonably to have been aware’* of the contamination.

The EPA is granted a range of powers under the CLM Act, which allows them to:

- Direct a person to conduct a preliminary investigation of land;
- Declare land to be “significantly contaminated”, where the contamination is significant enough to warrant regulation;
- Make a management order or maintenance order with respect to significantly contaminated land;
- Impose restrictions on the use of land for the purpose of ongoing management; and
- Make and/or approve guidelines in connection with the objectives of the Act.

The CLM Act contains two additional provisions that specifically impact the management of the department’s portfolio. Firstly, the holder of a perpetual lease over Crown land is taken to be the owner of the land for the

purposes of the CLM Act. Secondly the Director General or Secretary of NSW Department of Industry can be held responsible for “significant contaminants” originating from cattle dip sites ordered under the *Stock Diseases Act 1923*, irrespective of property ownership.

Legal requirements to manage contamination also exist under other NSW legislative instruments, including:

- The *Crown Land Management Act 2016*, which states a person must not pollute or contaminate Crown land or any waters in, on or under the land; pollute or contaminate any other land or waters in, on or under the land if the source of the pollution or contamination is in, on or under Crown land as stated in Division 9.2 Improper use of Crown land, s9.3.
- The *Protection of the Environment Operations Act 1997* (POEO Act), which makes it an offence to pollute land; to dispose of waste in a manner that harms or is likely to harm the environment; and to dispose of waste (including contaminated materials) at a location that cannot be used as a waste facility;
- The *State Environmental Planning Policy 55 – Remediation of Land* (SEPP55), which imposes statutory obligations on planning authorities (including the department in the unincorporated area of the Western Division) to consider whether land is contaminated when assessing rezoning and development applications;
- The *Work Health and Safety Act 2011*, which requires a person conducting a business or undertaking to ensure a safe work environment for employees, and establishes strict requirements for the assessment and management of asbestos; and
- The *Competition and Consumer Act 2010*, which requires that organisations not make false or misleading representations concerning land (typically in property transactions), including the characteristics of the land or the use to which it is capable of being put.

As a result of these legislative instruments the department holds significant obligations to be aware of, and to appropriately manage contamination issues across its portfolio.

2.2 Constructive Obligations

The department previously developed a corporate policy (TI-G-156) relating to contaminated land management. This policy has now been decommissioned and incorporated into this document. The key obligations created by the policy, in addition to those required by legislation, include:

- Maintaining a register of all known and potentially contaminated land;
- Managing contaminated land risks through property transactions;
- Providing information to land managers, tenure holders and the community to support informed decision making;
- Adoption of a risk-based approach to the identification and management of contaminated land; and
- Identification of financial liabilities associated with contamination on Crown land.

The management of contaminated land by the department was the subject of a Performance Audit by the Audit Office of NSW in July 2014. The audit report made the following key recommendations for contaminated land management across the department’s portfolio:

- Establish comprehensive risk-based policies and procedures to manage contaminated sites, including purchasing, selling, leasing or transferring land;

- Develop a comprehensive plan for assessing and managing contaminated sites including prioritisation, resources, timeframes and notification requirements under the Contaminated Land Management Act;
- Review the currency of the cattle dip program;
- Implement recommendations from review of the Legacy Mines Program;
- Assess sites ranked as high-risk as a matter of urgency;
- Ensure that liabilities for contamination are reliably measured and accounted for in financial reports;
- Make provisions for dealing with contaminated sites;
- Develop processes for ensuring timely communication plans for individual or classes of contamination;
- Develop a strategy for managing non high-risk sites;
- Create a centralised register of contaminated land;
- Ensure flow of information from regional offices to the management team; and
- Develop capability of staff for dealing with contaminated land matters.

These constructive obligations reinforce the need for the department to deliver a robust and comprehensive strategy for contaminated land management.

3. Objectives

The department's overall objectives for managing contaminated land across its portfolio are:

- To demonstrate compliance with applicable legislation;
- To address the department's constructive obligations including the recommendations of the Performance Audit; and
- To mitigate unacceptable human health, environmental and business risks associated with contamination;
- To manage Crown land in accordance with the objects and principles of the Crown Land Management Act 2016.

4. Risk Management

In order to meet its objectives, the department has developed a comprehensive strategy for managing contaminated land risks. This strategy has been designed to address the department’s legislative and constructive obligations with respect to contamination across the entire Crown land portfolio, and is based on the *Department of Trade & Investment Enterprise Risk Management Framework* as illustrated in **Table 4.1**.

Table 4.1: DoI-Crown Land Contaminated Land Management (CLM) Strategy

T&I Enterprise Risk Management Framework	DoI-Crown Land CLM Strategy	
	Proactive Management	Reactive Management
	Key Elements:	Key Elements:
Identify Risks	Portfolio Risk Assessment	Property Transaction Procedures Site Inspection Procedures 3 rd Party Notification Procedures
Analyse / Evaluate Risks	Contaminated Land Management Program	Individual Site Assessments and Evaluation
Treat Risks	Individual Projects for High-Risk Portions of Portfolio	Site-Specific Remediation Works and/or Administrative Controls
Monitor and Review	Governance, communication, monitoring and evaluation processes as provided in the Operating Procedures and Program Management Plan	
<i>Reference Documents:</i>	<i>DoI-Crown Lands Contaminated Land Program Management Plan (June 2015)</i>	<i>DoI-Crown Lands Contaminated Land Management Operating Procedures (June 2015)</i>

As shown above, the department’s contaminated land management strategy comprises two key components, including a proactive management stream defined by the Contaminated Land Management Program (CLMP), and a reactive management stream defined by the contaminated land operating procedures provided in **Part B** of this document. Both components are critical to the management of contamination risks across the Crown land portfolio, providing mechanisms to proactively identify high risk portions of the portfolio whilst still accounting for contamination issues identified by other triggers such as site inspections, tenure audits and property transactions.

The proactive component of the strategy comprises a comprehensive risk assessment of the portfolio based on land use activities, followed by the development and implementation of a CLMP. The CLMP comprises a finite series of separate but related projects to address contamination risks across specific portions of the portfolio that are classified as high risk through the portfolio risk assessment.

The reactive component of the strategy is delivered through the operating procedures presented in **Part B** of this document. These procedures account for contamination issues identified through ongoing triggers such as property transactions, site inspections and third party notifications, and provide processes to assess and

evaluate potential contamination risks at individual sites following identification. The procedures also provide guidance when undertaking remediation works to mitigate contamination risks at individual sites. To support the successful implementation of the operating procedures, the department is also improving staff competencies through training and awareness, and improving its data management capabilities through continual improvements to its Contaminated Sites Register (CSR).

The reference documents associated with each component of the overall contaminated land management strategy also include governance, communication, monitoring and evaluation, data management and reporting processes.

Whilst the contaminated land management strategy is driven by risks associated with contamination, it also considers risks associated with hazardous building materials in structures, due to the close relationship between the two issues. Risks associated with hazardous building materials are managed through the strategy as follows:

- The operating procedures (**Part B** of this document) consider hazardous materials issues and associated obligations under the *Work Health & Safety Act 2011* in conjunction with contaminated land issues where relevant;
- Projects targeting high risk portions of the portfolio under the CLMP will also consider hazardous materials risks when assessing individual sites; and
- A separate program of work will be performed to evaluate hazardous materials risks as a component of the department's *Total Asset Management Strategy (TAMS)*.

The department has also established effective governance arrangements to ensure the success of the contaminated land management strategy. The specific arrangements are documented within the Program Management Plan for high risk sites, and the Operating Procedures.

PART B – Contaminated Land Management Operating Procedures

5. Overview

The Operating Procedures presented in this document are the primary tools used for the day-to-day management of contaminated land risks across the department's portfolio.

The Procedures are based on the national framework for the assessment and remediation of contaminated land, which establishes a specific lifecycle for investigation, assessment and remediation works (refer **Section 5.1**).

These Procedures are intended to address situations, or triggers, within the course of the department's normal business operations that present a practical opportunity to assess and mitigate human health, environmental and/or business risks associated with contamination. These triggers include:

- Routine triggers including site inspections, third party notifications and termination of tenures (refer **Section 6.1**); and
- Strategic triggers where the management of contamination can be integrated into the delivery of new or renewed property transactions (refer **Section 6.2**).

These Procedures provide departmental personnel with tools to identify and evaluate the potential for contamination, and the resulting risks from such contamination in the situations listed above. For sites where actual or potential contamination risks are found to be present, guidance on the site investigation, assessment and remediation process is provided in **Section 5.2**. Sites with extensive or complex contamination issues are likely to require input from specialist consultants and contractors as described in **Section 5.3**.

The Procedures also cover the outputs from the site assessment and remediation process, including:

- Regulator notifications (refer **Section 6.3.1**);
- Reporting of financial liabilities (refer **Section 6.3.2**);
- Monitoring and reporting (refer **Section 6.3.3**); and
- Use of the department's Contaminated Sites Register (CSR) (refer **Section 6.3.4**)

5.1 Framework

The *National Environment Protection (Assessment of Site Contamination) Measure 1999* (NEPM; NEPC, April 2013) provides the framework for the assessment and remediation of contaminated land in Australia. The NEPM is supported by a suite of guidance documents produced / endorsed by the NSW EPA. These documents should always be followed when delivering contaminated land assessment and remediation works to ensure an appropriate level of quality and reliability.

- *Contaminated Sites: Sampling Design Guidelines* (NSW EPA, 1995);
- *Contaminated Sites: Guidelines for Consultants Reporting on Contaminated Sites* (OEH, 2011);
- *Contaminated Sites: Guidelines for the NSW Site Auditor Scheme (2nd Edition)* (DEC NSW, 2006);
- *Contaminated Sites: Guidelines for the Assessment and Management of Groundwater Contamination* (DEC NSW, 2007);
- *Contaminated Sites: Guidelines on the Duty to Report Contamination under the CLM Act* (DECC, 2009);
- *Waste Classification Guidelines – Part 1: Classifying Waste* (NSW EPA, 2014);

- *Australian and New Zealand Guidelines for Fresh and Marine Water Quality* (ANZECC & ARMCANZ, 2000);
- *Australian Standard 4482.1/2005, Guide to the Sampling and Investigation of Potentially Contaminated Soil*; and
- *Environmental Health Risk Assessment*; (enHealth, 2002)

The standard lifecycle for the investigation and remediation of contaminated land is provided in the NEPM and NSW EPA guidance documents and summarised in **Table 5.1** below.

The lifecycle phases are normally performed in order from top to bottom, however not all phases are required in all situations. Depending upon the type, level and extent of contamination, a site's physical and environmental setting, and/or its current or potential future land use, a particular selection of phases may be required in order to appropriately understand and mitigate contamination risks. Additionally, some situations within the department's normal business operations (such as high-value property transactions) may place responsibility for particular phases of work on to other parties such as tenants.

As each phase of work is completed the level of certainty regarding contamination and its associated risks increases, however the time and cost also increases. These Operating Procedures have therefore been designed to achieve an appropriate balance between the level of investigation and remediation required, and the level of certainty that is acceptable in different scenarios.

Table 5.1: Assessment of Site Contamination Lifecycle

Life Cycle Phase	Description	By
Desktop Review*	A review of existing records for any reliable information about potential contamination issues. (Template DOC18/146200)	Crown Lands
Site Inspection*	An inspection of a property to provide a general indication of potential contamination issues and/or to assist in scoping more detailed investigations. (Template DOC18/146201)	
Site Clean up*	Removal of general rubbish, minor contamination and tidy up on site.	
Preliminary Site Investigation (PSI / Phase 1)	A thorough review of site usage, history, infrastructure and site conditions to determine the likely nature and extent of contamination. PSI's can also involve minor sampling of soils to assist in identifying issues.	Specialist Resources (refer Section 5.3)
Detailed Site Investigation (DSI / Phase 2)	Detailed sampling and analysis of environmental media (soils, groundwater, etc.) using machinery to quantify the nature and extent of contamination present. DSI's can also encompass the scope of a PSI if required.	
Supplementary Site Investigation (SSI)	Additional sampling and analysis of environmental media in key areas of concern to delineate contamination. Also used to provide specific data for use in risk assessments and/or design of remediation strategies.	
Site-Specific Risk Assessment	A complex qualitative or quantitative assessment of site-specific risks to determine the requirements for remediation.	
Remedial Action Plan (RAP / Phase 3)	A detailed plan for the remediation of contamination to meet specific objectives. Includes determination of planning approval requirements and works required to demonstrate success (validation plan).	
Planning Approvals	Approvals processes for remediation under the EP&A Act, SEPP55 and any other relevant environmental planning instruments. Normally requires an assessment of the environmental impacts of remediation (e.g. noise, air, odour etc.).	
Remediation & Validation (Phase 4)	The action, or combination of actions taken to mitigate risks from contamination. Performed in accordance with planning approvals.	
Site Audit Statement (SAS)	An independent review of site assessment and remediation works to verify compliance with industry standards and to confirm the suitability of a property for an intended use.	
Long Term Management	Ongoing actions (post remediation) required to demonstrate the long term success of remediation and/or to mitigate residual risks.	

* These phases are not captured within the national framework (NEPM), but represent an important management tool utilised by the department.

5.2 Methodology

The department's methodology for contaminated land management is illustrated in **Figure 5.1**, and has been developed in accordance with the lifecycle phases presented in **Table 5.1**. The methodology has been adapted to the activities undertaken in the day-to-day management of the Crown land portfolio.

A fundamental concept established by the NEPM is that for a risk to exist, there must be a source of contamination, potential receptor(s) (human or environmental) of contamination, and an exposure pathway linking the two. Using this concept, the department has developed a customised risk matrix based on the NSW Trade and Investment Enterprise Risk Framework to determine the level of human health, environment, and business risks resulting from contamination, as presented in **Table 5.2**. These Operating Procedures primarily use the risk matrix to determine the level of risk that may exist from contamination on a site, and to therefore determine the extent of assessment and remediation required.

During the early stages of an assessment, often the lack of detailed information makes it possible to draw only broad conclusions regarding the level of risk. As such, the checklists used to perform Desktop Reviews and Site Inspections (in **Attachments 1 and 2**) contain triggers that assist in determining the level of risk and the actions required. Typically where the outcomes result in a Moderate, High, or Very High risk ranking, further site assessment and/or remediation works may be required.

As the assessment progresses to more detailed phases (such as Preliminary or Detailed Site Investigations), a much greater level of certainty can be achieved with respect to the source-pathway-receptor relationship, providing greater certainty in the risk evaluation and the need for remediation or management actions. At the completion of these phases, departmental officers should refer to the CLM risk matrix (**Table 5.2**) to determine the level of risk and the actions required. The decision to undertake further site assessment or remediation works should also be made in consultation with nominated officers in the Landscape Services Centre within the Natural Resources Services Unit.

In cases where the nature or extent of contamination identified at a site is minor (such as illegal dumping), the department may proceed directly to remediation works as shown in **Figure 5.1**, rather than performing more detailed assessments. In these scenarios it may be necessary to perform some basic sampling and planning tasks (for example, to confirm the nature of the contamination) in preparation for the remediation by using a suitably qualified consultant or contractor.

Note that all reports produced from each phase of site assessment and remediation works must be recorded in the HPM Content Manager (CM9) records database, and referenced in the CSR through the life cycle phase reference field for the site.

The typical site assessment and remediation methodology is summarised below, and specific procedures that apply to each component of the methodology are presented in Section 6.

- **Triggers for Assessment (Section 6.1):** In the course of normal business activities, opportunities exist to identify, evaluate and monitor contamination risks at individual properties. Typical triggers for contamination assessments include routine site inspections, tenure audits, third party notifications and property transactions. Detailed procedures for each of these triggers are provided in **Section 6.1** and typically involve a desktop review and site inspection using the tools provided in **Attachments 1 and 2**.

These procedures have been designed to be undertaken by departmental staff trained in the identification and evaluation of contamination and associated risks.

- **Outputs (Section 6.2):** Outputs and information from the site assessment, remediation and management process may require further action to appropriately manage and account for contaminated land risks, and are required for department reporting purposes. Such actions may include regulator notification requirements and/or continued monitoring, management and reporting of contamination issues. The outputs are also required for the department's financial reporting purposes, and to maintain up-to-date information in the CSR.

Figure 5.1: Typical Methodology for Contaminated Land Management

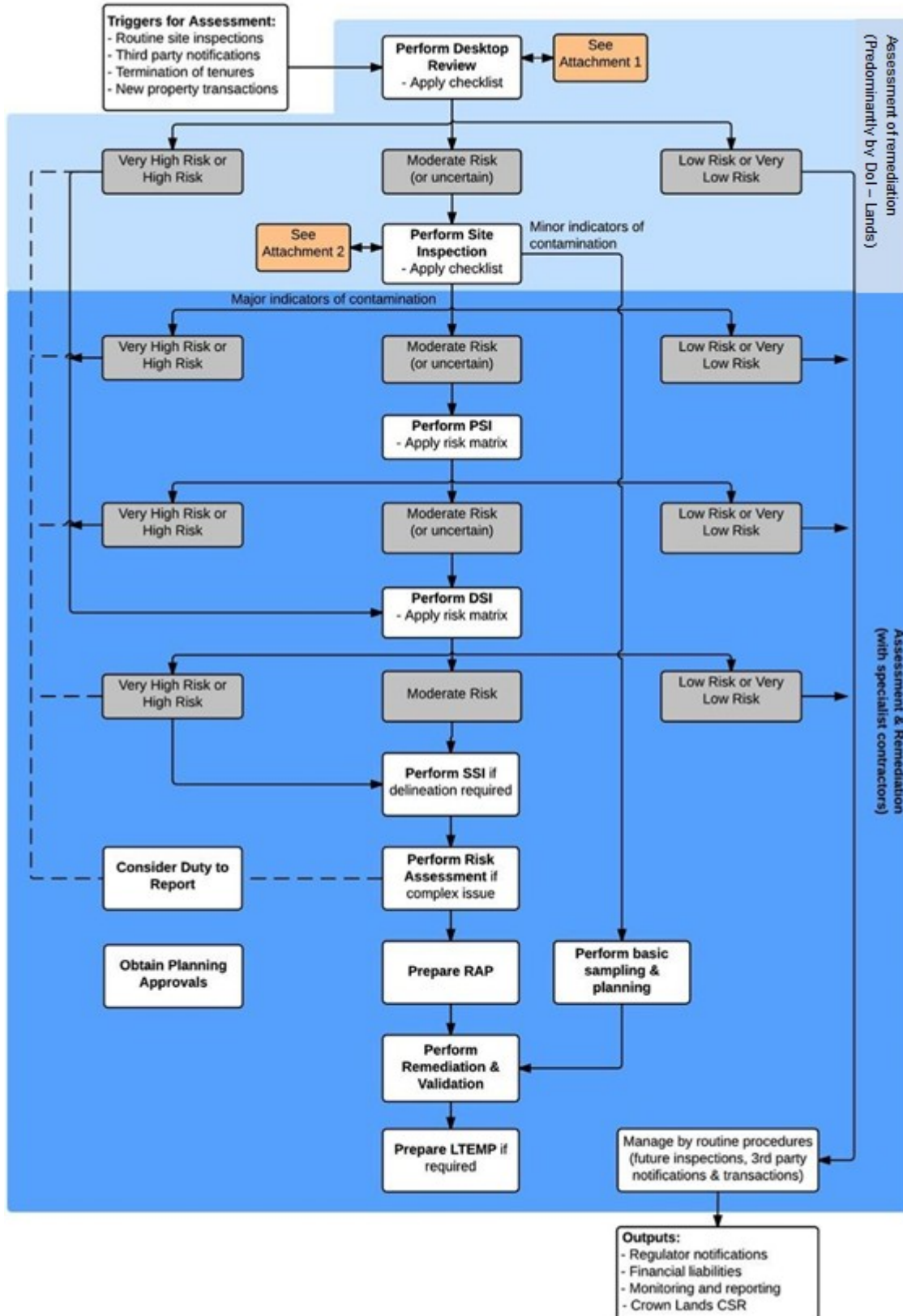


Table 5.2: Risk Matrix (based on T&I Enterprise Risk Framework policy TI-G-135)

									LIKELIHOOD				
									Almost Certain	Likely	Possible	Unlikely	Rare
									Expected to occur in most circumstances	Probably occur in most circumstances	Might occur at some time	Could occur at some time	Only occur in exceptional circumstances
	Service Delivery	HR, Health & Safety	Legal & Regulatory	Financial	Government & Business	Reputation & Stakeholders	Contracts	Environment					
Extreme	Catastrophic loss in ability to meet the department's fundamental objectives	Large number of people (in addition to site users) exposed to a severe, long term risk in daily activities that may result in permanent health effects	Breach of legislation which may lead to fine, prosecution or class action; Contamination subject to significant, onerous, costly regulation	Management cost (or lost opportunity) greater than \$20M	State political impacts; NSW government intervention; Significant impact on regional businesses	Significant long term damage to reputation; Negative media attention at state levels; Outrage / protests by community groups	Significant legal action in relation to contractual / landlord obligations	Widespread environmental impacts to soils, groundwater and/or surface waters across multiple parcels adjoining the source site	Very High	Very High	High	High	High
Major	Major loss in ability to meet the department's fundamental objectives	A number of people (in addition to site users) exposed to a long term risk in daily activities that may result in permanent health effects	Breach of legislation which may lead to legal challenge; Contamination issue subject to regulation under CLM Act.	Management cost (or lost opportunity) of \$1M - \$20M	State political impacts; NSW government questioning; Significant impact on local businesses	Significant damage to reputation; Negative local and state media attention; Significant concern / formal complaints by community	Legal action in relation to contractual / landlord obligations	Environmental impacts to soils, groundwater and/or surface waters extending beyond the boundaries of the source site	Very High	High	High	Moderate	Moderate
Moderate	Moderate loss in ability to meet the department's fundamental objectives	Site users / occupants may be exposed to a risk in their daily activities which may result in adverse health effects	Potential breach of legislation which is likely to attract attention of regulator(s); Contamination not regulated under CLM Act, but Regulator involved.	Management cost (or lost opportunity) of \$250K - \$1M	Local political impacts; Council intervention; Moderate impact on local businesses	Moderate / short term damage to reputation; Negative media attention in local area; Numerous informal complaints from community	Threat of legal action in relation to contractual / landlord obligations	Environmental impacts to soils, groundwater and/or surface water on the source site, with no off-site impact detected	High	High	Moderate	Low	Low
Minor	Minor loss in ability to meet the department's fundamental objectives	Site users / may be exposed to a risk only during particular activities, which may result in adverse health effects	Minor breach of legislation which can be easily rectified; No involvement from the Regulator.	Management cost (or lost opportunity) of \$20K - \$250K	No political impacts; Council involvement; Inconvenience to local businesses	Recoverable short term damage to reputation; Individual complaints by community	Renegotiation of contractual / landlord obligations	Environmental impacts across site soils, with no groundwater or surface water contamination	Moderate	Moderate	Low	Low	Very Low

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Insignifi- cant	Insignificant loss in ability to meet the department's fundamental objectives	Site users / occupants may be exposed to a risk only during certain activities, which may result in effects to sensitive persons	Potential breach of legislation but not significant; No involvement from the Regulator.	Management cost (or lost opportunity) less than \$20K	No political impacts; No impact on local businesses	Negligible damage to reputation ; No complaints from local residents or community groups	Minor variations to contractual / landlord obligations	Environmental impacts in localised soils (both laterally and vertically) around a source of contamination	Low	Low	Low	Very Low	Very Low
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5.3 Specialist Resources

As indicated earlier, specialist resources may be required to deliver the detailed phases of site investigation and remediation works.

Site assessments for complex sites (such as PSI's and DSI's) should be performed by environmental consultants. Consultants should have the necessary expertise to identify and evaluate hazards associated with contaminated land, and have a level of knowledge and experience commensurate with the requirements of the:

- *Site Contamination Practitioners Scheme* (refer <http://scpaustralia.com.au>); or the
- *Environment Institute of Australia & New Zealand (EIANZ) Contaminated Land Specialist* certification (<http://www.cenvp.org/apply/cenvp-cl-specialist/>)

Consultants should also have an ability to deliver (or be able to subcontract) the planning approvals aspects of projects.

In order to properly plan and execute site remediation works, specialist Remediation Contractors are required. Remediation Contractors should have extensive experience in the remediation of contaminated soils, groundwater and hazardous building materials, and should have an ability to manage the risks associated with earthworks and structures.

Independent Site Auditors can be used to provide an independent review and certification of the site assessment and remediation process. Statutory Site Audits can be required under legislation including the Contaminated Land Management Act and the Environmental Planning & Assessment Act (EP&A Act), whilst non-statutory (voluntary) audits can be used to provide greater certainty in connection with complex remediation projects or high value property transactions. Site Auditors must be accredited by the NSW EPA under the Contaminated Land Management Act.

6. Procedures

6.1 Routine Triggers

As part of the department's day to day activities, the following situations present opportunities to assess and remediate potential contamination issues, including:

- Routine site inspections performed by departmental officers for a range of purposes including the Tenure Audit Program; property transfers and applications.
- Notification of potential contamination issues from third parties such as tenants, councils or other members of the community; and
- Termination of tenures where no new tenure / property transaction is planned.

In all of these situations, the regional officer should assess potential contamination issues on the land through a Desktop Review (DOC18/146200) and a Site Inspection (DOC18/146201) (noting that the inspection is already performed in the first situation listed above).

The checklists provided in **Attachment 1 and Attachment 2** (DOC18/146200 and DOC18/146201) should be used to capture the results of the Desktop Review and Site Inspection and to assist the department in determining the next stage of assessment / remediation required in accordance with the Contaminated Land Management life cycle. The typical process to be followed in performing these assessments is provided in **Attachment 3**. The process includes a requirement for all checklists to be placed in the appropriate contamination file in CM9 and referenced in the life cycle phase reference field for recording in the CSR as a record that the site has been assessed, irrespective of whether any contamination issues were identified.

It is noted that the checklists can be used as a stand-alone tool, or incorporated into other processes / templates used by the regional officers.

6.2 Strategic Triggers

The department performs a variety of transactions across its portfolio such as property sales, licensing and leasing. Property transactions provide an excellent opportunity to strategically identify and manage contamination issues through the transaction process, including appropriate differentiation of responsibilities between the department and the other party to the transaction.

In addition to human health and environmental risks, the presence of pre-existing contamination can affect the ability to use land for the intended purpose, and can therefore pose contractual risks in property transactions. Equally, the use of land by another party has the potential to cause contamination that can pose risks to the value of the department's asset.

It is therefore important for the department to perform sufficient due diligence to identify potential contamination issues prior to a transaction taking place, and to use appropriate contract mechanisms to manage contamination risks through the transaction. Most importantly, these mechanisms must be aligned to the value and the risk profile of each particular transaction. Where a contaminated site is known or has previously been remediated, it is best practice to disclose the details of the site in any land transactions.

Although the property transaction processes are focussed on due diligence for contamination issues, they also consider hazardous materials risks in relation to leases, licenses and reserves. This additional consideration has been included due to the fact that both landlords and tenants hold duties in relation to asbestos under the WHS Regulations.

The following sections detail the key principles that apply to the different transaction types, and the nature and extent of due diligence that is typically required by the department. Each type of transaction is supported by a specific flow chart within the Attachments, which details the process for considering the contamination issues.

Note that references to the "CSR" in the flowcharts indicates that at these points, key reports / documentation **must** be sent to contaminated.land@crowland.nsw.gov.au for capture in the Contaminated Sites Register (CSR) or added to the relevant CM9 file with the reference entered into the CSR.

6.2.1 Aboriginal Land Claims

The objective of assessing contaminated land issues in relation to Aboriginal Land Claims (ALC) is to determine whether any significant issues may preclude transfer of the land. As the department is required to perform all

due diligence in relation to the transaction, the cost and time incurred in assessing and remediating land must be reasonable and yet sufficient to allow detailed consultation to take place between parties.

The flowchart provided in **Attachment 4** details the due diligence process required in relation to these types of transactions. This process is to be performed within the Claim Investigation phase of the ALC process, as discussed within the department's *Guidelines for Aboriginal Land Claims*.

6.2.2 Acquisition

When acquiring land (including through compulsory acquisitions), the department may take on responsibility under the CLM Act for existing contamination that has been caused by others. Due diligence is therefore required to determine whether the property is, or can be made fit for the intended purpose. Additionally, the interests of the department should be protected through the contract of sale.

Attachment 5 provides the due diligence process to be performed by the department in relation to land acquisition.

6.2.3 Development

In situations where development requires planning approval under the EP&A Act, the proponent is required to obtain land owners' consent from the department. This process provides an opportunity for any contamination issues to be identified and managed through the development activity.

The preferred approach is firstly to ensure that the applicant has assessed potential contamination issues as a component of their Statement of Environmental Impacts (SEE) or Environmental Impact Statement (EIS), and secondly to capture any key outcomes or recommendations from the assessment into the landowners consent. In this way, any issues can be managed through the construction phase of the development and overseen by the regulatory authority (normally Council). This approach allows a licence for construction and occupation to then be issued by the department using standard conditions, as the contamination aspects have been managed through the development consent rather than the licence.

The flowchart provided in **Attachment 6** illustrates the typical process to be adopted in relation to land owners consent. These requirements are also reflected in the department's *Policy for Landowners Consent for Development on Crown Land* and the *Guideline for Dealing with Requests for Landowners Consent*.

The department also performs functions as the consent authority in the unincorporated area of the Western Division, including applying the requirements of the EP&A Act and SEPP55. The department must ensure that contamination issues are considered when reviewing applications for rezoning or development, and that the land is suitable (or will be made suitable) for the intended use.

The flowchart provided in **Attachment 7** illustrates the process to be adopted in relation to these development consents.

6.2.4 Divestment

Although due diligence obligations normally fall to the purchaser in a property sale, contamination represents a key constraint in the sale process and the department can retain responsibility for contamination under the CLM Act even after settlement. Contamination should therefore be considered as a component of the broader site investigation and preparation process prior to divestment, as reflected in the *Guideline for Sales and*

Disposal of Crown Land. Importantly, the condition of the land must not be misrepresented in the sale process, and the department's interests should be protected through the contract of sale.

The flowchart provided in **Attachment 8** should be applied in property divestment scenarios and is supported by a suite of standard conditions for use in contracts of sale. A general summary of the conditions is provided in **Attachment 8**, and the template documents containing the specific clauses are held by the department's Crown Property Services Directorate.

6.2.5 Leases & Licences

When leasing or licensing land, contamination issues require consideration in three key ways:

- Prior to entering a new lease or licencing arrangement, sufficient due diligence should be performed by the department to determine whether any pre-existing contamination may affect the proposed use of the land;
- When negotiating the terms of the lease or licence, consideration should be given to the nature of activities that will be performed by the tenant, and whether or not these activities have the potential to cause contamination; and
- The lease or licence document should capture appropriate conditions to provide protection from pre-existing contamination, and to regulate the activities of the tenant to assist in preventing any additional contamination.

The flowchart provided in **Attachment 9** details the due diligence process to be followed in relation to leases and licences. The requirement for assessment of contamination in new leases is captured within the department's *Commercial Leasing Guideline*, and requirements relating to licences are captured within the Licence Cover Sheets used by the department's Business Centre and District Offices.

The due diligence process is also supported by a suite of standard and special conditions to be used within leases and licences. A general summary of the conditions is provided in **Attachment 9**. The documents containing the specific clauses for commercial leases are held by the department's Strategic Projects division, and the clauses relating to licences are held within CLID.

Note that in relation to perpetual leases, the tenant is taken to be the landowner for the purpose of the CLM Act. The department is therefore not obliged to perform due diligence in relation to the transaction, but should take advantage of any routine site inspections to identify potential contamination issues. Additionally, any change in the permitted use of the land offers an opportunity to incorporate contemporary conditions regarding contaminated land management into leases.

6.2.6 Reserves

Crown land managers often hold ownership of Crown land assets on a temporary basis and are responsible for the management of risks and liabilities. When entering into arrangements, the department should perform sufficient due diligence to identify any significant contamination issues that may affect the proposed use of the land, and to allow detailed consultation with the manager.

The obligation to mitigate risks may fall to the department or may be transferred to the Crown land manager in accordance with the *Crown Land Management Act 2016 (Division 3.3)* depending on site specific arrangements.

The flowchart provided in **Attachment 10** details the due diligence process to be applied in relation to Reserves.

6.2.7 Transfer & Vesting

The transfer or vesting of land to other government agencies often takes place due to strategic commitments, and is therefore not subject to high levels of due diligence. Nonetheless, the department should perform a Desktop Review and Site Inspection (refer **Attachments 1 and 2**) (DOC18/146200 and DOC18/146201), and disclose all known information about contamination risks to the receiving party. Additionally, the department should transfer all liabilities for contamination through the transaction process.

6.3 Outputs

The following sections detail procedures to be applied based on the outcomes of site assessment and remediation works.

6.3.1 Regulator Notification

When significant contamination issues have been identified, the department may have a duty to notify the NSW EPA. Section 60 of the CLM Act imposes this duty to report contamination upon a person whose activities have contaminated land, and upon an owner of land that has been contaminated.

Notification must be made to the NSW EPA as soon as practicable after the person becomes aware of the contamination, and is subject to the triggers / thresholds contained within the *Guidelines on the Duty to Report Contamination under the Contaminated Land Management Act* (NSW EPA, 2009) (DOC18/202009). Notification must also be made using the prescribed Contaminated Land Notification Form available at <http://www.epa.nsw.gov.au/clm/forms.htm>

The requirement to notify the EPA can emerge in many situations, including the assessment of land for due diligence, assessments performed as part of property transactions, and the generation of information through site inspections or third-party notifications. Often an environmental consultant performing an assessment will make a recommendation regarding the requirement to notify.

The following table presents the typical scenarios that indicate a duty to notify based on the type of information obtained from various site assessment phases. Reference should be made to the EPA guidelines for more detailed information on these triggers.

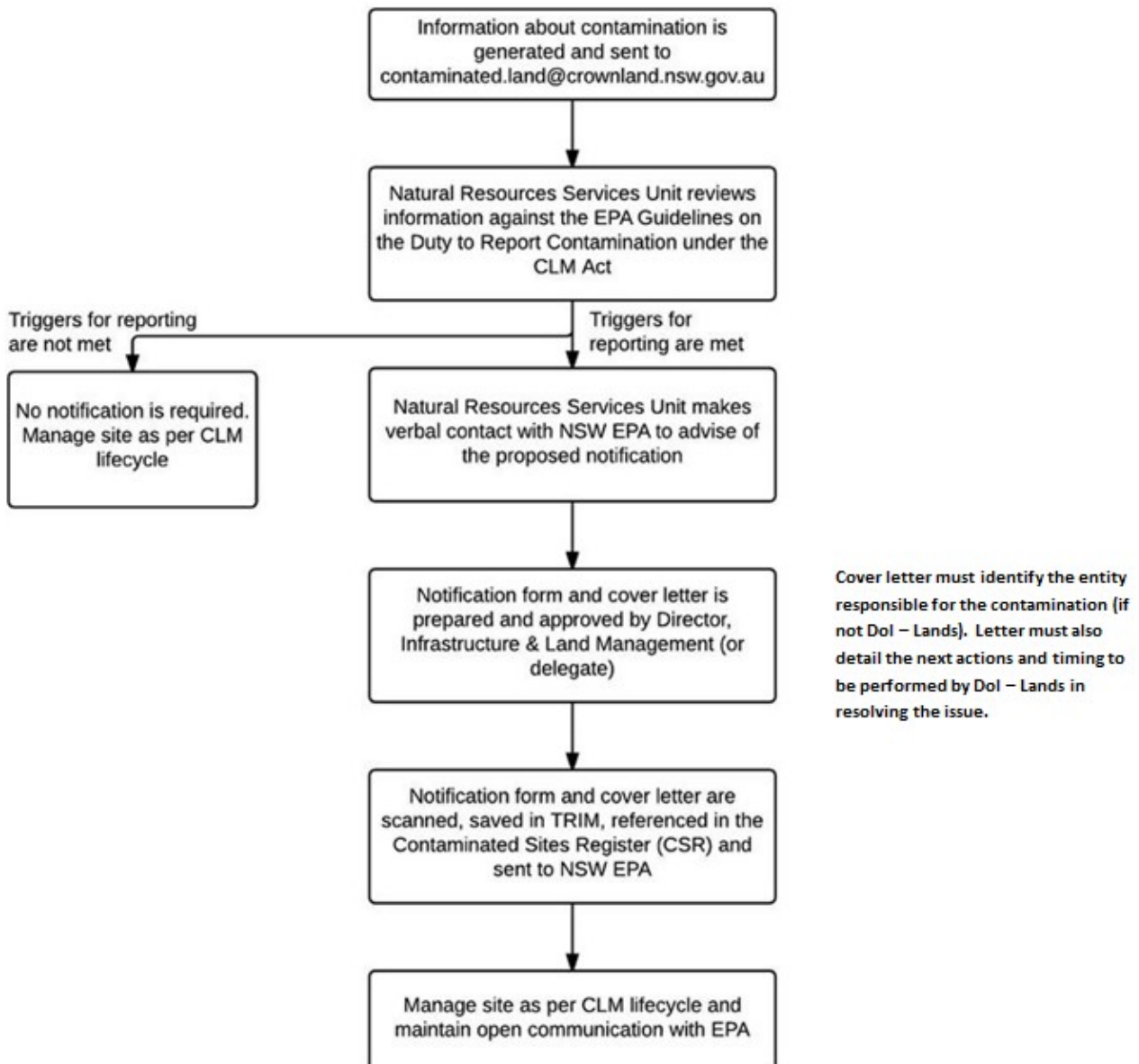
Table 6.1: Contaminated Land Notification Triggers

Life Cycle Phase	Triggers for Notification
Desktop Review	<ul style="list-style-type: none"> ● Cases of illness among people exposed to the site ● Presence of chemicals on or in soils, surface water, groundwater or surrounding land ● Significant impacts on flora or fauna
Site Inspection	<ul style="list-style-type: none"> ● Unusual odours ● The presence of bulk hazardous chemicals or explosive materials ● Uncontrolled landfilling
Preliminary Site Investigation	<ul style="list-style-type: none"> ● Contaminants in site soils exceeding Health Investigation / Screening Levels with a person exposed to the contaminants ● Contaminants that have entered (or will enter) neighbouring land at levels exceeding Health Investigation / Screening Levels with a person exposed to the
Detailed Site	

Investigation	contaminants
Supplementary Site Investigation	<ul style="list-style-type: none"> • Dissolved contaminants in groundwater or surface water at levels exceeding the trigger values • Separate-phase contamination in groundwater

Due to the complexity of EPA notifications, responsibility for the formal notification process is centralised within the Natural Resources Services Unit of the department. Notifications shall therefore be performed in accordance with the following steps:

Figure 6.1: Contaminated Land Notification Process



6.3.2 Reporting of Financial Liabilities

The department is likely to hold financial liabilities in relation to contamination risks across its portfolio. In accordance with Australian Accounting Standard AASB137, the agency holds “provisional liabilities” that must be disclosed when all of the following criteria are satisfied:

- A past event has occurred involving the contamination of land;
- The department holds a present legal or constructive obligation relating to the contamination;
- An outflow of financial resources will be required to settle the obligation; and
- A reasonable estimate of the financial obligation can be made.

Provisional liabilities will typically exist where the department is actively performing site assessment and remediation works in accordance with the standard CLM lifecycle (refer **Table 5.1**).

At the completion of each phase in the lifecycle, a determination must be made as to whether the next phase is required to further assess or mitigate risks. If the next phase of work is required, a provisional liability will be triggered in the amount equivalent to the cost (outflow of financial resources) for that next phase of work.

For example, upon completion of a Preliminary Site Investigation (PSI) it may be determined that a Detailed Site Investigation (DSI) is required. The provisional liability will therefore be equivalent to the cost of the DSI. Once the DSI is in progress, the provision liability will be equal to the outstanding value (amount yet to be paid) on the contract at any point in time. On this basis, provisional liabilities are subject to significant fluctuation throughout the lifecycle of a property.

Additionally, the agency may hold “contingent liabilities” where:

- The department holds a possible legal or constructive obligation relating to past events involving contamination, however that obligation is dependent on uncertain future events; or
- The department holds a present legal or constructive obligation, but it is not probable that an outflow of resources will be required to settle the obligation or the amount of the obligation cannot be reliably measured.

Contingent liabilities will typically exist where a parcel of land is contaminated, however that contamination does not pose a risk in its current landuse setting (for example, because the property is secured from access) and therefore no further remedial actions are planned. For this reason, contingent liabilities remain static in most cases.

The department has developed a framework for the calculation and reporting of contaminated land liabilities as detailed within **Table 6.2** below.

Table 6.2: Framework for Financial Liabilities

Aspect	In Scope
Coverage	Properties which fall within High or Very High risk categories are in scope, due to the likelihood of a legislative or constructive obligation existing. Financial liabilities will predominantly exist on properties under the direct management of the department, but may also emerge on properties under tenure / reserve management arrangements if those managing parties do not have sufficient financial capacity to mitigate contaminated land risks.
Obligations	Liabilities are to be recorded against individual properties where the department holds an obligation (or a possible obligation), irrespective of whether the department or a related entity actually caused the contamination. Note that provisional liabilities and contingent liabilities will be recorded separately.
Resources	Liability estimates cover all resources required to be expended in mitigating contaminated land risks including <ul style="list-style-type: none"> ● Site assessment costs by environmental consultants; ● Remediation costs (which may involve a range of mitigating actions from administrative controls, to fencing and signage, to large scale excavation and soil treatment, and demolition of structures). Note that the nature and extent of remediation should be commensurate with the long term fate and risk profile of the site; ● Site management costs (for example surveying and site monitoring); ● External project management costs; and ● Site auditing costs. Note that internal staff and administration costs are not to be included.
Estimates	Financial estimates are to be based on the following sources of information (from least reliable to most reliable): <ul style="list-style-type: none"> ● Independent written pre-tender estimates for the project; ● Formal proposals or contracts for works; or ● Actual costs incurred. The most reliable source of information that is available at any point in time shall be used as the source of the estimate. Reference will also be made to any relevant contract numbers that relate to the liability. Note that internal cost estimates are not to be used, and therefore no liability is recognised until information is available from one of the three sources listed above.
Reviews	The department will review and refine estimates on a quarterly basis.

The reporting of financial liabilities is managed centrally within the Natural Resources Services Unit. The Contaminated Sites Register (CSR) is the primary tool for storing site-specific information about contamination, the life cycle status for each site, and the value of financial liabilities.

6.3.3 Contaminated Sites Register

The Contaminated Sites Register (CSR) is a component of the Crown Lands Information Database (CLID). As discussed throughout these Operating Procedures, the CSR is used to capture information at the completion of each phase of site assessment and remediation works, including internal Desktop Review and Site Inspection checklists, reports prepared by environmental consultants (such as PSIs and DSI’s) and other formal documents such as EPA notifications. Importantly, all documentation must be recorded in the register (via a reference in CM9) as a record of the works having been performed, irrespective of whether any contamination issues were identified on the site or not.



Use of a centralised CSR for the department's portfolio provides the following benefits:

- Consistency in the storage and accessibility of information / data;
- Maintenance of corporate knowledge regarding contamination issues;
- Ability to generate statistics regarding the assessment and management of contamination issues for both internal and external stakeholders; and
- Provision of a key information source for calculating and reporting of financial liabilities for contamination.

The CSR is currently accessed and maintained by staff within Regional Services and Natural Resources Services Unit. Finalisation of any sites should be complete by Landscape Services Centre Staff only. The CSR is also the subject of continuous improvement efforts in order to ensure appropriate alignment with the overall Contaminated Land Management Strategy and these Operating Procedures. The CSR has become a more accessible management tool for staff across the business, and a specific CSR User Guide has been developed and can be found on the operational intranet, Contaminated Land Management Google site and the Regional Services Google site.

6.3.4 Monitoring and Reporting

In accordance with the department's *Natural Resource Monitoring, Evaluation and Reporting Strategy*, the following processes have been established to enable transparency and control over the effectiveness of these Operating Procedures:

- A report including statistics from the CSR will be produced and provided to the Director, Infrastructure & Land Management on a monthly basis (CM9 ref: 18/06076). The report will highlight any systemic issues arising with respect to contaminated land, and any resulting procedural changes required;
- Contaminated land issues will be discussed at the department's Executive Meeting every second month;
- A Steering Committee meeting will be held every quarter with regard to contaminated land issues; and
- The Operating Procedures will be formally reviewed and refined every 12 months. The review process will involve collaboration with key business units affected by the procedures.

7. Acronyms

DoI-CL	Crown Lands & Water Division of Department of Industry
CLID	Crown Land Information Database
CLM	Contaminated land management
CLMA	Contaminated Land Management Act
CLMP	Contaminated Land Management Program
CSR	Contaminated Sites Register
CM9	HPM Electronic Records Management System
DPI	Department of Primary Industries
DSI	Detailed Site Investigation
EC	Environmental Consultant
EIS	Environmental Impact Statement
EMP	Environmental Management Plan
ESD	Ecologically Sustainable Development
EPA	NSW Environment Protection Authority
LLS	Local Land Services
LTEMP	Long Term Environmental Management Plan
MER	Monitoring, Evaluation and Reporting
MERI	Monitoring, Evaluation, Reporting and Improvement
NEPM	National Environment Protection Measure
NRC	Natural Resources Commission
NRM	Natural Resource Management
NRMER	Natural Resources Monitoring, Evaluation and Reporting
NRMSS	Natural Resource Management Spatial System
NSW	New South Wales
OEH	Office of Environment and Heritage
PCG	Program Control Group
PLM	Public Land Management
PSI	Preliminary Site Investigation
RAP	Remediation Action Plan
RC	Remediation Contractor
SEE	Statement of Environmental Effects
SSI	Supplementary Site Investigation
T&I	Department of Trade and Investment, Regional Infrastructure and Services

8. Definitions

Delineation	The collection of data from environmental media to accurately determine the extent of contamination present.
Environment	Components of the earth, including: land, air and water; any layer of the atmosphere; any organic or inorganic matter and any living organism; and human-made or modified structures and areas, including interacting natural ecosystems.
Groundwater	Water beneath the surface of the earth which saturates the pores and fractures of geological formations (soils and rock).
Receptor	A human or environmental entity capable of being impacted by the presence of contamination.
Remediation	Broadly defined as an action, or combination of actions taken to mitigate the perceived or actual environmental, health and safety, and business risks resulting from the presence of contamination. Under legislation, it is defined as preparing a long-term management plan for the land; removing, dispersing, destroying, reducing, mitigating or containing the contamination; and eliminating or reducing any hazard arising from the contamination (including by preventing the entry of persons or animals on the land).
Risk	In the context of contamination, it is the probability in a certain time frame that an adverse outcome will occur in a person, a group of people, plants, animals and/or the ecology of a specified area that is exposed to a particular dose or concentration of a hazardous agent (ie it depends on both the level of toxicity of the substance and the level of exposure).
Site Audit	An independent review: (a) that relates to investigation, or remediation carried out.....in respect of the actual or possible contamination of land, and (b) that is conducted for the purpose of determining any one or more of the following matters: the nature and extent of any contamination on the land; the nature and extent of the investigation or remediation; what investigation or remediation remains necessary before the land is suitable for any specified use or range of uses; the suitability and appropriateness of a plan of remediation, and long-term management plan, a voluntary investigation proposal or a remediation proposal.
Validation	The process of demonstrating the suitability of a Site for its intended purpose (normally following remediation).

9. Attachments

9.1 Attachment 1: Desktop Review Checklist (DOC18/146200)

DoI-Crown Lands Contaminated Land Management

Desktop Review Checklist – Contamination No

Site Information (insert relevant site details / identifiers below)		
Reserve Number: _____	Tenure Account Number: _____	
Reserve Name: _____	Tenure Location: _____	
Reserve Location: _____	Lot/DP: _____	
Lot/DP: _____	Tenure Holder: _____	
File ref: _____	Contact Details: _____	
STEP 1: Information review (tick information that was reviewed)		
<input type="checkbox"/> Crown Lands Information Database (CLID) <input type="checkbox"/> Contaminated Sites Register (CSR) <input type="checkbox"/> Site-specific reports <input type="checkbox"/> Aerial photographs / GIS Imagery <input type="checkbox"/> CrownView	<input type="checkbox"/> Local office files / records / knowledge <input type="checkbox"/> NSW EPA website (see links below) <input type="checkbox"/> File records <input type="checkbox"/> Orbis Database <input type="checkbox"/> Other sources _____	
STEP 2: Sources of contamination (tick if any of these activities have taken place on the land)		
<input type="checkbox"/> Airports <input type="checkbox"/> Asbestos production or disposal <input type="checkbox"/> Brewery / distillery <input type="checkbox"/> Dry cleaning <input type="checkbox"/> Fuel or chemical storage (including tanks) <input type="checkbox"/> Foundries (metal casting) <input type="checkbox"/> Gasworks	<input type="checkbox"/> Landfills and scrap yards <input type="checkbox"/> Marinas <input type="checkbox"/> Manufacturing (acids, batteries, chemicals, paints, oils, pesticides) <input type="checkbox"/> Mining / quarrying <input type="checkbox"/> Power stations <input type="checkbox"/> Railways <input type="checkbox"/> Rifle / shooting ranges	<input type="checkbox"/> Sheep / cattle dips <input type="checkbox"/> Slipways / boat sheds <input type="checkbox"/> Smelting <input type="checkbox"/> Tanneries <input type="checkbox"/> Timber treatment <input type="checkbox"/> Waste dumping <input type="checkbox"/> Water & sewerage treatment <input type="checkbox"/> Other _____
<input type="checkbox"/> Nil (no source/s of contamination)		
STEP 3: Risk rating (tick the appropriate box)		
<input type="checkbox"/> A significant source exists. Risk = Moderate to Very High. Perform Site Inspection. <input type="checkbox"/> Source exists – uncertain significance. Risk = Low to Moderate. Perform Site Inspection. <input type="checkbox"/> Nil sources are present. Risk = Very Low. No further action required.		
STEP 4: Add any relevant comments		
STEP 5: Save this record into the contamination file and record in the Contaminated Sites Register		
Desktop Review Completed By: _____		
Date: _____		

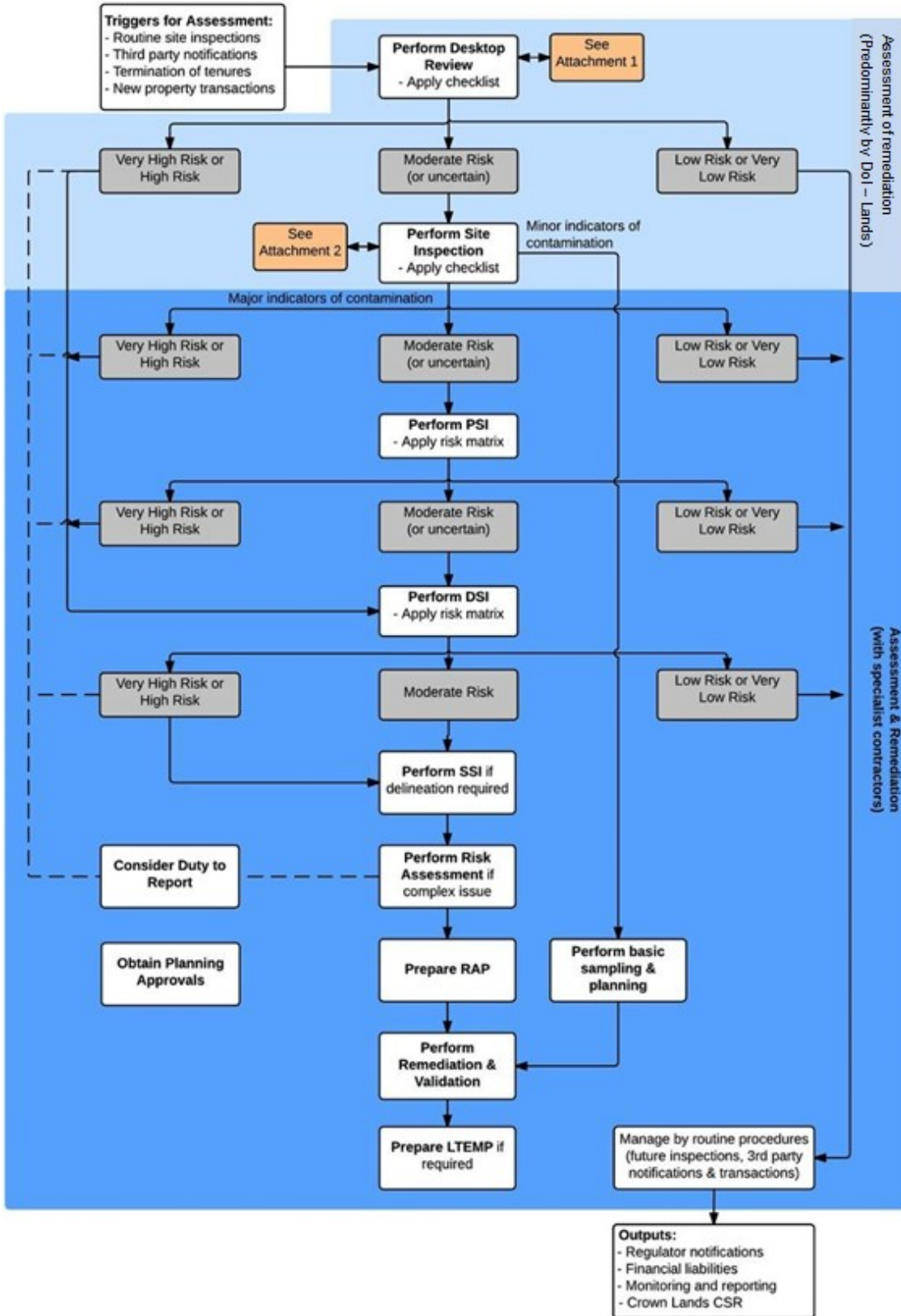
Contaminated sites notified to EPA: <http://www.epa.nsw.gov.au/cim/publiclist.htm>
 Contaminated sites regulated by EPA: <http://www.epa.nsw.gov.au/prclmapp/searchregister.aspx>
 Sites with Environmental Protection Licences (EPL): <http://www.epa.nsw.gov.au/prpoeoapp/>

9.2 Attachment 2: Site Inspection Checklist (DOC18/146201)

Site Information (insert relevant site details / identifiers below)	
STEP 1: Indicators of contamination (tick if any of these indicators are observed)	
<p><u>Minor indicators</u></p> <input type="checkbox"/> Small quantities of chemicals <input type="checkbox"/> Small areas of stained soil <input type="checkbox"/> Minor flaking paint <input type="checkbox"/> Isolated fragments of asbestos <input type="checkbox"/> Small stockpiles of wastes <input type="checkbox"/> Nil	<p><u>Major indicators</u></p> <input type="checkbox"/> Large volumes of fuel or chemical storage (incl radioactive) <input type="checkbox"/> Uncontrolled use of chemicals particularly near water <input type="checkbox"/> Significant leaks or spills of liquids, including severely stained soils <input type="checkbox"/> Uncontrolled filling of the land <input type="checkbox"/> Significant stockpiles of waste materials <input type="checkbox"/> Large area of discoloured / odorous soil or surface water <input type="checkbox"/> Extensive flaking paint on structures <input type="checkbox"/> Large quantities of asbestos fragments <input type="checkbox"/> Nil
STEP 2: Receptors (tick if any of these receptors are present)	
<input type="checkbox"/> Surface water (creek, lake, wetland)* <input type="checkbox"/> Source of drinking water (if known)* <input type="checkbox"/> Sensitive flora or fauna* <input type="checkbox"/> Shallow groundwater (if known)	<input type="checkbox"/> Frequent site users <input type="checkbox"/> Site maintenance workers <input type="checkbox"/> Sensitive adjacent landuse (low density residential, schooling, community gardens)
STEP 3: Risk rating (tick the appropriate box – refer to Source from Step 1, and Receptor from Step 2)	
<input type="checkbox"/> Minor indicator exists and receptor exists. Perform minor remediation to remove risk (may require some basic sampling and planning tasks for remediation). <input type="checkbox"/> Major indicator exists and receptor exists. Risk = Moderate to Very High. Perform PSI or DSI. <input type="checkbox"/> No sources are present (Nil). Risk = Low or Very Low. No further action required. <input type="checkbox"/> No receptors are present. Risk = Low or Very Low. No further action required.	
STEP 4: Add any relevant comments	
STEP 5: Send this completed form to contaminated.land@crowmland.nsw.gov.au	
Site Inspection Completed By:	
Date:	

* Surface water, source of drinking water or sensitive flora and fauna present on site or within 1km of site

9.3 Attachment 3: Routine Triggers – CLM Procedure



9.4 Attachment 4: Strategic Triggers – CLM Procedure for Aboriginal Land Claims

CM9 Reference DOC13/036553



Crown Lands Procedure - CL016 Aboriginal Land Claims.tr5

9.5 Attachment 5: Strategic Triggers – CLM Procedure for Acquisition

CM9 Reference DOC11/128759



PROCEDURE FOR ACQUISITION OF CROWN LANDS .tr5

9.6 Attachment 6: Strategic Triggers – CLM Procedure for Land Owners Consent

CM9 Reference DOC17/175576



Consistency Project - Land Owners Consent - Guidelines.tr5

9.7 Attachment 7: Strategic Triggers – CLM Procedure for Development Consent

CM9 Reference DOC10/01403



Guideline - Responding to Development on Land near Crown Land.tr5

9.8 Attachment 8: Strategic Triggers – CLM Procedure for Divestment

General conditions for divestment (template conditions held by Crown Property Services)

- Purchaser warrants that it has not relied on any representation regarding whether there is contamination, pollution or hazardous materials present on the property.
- Purchaser purchases the property subject to whatever contamination, pollution or hazardous materials are present.
- From settlement, the Purchaser assumes all responsibility for contamination, pollution and hazardous materials on the site, including liability for compliance with all Environmental Laws and Notices, and liability for notifying regulators.

9.9 Attachment 9: Strategic Triggers – CLM & Hazmat Procedures for Leases & Licences

General conditions for Leases & Licences (template conditions held by Crown Property Services)

LICENCES - MINIMUM CONDITIONS FOR ENVIRONMENTAL MANAGEMENT

- Tenant must comply with Environmental Laws and Notices. Any breach must be remedied, and notification provided to the Landlord.
- Tenant must not cause or permit any Contamination or Pollution.
- Tenant must notify Landlord of any potential or actual Contamination or Pollution.
- If Contamination or Pollution occurs, the Tenant must remediate the premises to a degree commensurate with the condition of the land at commencement of the agreement.
- Tenant must allow the Landlord access to carry out environmental assessments and audits
- Tenant must meet all obligations under the Work Health and Safety Act 2011 with respect to Hazardous Chemicals.
- Tenant must ensure that any Hazardous Building Materials present in structures are identified and maintained in order to meet obligations under the Work Health and Safety Act 2011, and to mitigate risks to human health and the environment.
- Tenant is required to fulfil legislative obligations for the reporting of Contamination or Pollution to regulators under the Contaminated Land Management Act 1997 and the Protection of the Environment Operations Act 1997.

COMMERCIAL LEASES - MINIMUM CONDITIONS FOR ENVIRONMENTAL MANAGEMENT

- Comply with Environmental Laws and remedy any breach
- Comply with Environmental Notices and remedy any breach
- Notify Landlord of any breach or potential breach of Environmental Laws or Environmental Notice
- Indemnify the Landlord in relation to any Pollution or Contamination caused or permitted by the Tenant.
- Tenant acknowledges that it has had the opportunity to inspect the premises including Environmental Aspects.
- The Landlord does not warrant or represent that the Premises is or is not Contaminated or Polluted
- Notify Landlord of any potential or actual Contamination
- Allow the Landlord access to carry out environmental assessments and audits
- Tenant is responsible for all Contamination on the premises except to the extent that the Tenant establishes that the Contamination was not caused or permitted by the Tenant, or that the Contamination existed prior to occupation by the Tenant
- If the Landlord reasonably suspects that Contamination has been caused or permitted by the Tenant, the Tenant is to commission reports, surveys or audits by an Environmental Consultant which the Landlord may reasonably require to determine whether a breach of the terms has occurred.
- Comply with the direction of the Landlord to implement any recommendation of a report or audit
- Do not cause or permit Contamination of the land. Do not unlawfully deposit waste on the land.
- Remediate any contamination caused or permitted by the lessee to a degree commensurate with the condition of the land prior to the contamination occurring, to the satisfaction of the Landlord.
- Landlord can use any information including but not limited to photographs, inspections, audits, reports and laboratory data in determining the condition of the land prior to commencement, during the lease term, and at completion.

- Notify Landlord of any potential or actual Pollution Incidents
- Immediately clean up any water or land Pollution caused or permitted by the lessee and do everything to minimise harm to the Environment
- Install, operate and maintain any pollution control devices at the premises in proper working order and in accordance with applicable laws
- Tenant must not use or store any Hazardous Chemicals on the premises except with the written consent of the Landlord
- Tenant must meet all relevant obligations under the WHS Act with respect to Hazardous Chemicals including but not limited to the maintenance of a Hazardous Chemicals Register; production of a Manifest of Hazardous Chemicals; installation of signage; emergency plans and equipment.
- Tenant to ensure that any Hazardous Building Materials present in structures are identified and maintained in order to mitigate risks to human health.
- Tenant to repair or replace any damaged or degraded Hazardous Building Materials to ensure that Contamination of the land does not occur.

COMMERCIAL LEASES - CONDITIONS FOR REGULATOR NOTIFICATIONS

- Tenant is required to notify the NSW EPA of contamination in accordance with the Guidelines on the Duty to Report Contamination under the CLM Act, as soon as practicable after becoming aware of contamination that may be significant enough to warrant regulation.
- Tenant is also required to notify Landlord
- Tenant is required to immediately notify regulators in accordance with the POEO Act of Pollution Incidents that cause or threaten material harm.
- If required by the WHS Regulations in relation to the use of Hazardous Chemicals, the tenant must provide Health Monitoring Reports to the regulator and notify the Regulator of Hazardous Chemicals exceeding manifest quantities

COMMERCIAL LEASES – SPECIFIC CONDITIONS FOR CONTAMINATION (REFER TO FLOWCHART FOR TRIGGERS)

CONDITIONS CLM1:

- Tenant acknowledges receipt of the Suitability Assessment performed for due diligence by the Landlord
- Tenant acknowledges that the following activities are not permitted on the Premises due to existing Contamination as identified by the Suitability Assessment: X, Y, Z

CONDITIONS CLM2:

- Tenant is to prepare a Partial Baseline Report within 90 days of commencement
- Tenant is to prepare an EMP within 90 days of commencement.
- Tenant is to undertake performance audits against its EMP every 6 months and provide the results to the Landlord.
- Tenant acknowledges that Landlord may also perform audits of the Tenant's performance against the EMP.
- Tenant is to prepare a Partial Term End Report within 12 to 6 months prior to terminating date.

- If the Partial Term End Report identifies that contamination has been caused by the Tenant, the Tenant is to prepare a RAP and perform remediation in accordance with the recommendations of the Partial Term End Report.

CONDITIONS CLM3:

- Tenant is to prepare a Comprehensive Baseline Report within 90 days of commencement
- Tenant is to prepare an EMP within 90 days of commencement.
- Tenant is to undertake performance audits against its EMP every 6 months and provide the results to the Landlord.
- Tenant acknowledges that Landlord may also perform audits of the Tenant's performance against the EMP.
- Tenant is to prepare a Comprehensive Term End Report within 12 to 6 months prior to terminating date.
- If the Comprehensive Term End Report identifies that contamination has been caused by the Tenant, the Tenant is to prepare a RAP and perform remediation in accordance with the recommendations of the Comprehensive Term End Report.
- ** Landlord to consider holding an Environmental Bond in case Tenant does not fulfil their obligations

COMMERCIAL LEASES – SPECIFIC CONDITIONS FOR HAZARDOUS MATERIALS (REFER TO FLOW CHART FOR TRIGGERS)

CONDITIONS HM1:

- Tenant to meet all obligations under the WHS Act and WHS Regs throughout the term regarding the identification and mitigation of risks resulting from the presence of Hazardous Building Materials within structures

CONDITIONS HM2:

- Tenant to accept existing Hazardous Materials Register / Report as the condition of Hazardous Building Materials in structures at lease commencement.
- Tenant to meet all obligations under the WHS Act and WHS Regs throughout the term, including the identification and mitigation of risks resulting from the presence of hazardous materials within structures.
- Hazardous Materials Register and Asbestos Management Plan to be kept current, and updated at least every 5 years.
- Tenant to engage Occupational Hygienist to prepare an updated Hazmat Register / Report at completion

CONDITIONS HM3

- Tenant to accept existing Hazardous Materials Register / Report as the condition of Hazardous Building Materials in structures at lease commencement.
- Tenant to engage a Remediation Contractor to perform remediation of hazardous materials to the extent required to make site safe for intended purpose.

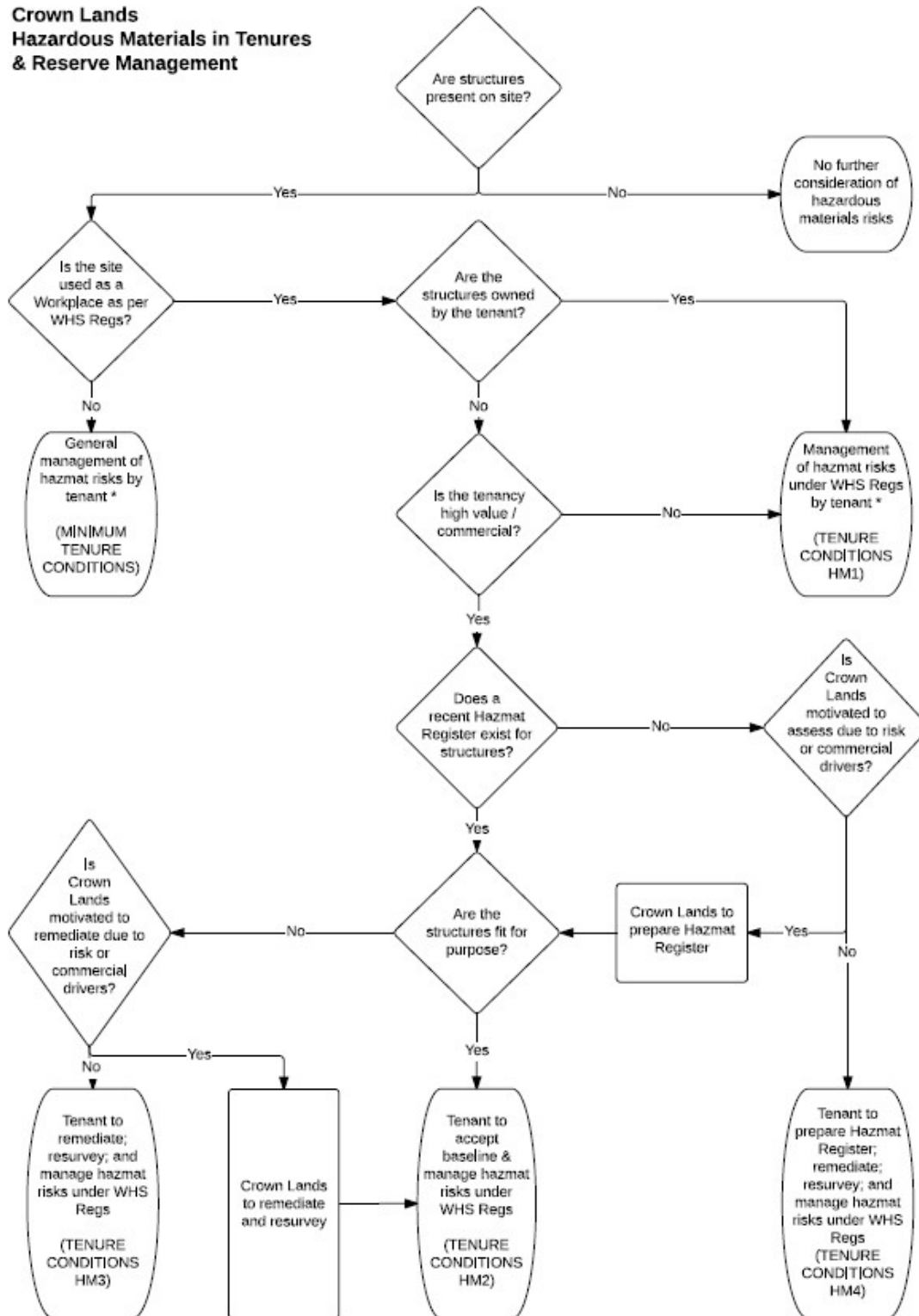
- Where remediation of asbestos is required, it must be performed by a Licenced Asbestos Removalist. Removalist must notify WorkCover. Air monitoring, site clearance and an updated hazmat register must be performed by an Occupational Hygienist.
- Tenant to meet all obligations under the WHS Act and WHS Regs throughout the term, including the identification and mitigation of risks resulting from the presence of Hazardous Building Materials within structures.
- Hazardous Materials Register and Asbestos Management Plan to be kept current, and updated at least every 5 years.
- Tenant to engage Occupational Hygienist to prepare an updated Hazmat Register / Report at completion

CONDITIONS HM4

- Tenant to engage an Occupational Hygienist to prepare a Hazmat Register / Report
- If required (based on the hazmat register), tenant to engage a Remediation Contractor to perform remediation of hazardous materials to the extent required to make site safe for intended purpose.
- Where remediation of asbestos is required, it must be performed by a Licenced Asbestos Removalist. Removalist must notify WorkCover. Air monitoring, site clearance and an updated hazmat register must be performed by an Occupational Hygienist.
- Tenant to meet all obligations under the WHS Act and WHS Regs throughout the term, including the identification and mitigation of risks resulting from the presence of Hazardous Building Materials within structures.
- Hazardous Materials Register and Asbestos Management Plan to be kept current, and updated at least every 5 years.
- Tenant to engage Occupational Hygienist to prepare an updated Hazmat Register / Report at completion

9.10 Attachment 10: Strategic Triggers – CLM & Hazmat Procedure for Reserves

**Crown Lands
Hazardous Materials in Tenures
& Reserve Management**



Hazmat Register may be prepared in conjunction with a Condition Report, Hazardous Materials Report and/or a Dilapidation Survey
* Tenant also taken to mean a Reserve Trust in these scenarios