



# assessing contamination in the **Danks Street South Precinct**

## Introduction

The Gateway Determination dated 1 February 2017 requires that a contamination report for the precinct be undertaken.

As it is not proposed to amend the current zoning of the precinct, which already permits retail commercial and residential development, it was agreed with the Department of Planning and Environment that providing this plain English summary of the processes that are followed prior to approving a development approval would be sufficient for this exhibition.

In assessing a development application (DA) the City is required to assess the suitability of the sites for developments, and stipulate what is required to ensure that the sites are suitable for the proposed/future use.

The City follows a rigorous process for all development on contaminated land. This process adheres to all relevant legislation. All assessments follow a practice note process which outlines the steps required when assessing

development applications.

This summary describes the legislative framework for assessing potential contamination, and a flow chart that outlines the City's processes according to legislative requirements.

A status report from the landowner is also provided.

## Legislative framework

### **Contaminated Land Management Act 1997**

The Act imposes a duty to notify the NSW Environment Protection Authority (EPA) of sites which present a significant risk of harm, establishes a system to provide access to information concerning such sites, and provides for a comprehensive contaminated sites auditor scheme.

### **Environmental Planning and Assessment Act 1979**

Heads of consideration are noted under section 79C of the Act. Consideration is given to environmental impacts on both the natural and built environments, the suitability of the site for development and the public interest.

### **State Environmental Planning Policy No 55 - Remediation of land**

State-wide planning approach to the remediation of contaminated land, to specify when consent

is required, and to indicate considerations that are relevant in rezoning land and determining DAs, and level of remediation that is required dependant on use.

### **Managing Land Contamination: Planning Guidelines: SEPP 55 - Remediation of land**

Establishes 'best practice' for managing land contamination through the planning and development control process. Deals with the early identification of contaminated sites, rezoning and DAs, the recording and use of information, and the provision of information to the community.

### **National Environment Protection (Assessment of Site Contamination) Measure 1999 Amended April 2013**

Technical legislation providing a very detailed and consistent process for investigating contaminated land and sets standards for determining risk to human and environmental health.

## Role of the NSW Environmental Protection Authority

The EPA deals with site contamination that is significant enough to warrant regulation under the Contaminated Land Management Act given the site's current or approved use.

The EPA is notified of any studies completed as part of the DA process for a site that is considered to be contaminated and requires remediation. The EPA provides accredited site auditors who prepare site audit statements that are required to be submitted to Council.

The EPA may also declare land to be significantly contaminated land. Section 12 of the Contaminated Land Management Act defines matters to be considered to determine whether or not to declare the land to be significantly contaminated.

## Role of the City

The City aims to ensure that land is not allowed to be put to a more sensitive land use that is inappropriate because of the presence of contamination. The City employs planning and development control processes under the Environmental Planning and Assessment Act 1979 and State Environmental Planning Policy No 55 – Remediation of land to manage land contamination.

## Development assessment

### Stage 1 Development Application

In some cases a Stage 1 DA will be required for a development. A Stage 1 DA results in a concept design approval addressing high level issues to ensure development is feasible and suitable. Contamination may need to be addressed as part of the Stage 1 process depending on its level of severity, intended uses and existing surrounding uses. Sydney LEP 2012 states when a Stage 1 DA is required.

### Stage 2 Development Application

A Stage 2 DA occurs after the Stage 1 DA process (and a competitive design process if applicable). If development will be staged on a site it is possible to have multiple Stage 2 DAs. A Stage 2 DA provides detailed design of the proposal on the site including the proposed land use. If the site is identified as being contaminated at the Stage 1 DA or Stage 2 DA, further investigation may be warranted at the Stage 2 DA.

## Flow chart

- 1** — **Initial evaluation**

The City will conduct an initial evaluation of the development proposal to determine whether land contamination is an issue and further investigation is warranted.
- 2** — **Preliminary Environmental Site Investigation (PESI)**

If contamination may be an issue the applicant will be required to engage a suitably qualified Environmental Consultant to prepare and **submit** a PESI. This is a desktop assessment to identify any past or present potential contaminating activities carried out on the subject site which may then require further investigation.
- 3** — **Detailed Environmental Site Investigation (DESI)**

A DESI is required when a PESI indicates land is contaminated to an extent that may pose a health risk to future occupiers of the proposed development. It must define the nature, extent and degree of contamination, assess risk to health and environment and develop a remedial action plan if required.
- 4** — **Remedial Action Plan (RAP)**

The DESI will state if a RAP is required. The RAP sets remediation goals to ensure the remediated site will be suitable for the proposed use and will pose no unacceptable risk to human health or the environment. The PESI, DESI and RAP will generally be required to be submitted to Council prior to any development consent being given.
- 5** — **Site Validation Report**  
**Environmental Management Plan (EMP)**

A Site Validation Report will confirm that the remediation objectives set for the site in the approved RAP have been satisfied and confirm the land is suitable for the proposed use.

An EMP may be required or proposed as part of the RAP where full clean-up of the land is not feasible or where encapsulated contaminated materials are to remain on the site as part of the remediation proposal. This will be subject to ongoing monitoring and maintenance by the land owner.
- 6** — **Site Audit Statement (SAS)**

Where sites are subject to significant contamination the City may require that the DESI and the proposed RAP/EMP be peer reviewed and approved by a NSW EPA accredited Site Auditor. On satisfactory completion of the remediation process the Auditor will issue a Site Audit Statement confirming that the site is suitable for the proposed land use. This will be required to be submitted to Council as a condition of development consent prior to any above ground works commencing a SAS that is submitted to Council stating what the land is suitable for the proposed use.
- 7** — **Conditions of Consent**

The City will apply relevant conditions of development consent to ensure that the site is remediated in accordance with the approved RAP and the necessary final Site Validation Report and Site Audit Statement (If required) are submitted confirming the land is suitable for the proposed use.