



12.1 **ADOPT THE SITE CONTAMINATION MANAGEMENT POLICY 2020-2024**

EXECUTIVE MEMBER: LILI ROSIC, GENERAL MANAGER, CITY STRATEGY AND SUSTAINABLE DEVELOPMENT

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1. PURPOSE

- 1.1 To present the City of Port Phillip's Site Contamination Management Policy 2020-2024 for adoption to meet obligations under the new Environmental Protection Act 2017 (as amended 2018) legislation.

2. EXECUTIVE SUMMARY

- 2.1 The City of Port Phillip (**Council**) is built upon land where soil is typically contaminated with a variety of hazardous substances, such as asbestos, hydrocarbons, arsenic and heavy metals, from legacy land uses.
- 2.2 Funding is allocated to the testing, remediation and management of soil contamination on Council owned and/or managed land via the annual capital works portfolio and is managed by relevant project managers. This work is guided by Council's Soil Contamination Management Policy 2004.
- 2.3 The Environment Protection Act 2017 (amended 2018) (**EP Act**), due to commence on 1 July 2021, sets out new duties for duty holders (person, or persons, in management or control of land; this includes Council) in relation to managing risks of contaminated land, namely the General Environmental Duty (**GED**), Duty to Notify and Duty to Manage.
- 2.4 Council's Soil Contamination Management Policy 2004 (**Attachment 1**) will not be compliant with the new duties under the EP Act. It is intended that the Soil Contamination Management Policy 2004 is rescinded and the Site Contamination Management Policy 2020-2024 (**Policy**) is adopted to enable Council to meet its obligations under the EP Act and to keep Council staff and contractors, community and the local environment safe from the potential risks of contaminated land.
- 2.5 The Policy (**Attachment 2**) states Council's legislative obligations and safety commitments to staff, contractors, community and local environment and provides a strategic framework for managing the risks associated with contamination on land over which Council has management or control.
- 2.6 The Policy will achieve the following outcomes:
- Compliance with legislation.
 - Council is kept safe and informed.
 - Community are kept safe and informed.
 - Protection of the natural environment.
 - Preservation of reputation.
 - Prevention of major financial impacts.
 - Management of corporate information.



- 2.7 In 2019/20, Council hired Greencap Consulting to develop a Site Contamination Management Plan (**Attachment 3**). This document has been used to develop the Policy, and it provides further, and more detailed guidance on compliance, minimising risk and ensuring correct assessments and testing are undertaken and recorded in the Site Contamination Risk Register (**Risk Register**).
- 2.8 Greencap Consulting's Site Contamination Management Plan will be used to inform the development of Work Standard Procedures, including Safe Work Method Statements (**SWMS**) and Standard Operating Procedures (**SOPs**), to ensure that the Policy is embedded and realised operationally.
- 2.9 The Risk Register supports the Policy and is a central inventory of all Council owned and/or managed land that includes site details, historical information, risk assessments and soil testing data.
- 2.10 The Risk Register uses this information to assess each site for risk, giving each site a ranking between 1 and 10, and will inform the proactive site testing schedule for the 246 sites for which Council is a duty holder.
- 2.11 The initial assessment of Council's sites by Greencap Consulting, found 12 Rank 1 sites, 57 Rank 2 sites and 69 sites that required further information to make an assessment. The remaining 108 sites were ranked between 3 and 8, requiring less-urgent testing due to their lower risk status, are already being managed effectively, or, testing results have indicated low or no contamination exceedances.
- 2.12 Rank 1 sites were defined as sensitive, with a site assessment indicating that contaminated soil, groundwater or soil vapour exists on the site. For these sites, further soil sampling is required, or remediation.
- 2.13 Rank 2 sites were defined as either: sensitive, with a known site history that indicates contamination risk, with no assessment completed, or, a non-sensitive site, with a site assessment indicating that contamination exists at the site. For these sites, further soil sampling is also required, or remediation.
- 2.14 The Risk Register is a critical financial and work planning document that will enable effective and compliant management of contaminated land scheduled for capital projects and/or development.
- 2.15 A Site Contamination Management Officer (**SCMO**) will be engaged in 2020/21 to oversee the delivery of the Policy, maintain the Risk Register, develop the Work Standard Procedures, ensure Council's legislative compliance with the EP Act, coordinate the proactive site testing schedule and to work across the organisation to embed site contamination management into Council's project management framework, Safety Management System and Asset Management System.
- 2.16 Determining indicative costs for remediation post-testing is very difficult to quantify as costs depend on the results of soil testing, level of risk and proposed redevelopment.
- 2.17 Relevant internal departments including Project Services, Occupational Health and Safety, Asset Management and Property, Environmental Sustainability, Planning, Organisational Performance, Finance, Digital Technology Systems and Customer Experience and Transformation have been consulted extensively throughout the development of the Policy and Risk Register.



3. RECOMMENDATION

That Council:

- 3.1 Rescind the Soil Contamination Management Policy 2004 and endorse in its place the Site Contamination Management Policy 2020-2024.
- 3.2 That Council delegate authority to the CEO to make editorial edits and edits in line with changes to legislation, the Environment Protection Act 2017 (amended 2018), and associated guidance materials to the Site Contamination Management Policy 2020-2024.

4. KEY POINTS/ISSUES

Background

- 4.1 Council is built upon land where soil is typically contaminated with a variety of hazardous substances, such as asbestos, hydrocarbons, arsenic and heavy metals, from legacy land uses over the last 100 years. Many of these substances can leach into groundwater and contaminate broader areas.
- 4.2 Funding is currently allocated to the testing and management of soil contamination during construction as part of Council's capital works budget. However, management costs often exceed budgeted costs when high levels of soil contamination are detected during site testing.
- 4.3 Outside of construction projects, Council only actively manages soil contamination where there is a known risk (e.g. Peanut Farm, Gasworks Park). Proactive testing is not routinely undertaken to understand the extent of soil contamination across the municipality.
- 4.4 Council manages site contamination via the Soil Contamination Management Policy 2004 (to be rescinded). This Policy is not compliant with the new expectations set out in the EP Act and associated subordinate legislation that comes into effect on 1 July 2021.

New EP Act Requirements

- 4.5 Council was recently advised that the EP Act, and associated subordinate legislation (Regulations, Environmental Reference Standards), which were due to commence on 1 July 2020, will now commence on 1 July 2021.
- 4.6 The EP Act sets out new duties for persons with management or control of land to manage the contamination risks.
- 4.7 'Management or control' relates to whether a person can exercise power over the land. For example, when a person holds a legal interest in the land, such as an owner, leaseholder or committee of management, or has access to the land, or use of the land.
- 4.8 The person, or persons, in management or control of land are 'duty holders' under the contaminated land duties. The extent of their duties relates to the level of control they have. They apply when a person either knows contamination is present or can reasonably suspect contamination be present.
- 4.9 These new duties mean Council, as a duty holder, has a responsibility to:



- Proactively assess the likelihood of contamination being present, and, where contamination is present, must manage the risks of harm.
 - Notify Environment Protection Authority Victoria (**EPA**) of contaminated land under prescribed circumstances outlined in the proposed Environment Protection Regulations, Part 2.1 Contaminated land: division 1 – prescribed notifiable contamination.
- 4.10 The EP Act also introduces the General Environmental Duty (**GED**) which requires all people in the State of Victoria to reduce the risk of harm from activities to human health and the environment, and from pollution and waste.
- 4.11 Council's Soil Contamination Management Policy 2004 will not be compliant with the new duties under the EP Act. It is intended that this policy is rescinded, and the Policy is adopted to enable Council to meet its obligation under the EP Act.

Site Contamination Management Policy 2020-2024

- 4.12 To ensure compliance with these new duties, inform future capital works projects more effectively and ensure ongoing staff and community safety, the Policy has been developed with the following Outcomes:
- **Compliance with legislation** - Council will be compliant with relevant legislation relating to contaminated land.
 - **Council is kept safe and informed** - Council staff and contractors will be kept safe from the risks of contamination via proactive assessment and effective management of contaminated land, training in, and adherence to, Work Standard Procedures and by being informed of existing and new contaminated land.
 - **Community are kept safe and informed** - Our community will be kept safe from the risks of contamination via proactive assessment and effective management of contaminated land. They will be informed of their own legislative duties and of existing and new contamination on Council land and how this is being managed.
 - **Protection of the natural environment** - Land over which Council has management or control will be proactively assessed and managed to protect our natural environment from the risks of contamination, including the development of our soil contamination profile to improve tracking of potential movement of contamination.
 - **Preservation of reputation** - Council's reputation as an organisation which manages its legal obligations and its commitments to community in relation to contaminated land will be maintained.
 - **Prevention of major financial impacts** - Proactive assessment of land over which Council has management or control will inform planning of works and assist in the prevention of major financial impacts associated with contamination.
 - **Management of corporate information** - Information relating to contamination of land over which Council has management or control will be managed in accordance with Council's Records Management Policy, and be accessible to relevant Council staff.



4.13 With these Outcomes, the Policy will achieve the following:

- Define how Council will manage its legislative obligations regarding the management of site contamination of land for which Council is a duty holder.
- Guide how Council uses its discretionary options concerning the identification and monitoring of contaminated private land.
- Provide a strategic framework to leverage external funding opportunities, such as grants, to manage historical site contamination.
- Provide a policy basis to manage contaminated sites within the municipality.
- Provide processes to minimise risk to staff, Council, contractors and community via potential exposure to contaminated soil and groundwater.
- Inform Council's ongoing planning and investment in assets, including acquisition or re-purposing of land for new functions.
- Integrate with, and support the delivery of, other core strategies such as Move-Connect-Live / Act and Adapt / Public Space Strategy.

4.14 To assist in the development of the Policy, Council engaged Greencap Consulting in 2019/20 to develop a Site Contamination Management Plan. This document provides further, and more detailed guidance on compliance, minimising risk and ensuring correct assessments and testing are undertaken and recorded in the Risk Register.

4.15 Greencap Consulting's Site Contamination Management Plan will be used to inform the development of Work Standard Procedures, including Safe Work Method Statements (**SWMS**) and Standard Operating Procedures (**SOPs**), ensure that the Policy is embedded and realised operationally.

4.16 The Work Standard Procedures will provide specific guidance to Project Managers to minimise risk to staff, Council and third-party contractors via potential exposure to contaminated soil and groundwater and to ensure correct assessments and testing are undertaken and recorded in the Risk Register.

4.17 The Work Standard Procedures will also, in future, be integrated into Council's Asset Management System and/or GIS system to assist in the identification and response to site contamination risk when undertaking routine maintenance work.

4.18 A new Soil Contamination Procedure (one of the Work Standard Procedures) will form part of the suite of Safety Management Procedures managed by Council's Occupational Health and Safety team.

4.19 The development and delivery of the Policy aligns with Strategic Direction 4 of the Council Plan, *We are growing and keeping our character*.

Site Contamination Risk Register

4.20 The Site Contamination Risk Register (**Risk Register**) has been developed to support the Policy and is a central inventory of all Council owned and/or managed land that includes site details, historical information, risk assessments and soil testing data and has been developed to incorporate and align with Council's Risk Management Framework.



- 4.21 In future, this will include a GIS layer to assist in the identification and response to site contamination risk when undertaking routine maintenance work, as well as the development of a soil contamination procedure to form part of the suite of Safety Management Procedures managed by Council's Occupational Health and Safety team.
- 4.22 The Risk Register is an interactive Excel spreadsheet which ranks Council's sites on a scale of 1 to 10 and needs to be managed by a suitably qualified professional, with experience in undertaking soil testing, and analysing soil contamination reports, generated by suitably qualified consultants or laboratories.
- 4.23 All rankings are based on current site use and prioritises sites for further investigation. For example, Gasworks Arts Park has contamination, but it is well understood, actively managed and does not pose a current significant risk to the site users; as such it has an overall risk ranking of 4. Changing the land use or undertaking construction work on the site would change the risk rating.
- 4.24 The initial assessment of Council's sites by Greencap Consulting found 12 Rank 1 sites, 57 Rank 2 sites and 69 sites that required further information to make an assessment. The remaining 108 sites were ranked between 3 and 8, requiring less-urgent testing due to their lower risk status, are already being managed effectively, or, testing results have indicated low or no contamination exceedances.
- 4.25 Rank 1 sites were defined as sensitive, with a site assessment indicating that contaminated soil, groundwater or soil vapour exists on the site. For these sites, further soil sampling is required, or remediation.
- 4.26 Rank 2 sites were defined as either: sensitive, with a known site history that indicates contamination risk, with no assessment completed, or, non-sensitive, with a site assessment indicating that contamination exists at the site. For these sites, further soil sampling is also required, or remediation.
- 4.27 Greencap Consulting recommend sites ranked 1 or 2 be tested and assessed as a matter of priority, and that the remainder of sites can wait until 2021/22 to be assessed, unless their usage or conditions change.
- 4.28 **Attachment 4** lists the following: Rank 1 and 2 sites, as well as sites without a ranking, noting those which are scheduled for development in 2020/21, 2021/22 and the next ten years. Also listed here are the indicative average costs for carrying out site assessments on these sites.
- 4.29 There are 69 sites with no ranking due to lack of known detail. Greencap Consulting recommend that site reports for these sites are reviewed and assessed, with results added to the Risk Register. Estimated cost of assessment for each of these sites is \$300 to \$600.
- 4.30 If sites are found to have contamination, costs to remediate may be substantial, dependant on what contamination is found, to what depth, the sensitivity of site users (e.g. adults vs children) and the risk of exposure for site users.
- 4.31 Estimated costs for disposal of contaminated soil for 2019/20 are outlined below:
- Category A: \$867/tonne
 - Category B: \$667/tonne
 - Category C: \$176/tonne.



- 4.32 Together, the Policy and Risk Register will inform Council's proactive site testing schedule, ongoing planning and investment in assets, including acquisition or re-purposing of land for new functions.
- 4.33 The proactive site testing schedule is a key method to ensure Council's compliance with the new duties under the EP Act. It will also allow soil contamination data to be gathered and used to inform planning capital works.
- 4.34 These documents will also provide a strategic framework to leverage external funding opportunities, such as grants, to manage historical site contamination, and they will integrate with, and support the delivery of, other core strategies such as Move-Connect-Live, Act and Adapt and the Public Space Strategy.

Site Contamination Management Officer

- 4.35 A Site Contamination Management Officer (**SCMO**) will be engaged in 2020/21 to oversee the delivery of the Policy, development of the Work Standard Procedures and the maintenance of the Risk Register, ensure Council's legislative compliance with the EP Act, coordinate the proactive site testing schedule and will work across the organisation to embed soil contamination management into Council's project management framework, Safety Management System and Asset Management System.
- 4.36 The SCMO will also develop and implement the Site Contamination Communications and Engagement Plan to ensure community are notified of contamination in line with requirements of the EP Act and Council's commitment to community and environmental safety.
- 4.37 It is noted in the 2020/21 Council budget (proposed) that the SCMO will be funded from a re-prioritization of vacant positions.
- 4.38 The SCMO, once appointed, will work closely with relevant Council departments to triage testing for sites to undergo works in 2020/21. Results of testing and/or assessment will be used to inform project scopes for RFQ/T's where possible.

Site remediation costs

- 4.39 Regarding indicative costs for remediation, the range of possible costs is very difficult to quantify and will depend on the results of soil testing, level of risk and any proposed redevelopment.
- 4.40 Site remediation is not proposed to occur in 2020/21 except for:
 - 4.40.1 Any sites where soil sampling identifies imminent risk to site users.
 - 4.40.2 Where required as part of other construction/building works.
- 4.41 Based on the soil sampling results, a remediation plan would be developed for likely start in 2021/22.
- 4.42 If sites are found to have contamination, costs to remediate may be substantial, dependant on what contamination is found, to what depth, the sensitivity of site users (e.g. adults vs children) and the risk of exposure for site users. This could range from tens of thousands to millions of dollars.
- 4.43 Estimated costs for disposal are outlined in 4.34.



Other Costs

- 4.44 There are a range of other cost impacts that will occur over time. For example, it is understood that routine maintenance works do not regularly test for soil contamination when undertaking road works or landscape works on nature strips. Guidance on how to approach this will be in the final EP Act regulations which are yet to be released.
- 4.45 Guidance for staff and contractors working on roads and nature strips is provided in the Policy. Neither of these are noted in the Risk Register, and assessment of these may result in additional costs for staff time, soil sampling and soil disposal for routine maintenance works.
- 4.46 When road sites such as Kings Place/Millers Lane, identified in the draft Public Space Strategy to be redeveloped into a new plaza come up for redevelopment, these will be assessed and tested and added to the Risk Register.
- 4.47 The cost of assessment of Rank 1 and Rank 2 sites is detailed in the financial section of this report.

5. CONSULTATION AND STAKEHOLDERS

- 5.1 Relevant internal departments, across all divisions of Council, have been consulted extensively throughout the development of the Greencap Site Contamination Management Plan, the Policy and Risk Register including Project Services, Occupational Health and Safety, Asset Management and Property, Environmental Sustainability, Planning, Organisational Performance, Finance, Digital Technology Systems and Customer Experience and Transformation.
- 5.2 Internal consultation has included four workshops with relevant internal stakeholders in 2019/20, several one-on-one discussions with Project Services, Occupational Health and Safety, Asset Management and Property and a Policy draft review meeting to discuss implementation, upcoming projects and developments, and the financial forecast.

6. LEGAL AND RISK IMPLICATIONS

- 6.1 The new EP Act that comes into effect on 1 July 2021 and will require Council as a duty holder to undertake measures to manage contaminated land, including proactive testing and, where necessary, remediation, to reduce risk to human and environmental health.
- 6.2 Council made an officer submission on the draft EPA regulations that guide the specifics of Council's obligations in October 2019 (**Attachment 5**). EPA have not yet released the final regulations, and this will be critical for guiding the first annual review of the Policy, scheduled for May 2021.
- 6.3 The regulations will also outline duty holders' responsibilities to notify other impacted land holders where we identify and manage legacy contamination.
- 6.4 There is a risk that additional testing and remediation requirements will have a substantial financial impact on project costs.
- 6.5 All Rank 1 and Rank 2 sites are classified as Major in the City of Port Phillip Risk Framework, and have one or more of the following:
 - 6.5.1 Major risk to Natural Environment (2-5 years of remediation)
 - 6.5.2 Moderate risk to Reputation (serious negative attention from public/state media).



7. FINANCIAL IMPACT

- 7.1 The 2020/21 Council Budget (proposed) includes \$310K to cover most of the cost of testing of Rank 1 and 2 sites and project sites. This is a \$70K decrease from the \$380K allocated in the Council Plan.
- 7.2 The SCMO, required to commence by October 2020, will be funded from a re-prioritization of vacant positions due to Covid-19, as they will be required to participate in, and inform, the budget process for 2021/22.
- 7.3 Whilst the Risk Register has indicative costs for assessment, it cannot pre-empt remediation costs. Remediation and contaminated soil disposal costs will continue to add to higher project costs and will apply to a broader range of maintenance or construction projects than in previous years.
- 7.4 Proactive site testing however, will enable better forward planning of project budgets and timelines and improved accuracy of project feasibility assessments.

8. ENVIRONMENTAL IMPACT

- 8.1 The delivery and proper management of the Policy by the SCMO will manage the environmental impacts of contaminated soil within the City of Port Phillip, in line with our obligations under the EP Act, including the GED.

9. COMMUNITY IMPACT

- 9.1 The SCMO will develop the Site Contamination Communications and Engagement Plan (**CE Plan**) upon commencement in consultation with the Communications and Engagement Department.
- 9.2 The Policy commits to:
 - 9.2.1 Fulfilling all our legislative obligations relating to site contamination, including notifying EPA of contamination above thresholds determined in guidance documents.
 - 9.2.2 Informing Council staff, contractors and community of any existing contaminated land over which it has management or control, the type and extent of this contamination, potential impacts and how it is being managed.
 - 9.2.3 Informing Council staff, contractors and community of any newly discovered contaminated land over which it has management or control, the type and extent of this contamination, potential impacts and how it will be managed.
 - 9.2.4 Informing Council staff, contractors and community when new contamination occurs on land over which Council has management or control over, the type and extent of this contamination, potential impacts and how it will be managed.
 - 9.2.5 Informing community of their own legislative duties relating to contaminated land, offering advice and guidance where appropriate.
- 9.3 The CE Plan will define key stakeholder groups and will then detail key messages for each group and the appropriate methods, techniques and timing to enable effective communication and engagement.
- 9.4 Project specific CE Plans will continue to be utilised by Project Managers. It is not intended that the Site Contamination CE Plan supersede these nor make them redundant.



10. ALIGNMENT TO COUNCIL PLAN AND COUNCIL POLICY

10.1 The development and delivery of the SCMP and Risk Register align with Strategic Direction 4 of the Council Plan: *We are growing and keeping our character.*

11. IMPLEMENTATION STRATEGY

11.1 TIMELINE

11.1.1 June 2020 – Rescindment of the Soil Contamination Management Policy 2004 and adoption of the Policy by Council.

11.1.2 October 2020 – Appointment of the SCMO.

11.1.3 October 2020 – Commence proactive assessment of Rank 1 and Rank 2 sites, and of sites with no ranking (subject to recruitment of the SCMO).

11.1.4 October 2020 and ongoing – development of Work Standard Procedures, continue assessment program, management of the Policy, development of the CE Plan, provide advice and recommendations to internal departments regarding capital works, compliance with EP Act.

11.1.5 1 July 2021 – EP Act comes into effect.

12. COMMUNICATION

12.1 The CE Plan, as outlined in Section 9 of this Report, will be developed to communicate to the community (external) and to staff and contractors (internal) about site contamination, where to get information and guidance, and responsibilities of duty holders in 2020/21.

13. OFFICER DIRECT OR INDIRECT INTEREST

13.1 No officers involved in the preparation of this report have any direct or indirect interest in the matter.

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ATTACHMENTS

1. Attachment 1 - Soil Contamination Management Policy 2004
2. Attachment 2 - CoPP Site Contamination Management Policy 2020-2024_V1-0_2020-06-03
3. Attachment 3 - Greencap Consulting_CoPP DRAFT SCMP_2020-06-02
4. Attachment 4 - Assessment Schedule Rank 1 and Rank 2 sites and non-ranked sites
5. Attachment 5 - CoPP submission to EPA Victoria on EPA Act 2018 subordinate legislation_2019-10-31