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*Attention:* *Marc Voortman*

**Planning and Land Use Services**
Department for Housing and Urban Development
83 Pirie Street, Adelaide SA 5000
Marc.Voortman@sa.gov.au

*Property Council of Australia: Site Contamination Development Assessment Scheme Code Amendment*

Dear Marc,

As discussed at the recent meeting on September 6, we thank you for the opportunity to provide comment as part of the Site Contamination Reference Group.

The Property Council of Australia's members lead the property sector with the largest direct economic footprint in the nation – producing $232.7 billion towards GDP, employing 1.4 million Australians and generating $178 billion in employee incomes. Property and shaping the future of our cities is central to our national prosperity and touches the lives of every Australian.

The Property Council maintains its concern that the planning system should not be unnecessarily encumbered with constraints associated with matters already regulated under separate legislative regimes.

On matters of site contamination, the planning system is not the only or indeed the primary gatekeeper of this issue. The *Environment Protection Act 1993* adequately regulates site contamination and has done so for a number of years.

The burden of managing site contamination should not be substantially shifted to the planning system simply because it is convenient to the EPA for that to occur.

We appreciate the opportunity to comment and look forward to your response.

**Bruce Djite**
SA Executive Director, Property Council

## Amendments to LUSH

If the Land Use Sensitivity Hierarchy will continue to be utilized as an assessment tool, the Property Council supports the reduction in the classes of land use nominated in the LUSH such that less developments are captured as changes of class. We agree that the investigations should be commensurate with the level of risk.

The Property Council would support a more flexible approach to land uses that have a very low likelihood of site contamination, such as the majority of forms of farming and horticulture, and we question the need for all primary production activities to be class 3.

Likewise, there is no basis to require a site contamination assessment for a proposed development in an area of virgin scrubland or native vegetation. Proposals like tourist accommodation in coastal areas or among vineyards are being unnecessarily captured.

Extreme examples such as the prospect of illegal dumping should not be used as justification for expanding the circumstances where a PSI is required.

Where the previous use of land is known but discontinued (such that no existing use rights continue to exist) the planning authority should be able to have regard to that use to not require a new site contamination investigation. For example, the reinstatement of a disused retail fuel outlet as a retail fuel outlet should not trigger the need for a PSI.

Our further comments around amendments to the LUSH are as follows:

1. Restaurants could be included in Tier 1, along with some forms of tourist accommodation.
2. Golf courses and the like should be placed in Tier 2 (not Tier 1) only if they have a previous history of remediation (eg - built on remediated landfills etc).
3. 'Store' should be moved to Tier 2 (except where it is used to store Part B - Listed Wastes under *Environment Protect Act 1993* and other contaminants).
4. Dry cleaner is currently present in both Tiers 3 and 4 – it is probably most appropriate in Tier 4 (with fire stations).
5. Renewable energy facilities – given the range of developments this could comprise, it could be that one looks to divide lower impact facilities (eg - Battery storage and solar farms – minimal disturbance in development and minimal enviro impact) into Tier 2, with higher impact facilities (eg - hydrogen power plants) into Tier 3.

## Use of Reserved Matters

The Property Council strongly supports changes to the planning system to permit site contamination assessments to be dealt with as reserved matters.

That would likely be achieved through:

1. Amendments to Practice Direction 14.
2. Amendments to the Planning and Design Code to specify site contamination as a "matter" for the purposes of section 102(4) of the Act.
3. Amendments to the Regulations to avoid the need for a Preliminary Site Assessment to be provided with a development application where an applicant has nominated it to be reserved.

The legislative constraint in section 102(5) on reserving matters which are "fundamental to the nature of the relevant development" is not an impediment.

The starting point is that site contamination has nothing to do with the "nature" of a development. It is simply a precondition to the change of use of land to a more sensitive use. The presence or absence of site contamination will not, of itself, alter the design of a development or the way it impacts on the amenity of a locality. It will not alter the essential task of a planning authority in determining whether a proposal warrants planning consent.

An office is an office regardless of whether it is proposed to be located on a site requiring remediation.

This approach is consistent with the established case law, which permits issues to be reserved where they are capable of being resolved in potentially a range of ways which have no impact on the essential elements or operation of a development.

There is almost always a way of addressing site contamination. It is generally a question of "at what cost". In that regard there should be no concerns about applications being "hypothetical", noting in any event that the "hypothetical" development principle arguably has no application to a development application under the PDI Act.

The use of reserved matters for site contamination will enable applicants to defer incurring substantial costs on site contamination assessment until they have the investment confidence and certainty of outcome of a planning consent.

The risk associated with deferring those investigations to a later stage in the process will lie wholly with the applicant.

The assessment of site contamination will still be a gate for applications to pass through but will not delay an applicant obtaining an answer on the fundamental question of whether an application warrants planning consent.