

Contaminated Sites Management Series

SITE CLASSIFICATION SCHEME

Draft for public comment

November 2001

Department of
Environmental Protection

PREFACE

This draft version of the *Site Classification Scheme* has been prepared by the Department of Environmental Protection (DEP) to provide site owners and occupiers, local government authorities, industry and other interested parties with the DEP's requirements for the process of site classification.

This draft guideline has been prepared based on the *Contaminated Sites Bill (CS Bill)* and has been released for public comment. Any comments on this draft should be forwarded to the Contaminated Sites Section of the DEP by **28 February 2002**. All comments will be reviewed and considered, and where appropriate incorporated into the final version.

Written comments on this guideline should be forwarded to:

Manager – Land and Water Quality Branch
Environmental Regulation Division
Department of Environmental Protection
PO Box K822
Perth WA 6842
Fax: 08 9322 1598

Comments by E-mail should be sent to:

info@environ.wa.gov.au

LIMITATIONS

This guideline is for the use of persons who are owners or occupiers, public authorities, industry representatives, auditors and other interested parties, to provide guidance only on the requirements for the determination of a classification for a site based on contamination present. It does not purport to provide a methodology for the assessment of sites. Competent professionals should be engaged to provide specific advice in relation to the assessment of contaminated sites.

This guideline should be used in conjunction with the texts referenced herein, and any other appropriate references.

DISCLAIMER

This guideline has been prepared by the DEP in good faith, exercising all due care and attention. No representation or warranty, expressed or implied, is made as to the relevance, accuracy, completeness or fitness for purposes of this document in respect of any particular user's circumstances. Users of this document should satisfy themselves concerning its application to their situation, and where necessary seek expert advice.

CONTAMINATED SITES MANAGEMENT SERIES

This guideline forms part of a management series being developed by the DEP to provide guidance on the assessment and management of contaminated sites in Western Australia.

The Contaminated Sites Management Series contains the following guidelines:

- Assessment Levels for Soil, Sediment and Water;
- Certificate of Contamination Audit Scheme;
- Community Consultation;
- Contaminated Site Auditor Accreditation Scheme;
- Development of Sampling and Analysis Programs;
- Disclosure Statements;
- Guidance for Planners;
- Potentially Contaminating Activities, Industries, and Landuses;
- Reporting of Known or Suspected Contaminated Sites;
- Reporting on Site Assessments; and
- Site Classification Scheme.

Reference to these guidelines should ensure that the minimum requirements of the DEP are satisfied.

Copies of these guidelines are available from the DEP's library located at Westralia Square, Level 8, 141 St Georges Terrace, Perth, or from the DEP's website at www.environ.wa.gov.au.

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1. INTRODUCTION

The objectives of this guideline are to provide landowners, occupiers and public authorities with an understanding of:

- **the process of classification of sites;**
- **notification of classification of a site;**
- **appealing site classification;**
- **facilitation of a change to a site's classification; and**
- **Records of Known or Suspected Contaminated Sites and the Public Database of Confirmed Contaminated Sites.**

Over the past decade there has been an increasing awareness of the issues associated with contaminated sites. In Western Australia, these issues are compounded somewhat by our reliance on groundwater and the threat posed by land contamination to groundwater quality. It is currently difficult to estimate the exact number of contaminated sites in Western Australia, predominantly due to deficiencies in the identification and documentation of contaminated sites and the limitations associated with the exchange of information on contaminated sites.

One of the principles of the Government Public Position Paper *Contaminated Sites - Assessment and Management of Contaminated Land and Groundwater in Western Australia* (DEP, 1997) identified the importance of the identification, reporting and classification of contaminated sites and the availability of this information for land transfer, site development and public awareness purposes. The *Contaminated Sites Bill (CS Bill)*, which has been prepared based on the principles in the Position Paper, provides for the identification, reporting and classification of sites and the documentation of information on the Public Database of Confirmed Contaminated Sites and Records of Known or Suspected Contaminated Sites, and memorials registered on the Certificate(s) of Title where relevant.

Information on the identification and reporting of sites is provided in the *Reporting of Known or Suspected Contaminated Sites* (DEP, 2001) guideline. This guideline provides information on the classification and the recording of reported known or suspected contaminated sites.

Sites reported to the DEP will be classified based upon:

- the extent of investigations completed;
- the knowledge of contamination;
- the extent of contamination; and
- the risk the contamination poses to human health and the environment.

A memorial must be registered on the Certificate(s) of Title for the site if it is classified as *contaminated – restricted use* or *contaminated – remediation required* or if an Investigation Notice, Clean-up Notice or Hazard Abatement Notice is issued in relation to the site. Section 4 of this guideline provides further information in relation to registration of memorials.

The DEP will keep Records of Known or Suspected Contaminated Sites for each site reported to the DEP. Sites subsequently classified as *contaminated - restricted use* or *contaminated – remediation required* will appear on the Public Database of Confirmed Contaminated Sites.

Section 5 of this guideline provides further information in relation to the DEP records and the Public Database.

1.1 OBJECTIVES

The objectives of this guideline are to ensure a consistent methodology for the identification and classification of contaminated sites, and to assist the transfer of information through the Public Database of Confirmed Contaminated Sites. This guideline provides landowners, occupiers, local authorities and interested parties with an understanding of:

- the processes of classification and recording of sites;
- notification of classification of a site;
- facilitation of a change to a site's classification;
- appealing site classification;
- Records of Known or Suspected Contaminated Sites; and
- the Public Database of Confirmed Contaminated Sites.

Each of these subjects is addressed in a separate section within this guideline.

This guideline does not cover the assessment of contaminated sites. Guidance on the investigation of contaminated sites is provided in the *Development of Sampling and Analysis Programs* (DEP, 2001), *Reporting on Site Assessments* (DEP, 2001) and *Assessment Levels for Soil, Sediment and Water* (DEP, 2001) guidelines.

This guideline does not provide information on the DEP's requirements for reporting of known or suspected contaminated sites. For the identification and reporting of known or suspected contaminated sites to the DEP, please refer to the draft *Reporting of Known or Suspected Contaminated Sites* (DEP, 2001) guideline. For specific guidance on the reporting on the various stages of site investigations (e.g. Preliminary Site Investigations (PSIs), Detailed Site Investigations (DSIs), remediation and validation), refer to the *Reporting on Site Assessments* (DEP, 2001) guideline.

Where a disclosure statement is prepared, please refer to the draft guideline *Disclosure Statements* (DEP, 2000).

2. THE SITE CLASSIFICATION SCHEME

- The DEP has developed a Site Classification Scheme to manage the transfer of information on known and suspected contaminated sites.
- Sites are classified by the presence and extent of contamination and the risk that the contamination poses to the environment and/or human health.
- The Site Classification Scheme contains six classifications, *report not substantiated*, *possibly contaminated – investigation required*, *not contaminated - unrestricted use*, *contaminated – restricted use*, *contaminated – remediation required* and *decontaminated*.
- Sites classified as *contaminated – restricted use* and *contaminated – remediation required* will be placed on the Public Database of Confirmed Contaminated Sites.
- The classification of a site can be appealed, with rights to appeal depending on the classification allocated.

To identify contaminated sites, and manage the transfer of information on sites such that land values are not adversely affected but that all relevant parties are aware of contamination issues, the DEP has developed a site classification scheme for known or suspected contaminated sites within Western Australia. The site classification scheme contains the following six categories based upon the information available on a site, the extent of contamination at a site and the risk the identified contamination poses to the environment and/or human health:

- *report not substantiated*;
- *possibly contaminated - investigation required*;
- *not contaminated - unrestricted use*;
- *contaminated - restricted use*;
- *contaminated - remediation required*; and
- *decontaminated*.

This guideline provides information on each of these classifications in terms of the processes involved in classifying sites, who receives notification of classification, rights of appeal against the classification, and access to information held in the DEP Records of Known or Suspected Contaminated Sites and on the Public Database of Confirmed Contaminated Sites.

2.1 WHEN ARE SITES CLASSIFIED?

Classification of sites will be completed by DEP:

- following submission of a report of a known or suspected contaminated site as required under the *CS Bill* (refer to the draft *Reporting of Known or Suspected Contaminated Sites* (DEP 2001) for further information on the reporting of sites);
- following submission of a disclosure statement as required under the *CS Bill* (refer to the draft *Disclosure Statements* (DEP, 2000), guideline for further information on submission of disclosure statements); and
- following a request for a Certificate of Contamination Audit as required under the *CS Bill* (refer to the draft *Certificate of Contamination Audit Scheme*, (DEP 2000) for further information on the certificate of contamination audit scheme).

Sites for which the DEP already holds files, i.e. sites for which information has already been provided to the DEP, prior to the commencement of the *Contaminated Sites Act*, will also be classified.

2.2 HOW ARE SITES CLASSIFIED?

Appendix A of this guidelines provides a flow chart describing the classification system for sites in Western Australia.

Following submission of a report to the DEP, the documentation will be assessed to ensure that it provides adequate information to identify the site and classify the contamination status of the site, and to ensure, as far as possible, that the information provided is accurate. The following sections describe the process of classification of sites and provide details of the site classification categories.

Appendix B of this guidelines provides a summary of the site classification scheme in terms of notification, appeal rights and access to information.

2.3 NOTIFICATION OF SITE CLASSIFICATION

The *CS Bill* includes provisions relating to the notification of site classification. Notice of the site classification is to be provided in writing by the DEP no later than ten days following the determination of the classification. Notification can be given by way of a notice or a Certificate of Contamination Audit (if requested). Notification will contain:

- a statement that the site has been classified under the *Contaminated Sites Act*;
- the category of the site classification;
- a description of the location and extent of the site; and
- reasons for the classification of the site, with reference to the guidelines and any other information used in the decision making process.

The notice of the classification of a site will be provided to (whichever is applicable):

- the owner of the site;
- the occupier of the site;
- the reporter (only for sites classified as *report not substantiated, possibly contaminated – investigation required* and *not contaminated – unrestricted use*); and
- the person responsible for remediation of the site (for sites classified as *contaminated – remediation required* and *contaminated – restricted use*).

Where a classification is provided following an application for a Certificate of Contamination Audit, the classification of the site will be provided on the Certificate (refer to the draft guideline *Certificate of Contamination Audit* (DEP, 2000)). Written notification via a Certificate of Contamination Audit cannot be provided for sites classified as *report not substantiated* or *possibly contaminated - investigation required*, and will only be provided in a letter format.

2.4 CHANGES TO THE CLASSIFICATION OF A SITE

Once a site has been classified, changes to the classification can be made following any investigation or remediation works at the site. For example, where a site is classified as *potentially contaminated - investigation required*, and investigations conducted at the site subsequently confirm the presence of contamination at a site, then the site will be re-classified as *contaminated - restricted use*, or *contaminated - remediation required*.

Similarly where sites identified as contaminated and classified as *contaminated - restricted use* or *contaminated - remediation required* have been remediated to the satisfaction of the DEP, then they may be re-classified as *decontaminated* or in the case of *contaminated - remediation required*, *contaminated - restricted use*.

Changes to a site's classification can be made at any time. Where works at a site have been completed which are thought to alter the classification of the site, documentation to describe those works should be presented to the DEP with a request for re-classification of the site.

Following re-classification of a site, the DEP's Records of Known or Suspected Contaminated Sites and the Public Database of Confirmed Contaminated Sites will be updated as soon as practicable within ten days.

A site is classified according to the classification most recently conferred on it.

2.5 APPEALS ON CLASSIFICATIONS

Section 3 of this guideline provides information in relation to appeal rights regarding a site's classification, depending upon the classification determined. The system for appeal is set out under the *CS Bill*. Appeals to the Minister is consistent with the appeals system presented in the *Environmental Protection Act 1986*.

All appeals on or regarding a site's classification must be made in writing to the Minister for the Environment and Heritage. Any appeal should include grounds and facts upon which the appellant relies. Prior to making a decision on an appeal, the Minister may request further information from either the appellant or any other person who has an interest in the site or land. Further information on lodging of appeals can be obtained from the Appeals Convenor, Office of the Minister for the Environment and Heritage.

3. CLASSIFICATIONS

- The site classification scheme contains six classifications:
 - *report not substantiated*;
 - *possibly contaminated – investigation required*;
 - *not contaminated – unrestricted use*;
 - *contaminated – restricted use*;
 - *contaminated – remediation required*; and
 - *decontaminated*.
- Sites classified as *contaminated – restricted use* and *contaminated – remediation required* will appear on the Public Database of Confirmed Contaminated Sites.
- The DEP will maintain Records of Known or Suspected Contaminated Sites.

Appendix B of this guideline provides a summary of the site classifications, notification, appeals, and access to information.

3.1 REPORT NOT SUBSTANTIATED

Where a report presents inadequate or inaccurate information, or is in some other way insufficient to suggest that the site is uncontaminated, contaminated or that an increased potential for contamination exists at the site, the DEP will classify the site as *report not substantiated*.

Where a site is classified as *report not substantiated*, it does not indicate that the DEP is providing any clearance for the site in relation to the absence of contamination, only that there is insufficient information to determine whether or not a site is contaminated, or to support a requirement for further investigation of the site.

3.1.1 Notification

Where a site is classified as *report not substantiated*, written notification will be provided to both the person who reported the site to the DEP and to the landowner of the site (at the time of classification). Subsequent owners and occupiers of sites will need to request information from the DEP via a written request for a Summary of Records and payment of a prescribed fee.

Notification of the classification may also be provided to any relevant public authority.

A certificate of contamination audit cannot be issued for sites classified as *report not substantiated*.

3.1.2 Appeals

Only the person who reported the site can appeal the classification of *report not substantiated*. Information on appeal of classification is provided in the *CS Bill*.

3.1.3 Information Access

Sites classified as *report not substantiated* will not be listed on the Public Database of Confirmed Contaminated Sites. A Summary of Records held by the DEP on these sites will be provided to parties with a verifiable interest in the site following submission of a written request to the DEP describing their interest, and providing an application fee. Where these parties are confirmed by the DEP as having verifiable interest, information on the site will be provided in writing by the DEP.

A verifiable interest could be ownership/occupation of the site, ownership/occupation of an adjacent site, an intention to purchase, finance or lease the site, and a local or state government agency making a planning decision. Potential purchasers, developers and lessees must provide documentation, which proves that they have a genuine financial interest in a site.

3.2 POSSIBLY CONTAMINATED - INVESTIGATION REQUIRED

Where a report of a site is provided to the DEP, is considered to be accurate, and provides a basis for suspecting contamination, then the site will be classified as *possibly contaminated - investigation required*.

This classification informs owners, occupiers, public authorities or parties with a verifiable interest that the site is possibly contaminated, and that further investigations are required to confirm the presence or absence of contamination.

Any owner or occupier of a site, or a prospective purchaser can complete a voluntary investigation of a site.

A site will remain listed as *possibly contaminated - investigation required* until an investigation is completed and the contamination status of the site is determined. Following the provision of investigation reports to the DEP, the site can then be reclassified (refer to Section 2.4 of this guideline).

An example of the application of this classification is where a PSI indicates that there is a potential for the site to be contaminated due to current and/or historical activities at the site, and further investigations, including intrusive investigations, are required to confirm the presence or absence of contamination in the soil and/or groundwater.

Any site that is suspected of being contaminated by a groundwater plume, including plumes originating from adjacent sites, may be classified in this category.

There is no regulatory requirement for further investigation to be completed, unless an Investigation Notice is issued for the site under the *CS Bill*. However, prior to any approvals

being granted for re-development or change of landuse, investigations will be required at the site to assess contamination and the results reported to the DEP.

An Investigation Notice may be issued to either an owner or occupier of a site. An Investigation Notice sets out the requirements for the investigation, monitoring and assessment of a site to the satisfaction of the DEP.

An Investigation Notice will comprise:

- information on the name and address of the person to whom the notice is issued;
- a description of the location of the site to which the notice relates;
- the reason for the issuing of the notice;
- actions required to investigate, monitor or assess the site;
- requirements for reporting of investigations; and
- requirements for the preparation of a management plan for the site (where necessary).

When an Investigation Notice is issued, the person on whom the notice is binding must engage an Accredited Contaminated Sites Auditor to report on the actions taken to comply with the requirements of the notice. Further information on Accredited Auditors is provided in the draft *Contaminated Site Auditor Accreditation Scheme* guideline (DEP, 2000).

3.2.1 Notification

Where a site is classified as *possibly contaminated - investigation required*, written notification will be provided to the person who reported the site, to the owner and any relevant occupiers of the site (at the time of classification). Subsequent owners and occupiers of sites will need to request information from the DEP via written request and payment of a prescribed fee. Notification may also be provided to any relevant public authority for the purpose of regulation, planning decisions, etc. The *CS Bill* precludes planning authorities in approving development applications or subdivisions where a site is classified as *possibly contaminated - investigation required* until such time as it has been re-classified as *contaminated - restricted use*, *contaminated - remediation required*, *decontaminated* or *not contaminated - unrestricted use*.

A Certificate of Contamination Audit cannot be issued for sites classified as *possibly contaminated - investigation required*.

For sites classified as *possibly contaminated - investigation required*, memorials would be registered on the Certificate(s) of Title only where an Investigation Notice has been issued.

3.2.2 Appeals

Appeals against the classification of sites as *possibly contaminated - investigation required*, can only be made by the owner and/or occupier of the site.

3.2.3 Information Access

Sites classified as *possibly contaminated - investigation required* will not be listed on the Public Database of Confirmed Contaminated Sites. A Summary of Records held by the DEP

on these sites will be provided to persons with a verifiable interest following submission of a written request to the DEP describing their interest, and providing an application fee. Where these parties are confirmed by the DEP as having a verifiable interest, information will be provided in writing by the DEP.

3.3 NOT CONTAMINATED - UNRESTRICTED USE

Where investigations completed at a site conclude that there is either no contamination at a site, or where contamination exists at levels that do not pose a risk to the environment or human health, the site will be classified as *not contaminated - unrestricted use*.

An example of sites attributed this classification are sites where:

- a PSI identifies that there is no potential for a site to be contaminated as the current and/or historical site activities have not involved any potentially contaminating activities such as the storage of hazardous material and industrial processes; or
- where a site has the potential to be contaminated due to current and/or historical processes, but where investigations have shown that the site has not become contaminated by these activities.

3.3.1 Notification

Where a site is classified as *not contaminated - unrestricted use*, written notification will be provided to the person who reported the site, the owner and any relevant occupiers of a site (at the time of classification). Subsequent owners and occupiers of sites will need to request information from the DEP via written request and payment of a prescribed fee. Notification may also be provided to any relevant public authority (i.e. for the purposes of regulation, planning decisions, etc.).

A Certificate of Contamination Audit may be issued on request for sites classified as *not contaminated - unrestricted use*.

3.3.2 Appeals

The owner(s) or occupier(s) of the site, and any adjacent landowners, may appeal against sites classified as *not contaminated – unrestricted use*.

3.3.3 Information Access

Sites classified as *not contaminated – unrestricted use* will not be listed on the Public Database of Confirmed Contaminated Sites. A Summary of Records held by the DEP on these sites will be provided to persons with a verifiable interest following submission of a written request to the DEP describing their interest, and on payment of a prescribed fee. Where these parties are confirmed by the DEP as having a verifiable interest, information will be provided in writing by the DEP.

3.4 CONTAMINATED - RESTRICTED USE

Where information is provided on a site which confirms that the site is contaminated, but where the contamination does not pose an unacceptable risk to the environment or human health under the existing landuse, but may pose a risk under a more sensitive land use, the site will be classified as *contaminated - restricted use*.

Example:

A site classified as *contaminated - restricted use* is one which is currently, and has historically, been used as a metal fabrication workshop. The site has surface soil contaminated with metals and hydrocarbons, but no groundwater contamination, or no soil contamination in a location which poses a risk to groundwater.

Under the current landuse, this site is seen as contaminated, but the risk to workers on the site is minimal due to limited exposure. Therefore, the site is not contaminated with respect to its current landuse (because no substance is present at a concentration presenting a risk to human health or the environment) and remediation is not required provided the landuse and operations at the site remain the same.

However, were the site to be redeveloped to a more sensitive landuse, such as residential lots or a kindergarten, then remediation would be required due to an increased risk to future occupiers of the site based on an increased exposure to the contaminants.

This classification may also apply to sites remediated to allow use under some, but not all landuses, e.g. remediated to an extent where it can be used for commercial/industrial use, but not for residential or public open space use.

In some instances, where sites are classified as *contaminated - restricted use*, an Investigation Notice may be issued to the owner where the extent of contamination has not been fully delineated and further investigation is required.

Where a site is listed as *contaminated – restricted use*, *contaminated – remediation required*, or where a Notice has been issued, the owner or occupier of the site has a duty to disclose the contamination to new owners, mortgagee or lessee within 14 days before the completion of the transaction.

3.4.1 Notification

Where a site is classified as *contaminated - restricted use*, written notification will be provided to the person who reported the site, the owner, and any relevant occupiers of the site (at the time of classification). Subsequent owners and occupiers of sites will need to request information from the DEP via written request and payment of a prescribed fee. Notification may also be provided to any relevant public authorities (i.e. for the purpose of regulation, planning decisions, etc.).

Notification will include details on the recommended restrictions on the use of the site. This may include landuse restrictions, or restrictions to excavation of soil to a specific/particular depth, installation of infrastructure or extraction of groundwater.

Where a site is classified as *contaminated – restricted use*, the details of the contamination and the recommended restrictions will be specified on a memorial registered on the Certificate(s) of Title for the Site (refer to Section 4.0 of this guideline).

A Certificate of Contamination Audit may be issued, upon request, for sites under this classification.

3.4.2 Appeals

The owner(s) or occupier(s) of the site and/or parties identified as being responsible for remediation can appeal to the Minister against this level of classification.

3.4.3 Information Access

Where sites are classified as *contaminated - restricted use*, they will be entered onto the Public Database of Confirmed Contaminated Sites and information on these sites will be publicly available at no charge. Section 5.0 of this guideline provides a list of the information which will be available on the Public Database of Confirmed Contaminated Sites.

3.5 CONTAMINATED - REMEDIATION REQUIRED

Where a site is confirmed as contaminated, and where the contamination poses a risk to the environment and/or human health under the existing, approved, landuse(s) due to either the presence of on-site contamination or the off-site migration of contamination, the site will be classified as *contaminated - remediation required*.

Where a site is classified as *contaminated - remediation required* the site is required to be remediated to the satisfaction of the DEP. Where the DEP identifies that remediation has not, or is not occurring within an appropriate timeframe, or in an appropriate manner, then a Clean-up Notice or Hazard Abatement Notice may be issued. Notices may be issued to an owner or occupier of a site and/or the person responsible for remediation (i.e. polluter).

A Clean-up Notice sets out the actions to be taken to remediate a site and may require:

- the preparation and submission of a site management plan for the site;
- compliance with appropriate standards and guidelines; and
- evidence of monitoring of compliance with the requirements of the notice and/or management plan.

A Hazard Abatement Notice may be issued where the DEP determines that the contamination at the site poses an immediate or serious risk to the environment and/or human health. A Hazard Abatement Notice sets out the actions required to immediately control or reduce the risks. It may, for example, involve restricting access to the contamination to remove the immediate risk. A Hazard Abatement Notice may be followed by a Clean-up Notice to ensure that the site does not pose any further risk to the environment and/or human health under its normal, approved landuse.

Persons on whom a Clean-up Notice or Hazard Abatement Notice is binding must engage an Accredited Contaminated Sites Auditor to report on compliance with the notice. Further

information on Accredited Auditors is provided in the draft *Contaminated Site Auditor Accreditation Scheme* (DEP, 2000) guideline.

Where a site is listed as *contaminated – restricted use*, *contaminated – remediation required*, or where a Notice has been issued, the owner or occupier of the site has a duty to disclose the contamination to new owners, mortgagee or lessee within 14 days before the completion of the transaction.

3.5.1 Notification

Where a site is classified as *contaminated - remediation required*, written notification will be provided to the reporter of the site, the owner, any relevant occupiers of the site (at the time of classification), and person(s) responsible for remediation. Subsequent owners and occupiers of sites will need to request information from the DEP via written request and payment of a prescribed fee. Notification may also be provided to any relevant public authority for regulatory and planning purposes, etc.

As with sites classified as *contaminated - restricted use*, sites under this classification will be required to have a memorial registered on the Certificate(s) of Title detailing the contamination at the site (refer to Section 4 of this guideline), and any notices issued.

Certificates of Contamination Audit may be issued upon request for sites classified as *contaminated – remediation required*.

3.5.2 Appeals

The owner(s) or occupier(s) of the site and the parties identified as being responsible for remediation can make appeals on this level of classification.

3.5.3 Information Access

Where sites are classified as *contaminated – remediation required*, they will be entered onto the Public Database of Confirmed Contaminated Sites and information on these sites will be publicly available at no charge. Section 5.0 of this guideline provides a list of the information which will be available on the Public Database of Confirmed Contaminated Sites.

3.6 DECONTAMINATED

Where sites have been classified as *contaminated - restricted use*, or *contaminated - remediation required*, and remediation has been completed to the satisfaction of the DEP, with contaminant concentrations having been reduced to the extent that they no longer pose a threat to the environment and human health, irrespective of landuse, a site may be reclassified as *decontaminated*.

3.6.1 Notification

Where a site is classified as *decontaminated*, written notification will be provided to the owner and occupier of the site at the time of classification and any person who was

responsible for the remediation. Subsequent owners and occupiers of sites will need to request information from the DEP via written request and payment of a prescribed fee. Notification will also be provided to relevant public authorities for regulatory and planning purposes, etc.

A Certificate of Contamination Audit may be given for sites classified as *decontaminated* upon request.

3.6.2 Appeals

The owner or occupier of the site may appeal against this level of classification.

3.6.3 Information Access

Sites classified as *decontaminated* will not be listed on the Public Database of Confirmed Contaminated Sites. A Summary of Records held by the DEP on these sites will be provided to persons with a verifiable interest following submission of a written request to the DEP describing their interest, accompanied by payment of a prescribed fee. Where these parties are confirmed by the DEP as having a verifiable interest, information will be provided in writing by the DEP.

4. REGISTRATION OF A MEMORIAL

A memorial must be registered on the Certificate(s) of Title if the site is classified as *contaminated – restricted use* or *contaminated – remediation required* or if an Investigation Notice, Clean-up Notice, Hazard Abatement Notice, or any other notice is issued in relation to the site.

For sites classified as *possibly contaminated – investigation required*, registration of a memorial would only occur where an Investigation Notice has been issued.

The Chief Executive Officer (CEO) of the DEP (or the owner, as requested by the CEO) is to lodge a memorial with the Registrar of Titles¹ of the Department of Land Administration (DOLA) in respect of land that is:

- part of a site classified as *contaminated – remediation required*;
- part of a site classified as *contaminated – restricted use*;
- the subject of a Notice; or
- land on which a charge has been placed as part of a transfer of responsibility for remediation (refer to the *CS Bill*).

The memorial is to be accompanied by the prescribed fee. The Registrar registers the memorial against the land.

Appendix C of this guideline shows an example of wording for a memorial registered on the Certificate(s) of Title of a site listed as *contaminated – restricted use*.

The CEO will inform the Registrar when the land has been classified as *decontaminated*, when a notice is cancelled, or when the charge on the land is no longer required (as per the *CS Bill*). The Registrar will then register the withdrawal of the memorial on the Certificate(s) of Title.

Where the CEO has lodged a memorial on the Certificate(s) of Title, costs for the registration will be recouped from the relevant owner, occupier, or persons responsible for remediation. Relevant charges will be detailed in the *Contaminated Sites Regulations*. Where the CEO lodges a memorial, a handling fee will be charged additionally to the Registrar's costs of registration of a memorial. Alternatively, the owner may lodge the memorial on the Certificate(s) of Title.

The memorial must specify the nature and extent of contamination and any restrictions related to the site (i.e. abstraction of groundwater, excavation beneath warning barrier, etc.).

The CEO can specify to the Registrar that land classified as *contaminated – remediation required* is not to be transferred unless the CEO consents to the transfer. This ensures that future owners of the site have the capacity to undertake the required remediation.

Once the memorial is registered or withdrawn, written notification will be provided to the owners and occupiers of the site, and all the relevant authorities or agencies.

¹ In most cases the Registrar of Titles, in some instances, the Registrar of Deeds and Transfers.

5. ACCESS TO INFORMATION ON SITES

Access to information on sites classified by the DEP can be obtained via:

- the Public Database of Confirmed Contaminated Sites;
- a request for a Summary of Records under the *CS Bill* made to the Contaminated Sites Section of the DEP; and
- application for information under the *Freedom of Information Act 1992*.

The following sections describe how information can be obtained through these methods.

5.1 RECORDS OF KNOWN OR SUSPECTED CONTAMINATED SITES

Under the *CS Bill*, the DEP is required to keep the following records on known or suspected contaminated sites:

- contaminated underground water plumes;
- the following documents:
 - reports of known or suspected contaminated sites;
 - notice of site classification;
 - Cleanup, Hazard Abatement and Investigation Notices;
 - notices in relation to areas of underground water contamination;
 - management plans submitted to the DEP;
 - sampling and analysis programs submitted to the DEP investigating the extent and nature of contamination;
 - memorials registered on the Certificate(s) of Title;
 - disclosure statements made;
 - Certificates of Contamination Audit;
 - exemption certificates;
 - notices in relation to persons responsible for remediation of a site;
 - notices in relation to appeals and decisions made on an appeal;
 - approval given to the transfer of responsibility for remediation of a site;
 - notice of transfer of responsibility from mortgagees in possession; and
 - written disclosures;
- Such other information or documents as the CEO directs, in writing, are to be included as records.

These records are kept on files held by the DEP for each site reported to the DEP. Access to a Summary of Records can be made through application (see Appendix D of this guideline for an example of an application) where the applicant will need to provide details and verify their interest in the site.

5.2 PUBLIC DATABASE OF CONFIRMED CONTAMINATED SITES

The DEP will maintain an electronic-based listing of all sites confirmed to be contaminated based on the results of on-site investigations provided to the DEP. Sites classified as *contaminated – restricted use* and *contaminated – remediation required* will appear on the Public Database of Confirmed Contaminated Sites. The information on these sites will be available free of charge.

Access to information on sites classified as *report not substantiated, not contaminated – unrestricted use* and *potentially contaminated – investigation required* is limited, to protect the commercial interests of site owners. This helps to ensure that the reporting process is not abused given that the identity of the reporter is protected. (As soon as contamination is confirmed, the classification changes and the information goes on the Public Database of Confirmed Contaminated Sites).

Parties having a verifiable interest may have access to this information upon request, in writing, to the CEO and payment of the prescribed fee (as per the *Contaminated Site Regulations*). Parties having a verifiable interest are those parties involved in the land transfer process such as owners, potential purchasers, potential developers and lending institutions. A verifiable interest could be ownership of an adjacent site, and a local or state government agency making a planning decision. Potential purchasers and developers must provide documentation, which proves that they have a genuine financial interest in a site. Appendix E provides an application form for access to information.

The information on the freely accessible Public Database of Confirmed Contaminated Sites will include:

- DEP's reference/file number;
- site name;
- site address;
- Local Government Authority;
- Certificate(s) of Title reference (e.g. Volume/Folio);
- previous, present and future landuse (e.g. service station to low density residential development);
- media and contaminants (including receiving environment);
- site audits;
- any regulatory notices issued (e.g. Investigation Notice, Clean-up Notice);
- site classification;
- current management status; and
- a listing of reports associated with the site, including title, author and date of report.

The identity of the person who reported a site is not made available.

Appendix B of this guideline provides a summary of access to the database for sites relating to their classification.

It should be noted that the information that the DEP will provide to the public is based on the current DEP records held at the time.

5.3 FREEDOM OF INFORMATION

Application for access to information held by the DEP can be made under the *Freedom of Information Act 1992*. For further information about Freedom of Information (FOI) applications please refer to the *Information Statement* (DEP, 2000) guideline or contact the DEP FOI officer.

6. GLOSSARY

Accredited Auditor	For further information, refer to <i>Guidelines for the Proposed Contaminated Sites Auditor Scheme</i> (DEP, 2000).
Assessment	Study of a site to determine possible and actual contaminants. May involve a desktop review of the site and may also include the collection and analysis of air, soil, groundwater, water or sediment samples.
Clean-up Notice	A notice issued by the DEP where a site is classified as <i>contaminated – remediation required</i> and the required remediation has not been undertaken. The notice will be given to the site owner, occupier, or the polluter, whichever the DEP sees as most appropriate. The notice will outline the works required to be completed, which may include the preparation and submission of a management plan and compliance with the management plan and any appropriate standards. Failure to comply with a notice is an offence.
Competent Professional	Possessing the skills, knowledge, experience, and judgement to perform the assigned tasks or activities satisfactorily.
Contaminant	A substance which has the potential to present a risk of harm to human health or any environmental value.
Contaminated	In relation to land or underground water, means that a substance is present in, on or under that land or in that underground water, at a concentration that presents, or has the potential to present, a risk of harm to human health or any environmental value.
DEP	Department of Environmental Protection.
Detailed Site Investigation (DSI)	An investigation which confirms and delineates potential or actual contamination through a comprehensive sampling program.
DOLA	Department of Land Administration.
Environmental Value	(a) beneficial use; or (b) an ecosystem health condition. Which requires protection from activities which may degrade, impair or destroy it.

Groundwater (also Underground Water)	All waters occurring below the land surface.
Hazard Abatement Notice	Notice that may be issued by the DEP where contamination at a site poses an immediate and serious risk to the environment and or human health.
Investigation Notice	An investigation notice will be issued by the DEP where there is a reasonable belief that a site is contaminated and that appropriate action to investigate, monitor or assess the site is not being taken. The notice will include the reasons for its issue, actions required to be completed to investigate a site, and the reporting requirements for the investigations. Failure to comply with the requirements of a notice is an offence.
Land	Land that is part of a site can consist of part, one or several lots of land and may involve several owners and occupiers. It also includes underground water under the land.
NEPC	National Environment Protection Council.
NEPM	National Environment Protection Measure.
Notice	Clean-up Notice, Hazard Abatement Notice, Investigation Notice, or Notice given to owner/occupiers in areas of underground water contamination.
Preliminary Site Investigation (PSI)	An investigation consisting of a desktop study, a detailed site inspection and, where appropriate, limited sampling. The preliminary site investigation should be of such scope as to be sufficient to indicate whether contamination is present or likely to be present and to determine whether a detailed site investigation should be conducted. Also to provide information for designing a DSI.
Prescribed Fee	As defined under the Contaminated Site Regulations.
Public Authority	Includes all local government authorities and any other person, corporate or not, who or which under the authority of a written law administers or carries on for the benefit of the State, or any district part thereof, a social service or public utility.
Remediation	Action taken to eliminate, limit, correct, counteract, mitigate or remove any contaminant or the negative effects on the environment or human health of any contaminant.
Risk Assessment	Process of estimating the potential impact of a chemical, biological or physical agent on humans, plants, animals and the ecology.

Sediment

Loose particles of sand, clay, silt and other substances that settle at the bottom of a body of water. Sediment can derive from the erosion of soil or from the decomposition of plants and animals.

Site

An area of land and/or underground water.

Verifiable Interest

Parties having a verifiable interest are those parties involved in the land transfer process such as owners, potential purchasers, potential developers and lending institutions.

A verifiable interest could also be ownership of an adjacent site or a local or state government agency making a planning decision.

Potential purchasers and developers must provide documentation, which proves that they have a genuine financial interest in a site.

7. REFERENCES

7.1 CITED REFERENCES

Contaminated Sites Bill 2000, Draft for Public Comment, June 2000.

Department of Environmental Protection (DEP) (2000) draft *Certificate of Contamination Audit Scheme*.

Department of Environmental Protection (DEP) (2000) draft *Disclosure Statements*.

Department of Environmental Protection (DEP) (2001) *Reporting on Site Assessments*.

Department of Environmental Protection (DEP) (2001) *Development of Sampling and Analysis Programs*.

Department of Environmental Protection (DEP) (2001) *Potentially Contaminating Activities, Industries and Landuses*.

Department of Environmental Protection (DEP) (1997) *Public Position Paper, Contaminated Sites - Assessment and Management of Contaminated Land and Groundwater in Western Australia*.

Department of Environmental Protection (DEP) (2001) draft *Reporting of Known or Suspected Contaminated Sites*.

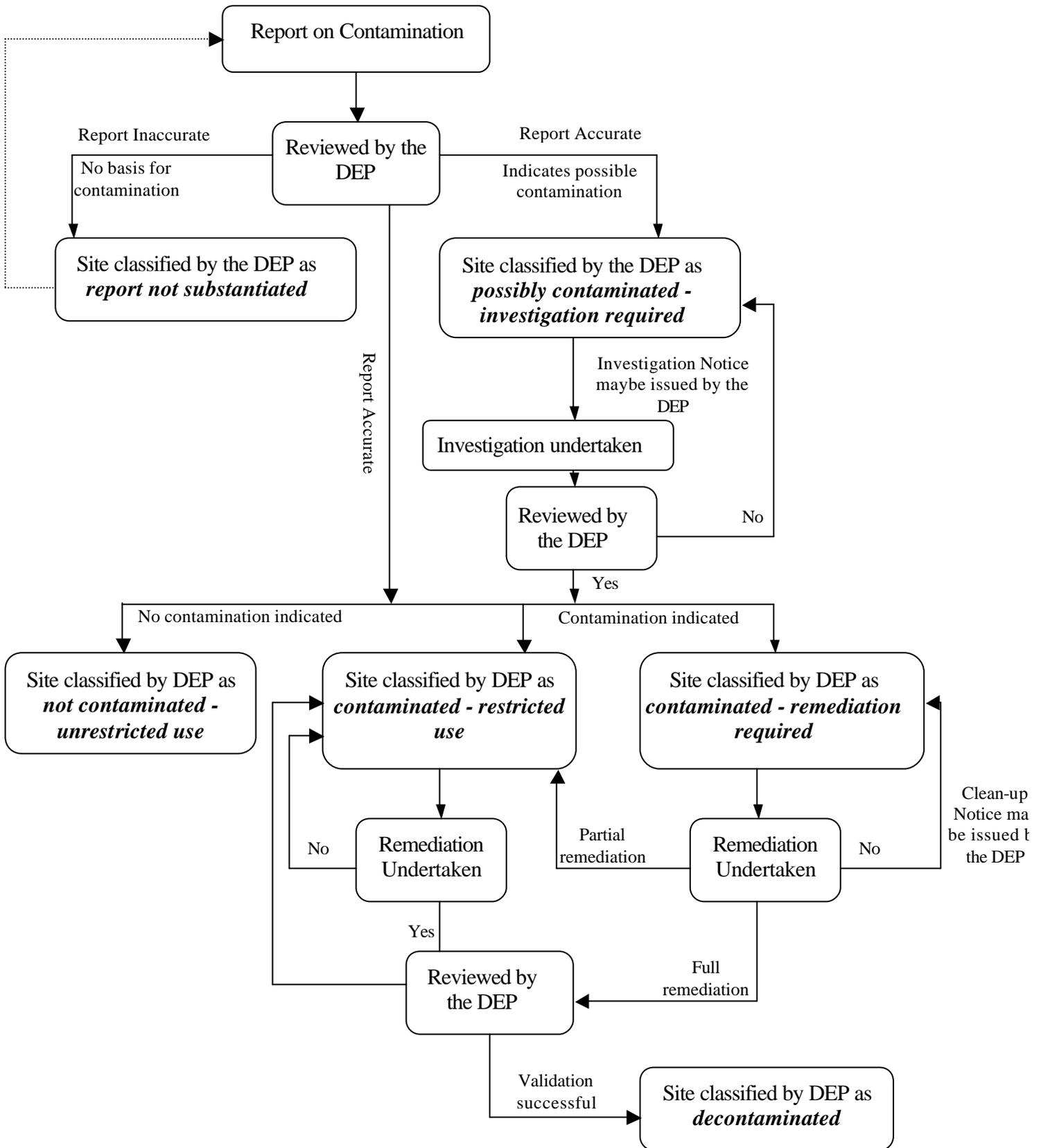
Department of Environmental Protection (DEP) (2001) *Assessment Levels for Soil, Sediment and Water*.

7.2 USEFUL REFERENCES

National Environment Protection Council (NEPC) (1999) *National Environment Protection (Assessment of Site Contamination) Measure*.

APPENDIX A
PROCESS OF SITE CLASSIFICATION

APPENDIX A. PROCESS OF SITE CLASSIFICATION



APPENDIX B

SUMMARY OF SITE CLASSIFICATION SCHEME

					Contamination Audit		
<i>Report not substantiated</i>	Report provides no grounds to indicate possible contamination of the soil and/or groundwater	Reporter, owner, relevant public authority where necessary	Not applicable	Not applicable	Cannot be issued		
<i>Possibly contaminated – investigation required</i>	There are grounds to indicate possible contamination of the soil and/or groundwater and that further investigation is required	Reporter, owner, occupier, relevant public authority	May be lodged if Investigation Notice is issued by the DEP	Investigation Notice may be issued by the DEP	Cannot be issued		
<i>Not contaminated - unrestricted use</i>	After investigation, the soil and/or groundwater is found not to be contaminated	Reporter, owner, occupier, relevant public authority where necessary	Not applicable	Not applicable	May be issued		
<i>Contaminated - restricted use</i>	The soil and/or groundwater is contaminated but the site is suitable for restricted use as there is no risk to the environment or human health based on the current landuse and/or management of the contamination (in the case of contaminated groundwater)	Reporter, owner, occupier, responsible party for remediation, relevant public authority where necessary	Required to be lodged	Investigation Notice, Clean-up Notice, Hazard Abatement Notice may be issued by the DEP	May be issued		
<i>Contaminated - remediation required</i>	The soil and/or groundwater is contaminated and remediation is required as there is a risk to the environment and/or human health	Reporter, owner, occupier, responsible party for remediation, relevant public authority where necessary	Required to be lodged	Investigation Notice, Clean-up Notice, Hazard Abatement Notice may be issued by the DEP	May be issued		
<i>Decontaminated</i>	The soil and/or groundwater has been remediated and is suitable for all uses	Owner, occupier, relevant public authority where necessary	Memorial withdrawn	Not applicable	May be issued		

APPENDIX C

EXAMPLE OF A MEMORIAL REGISTERED ON THE CERTIFICATE OF TITLE APPLICATION

APPENDIX C. EXAMPLE OF A MEMORIAL ON CERTIFICATE OF TITLE APPLICATION

APPROVAL NUMBER

WESTERN AUSTRALIA
TRANSFER OF LAND ACT 1893 AS AMENDED

**MEMORIAL
UNDER SECTION 47
CONTAMINATED SITES ACT 2002⁴**

DESCRIPTION OF LAND (Note 1)	EXTENT	VOLUME	FOLIO
As to the portion site stippled on the attached sketch only and being part Lot 1 on Diagram 11111.	Part	1111	111

REGISTERED PROPRIETOR (Note 2)
Joseph and Mary Smith, both of 111 Smith Street, Perth

INFORMATION CONCERNING SITE CLASSIFICATION OR NOTICE GIVEN UNDER PART 3 (Note 3)
The site is listed on the Public Database of Confirmed Contaminated Sites as *contaminated – restricted use*. Soil contaminated by total petroleum hydrocarbons is contained under the foundations of the existing building. If an activity undertaken on-site exposes the soil under the foundations of the existing building, an assessment of the soil must be undertaken to determine the extent of the contamination and any risks posed to the environment and human health. An appropriate strategy is to be developed addressing any contamination within the soil. The strategy so developed is to meet the requirements of the Department of Environmental Protection.

Dated this 10 day of October Year 2001

CHIEF EXECUTOR'S ATTESTATION (Note 4)

..... DELEGATE OF THE CHIEF EXECUTIVE OFFICER ENVIRONMENTAL PROTECTION AUTHORITY UNDER SECTION 20 OF THE ENVIRONMENTAL PROTECTION ACT 1986 WITNESS NAME ADDRESS OCCUPATION
--	---

⁴ The information presented in this form is purely fictional and were compiled for the sole purpose of assisting with an explanation of the use of Memorials on Certificate(s) of Title.

INSTRUCTIONS

1. If insufficient space in any section, Additional Sheet Form B1, should be used with appropriate headings. The boxed sections should only contain the words "see page....."
2. Additional Sheets shall be numbered consecutively and bound to this document by staples along the left margin prior to execution by the parties.
3. No alteration should be made by erasure. The words rejected should be scored through and those substituted typed or written above them, the alteration being initialled by the persons signing this document and their witnesses.

NOTES

1. **DESCRIPTION OF LAND**
Lot and Diagram/Plan/Strata/Survey-Strata Plan number or Location name and number to be stated. Extent - Whole, part or balance of the land comprised in the Certificate of Title to be stated. If this document relates to only part of the land comprised in the Certificate of Title further narrative or graphic description may be necessary. The volume and folio number to be stated.
2. **REGISTERED PROPRIETOR**
State full name and address of the Registered Proprietors as shown on the Certificate of Title and the address / addresses to which future Notices can be sent.
3. **INFORMATION CONCERNING SITE CLASSIFICATION OR NOTICE GIVEN UNDER PART 3**
Include information concerning site classification as contaminated – remediation required, restricted use or whether a notice under Part 3 of the Contaminated Sites Act 2001 has been given.
4. **CHIEF EXECUTIVE OFFICER'S ATTESTATION**
This document must be signed by or on behalf of the Chief Executive Officer, Department of Environmental Protection under Section 20 of the Environmental Protection Act 1986. An Adult Person should witness this signature. The address and occupation of the witness must be stated.

EXAMINED

OFFICE USE ONLY

**MEMORIAL
SECTION 47 CONTAMINATED SITES
ACT 2002**

LODGED BY the Department of
Environmental Protection

ADDRESS 141 St Georges Terrace, Perth

PHONE No. (08) 9222 7000

FAX No. (08) 9322 1598

REFERENCE No. 11/90/111

ISSUING BOX No.

PREPARED BY Environmental Regulation
Division, Department of Environmental
Protection

ADDRESS 141 St Georges Terrace, Perth

PHONE No. (08) 9222 7000

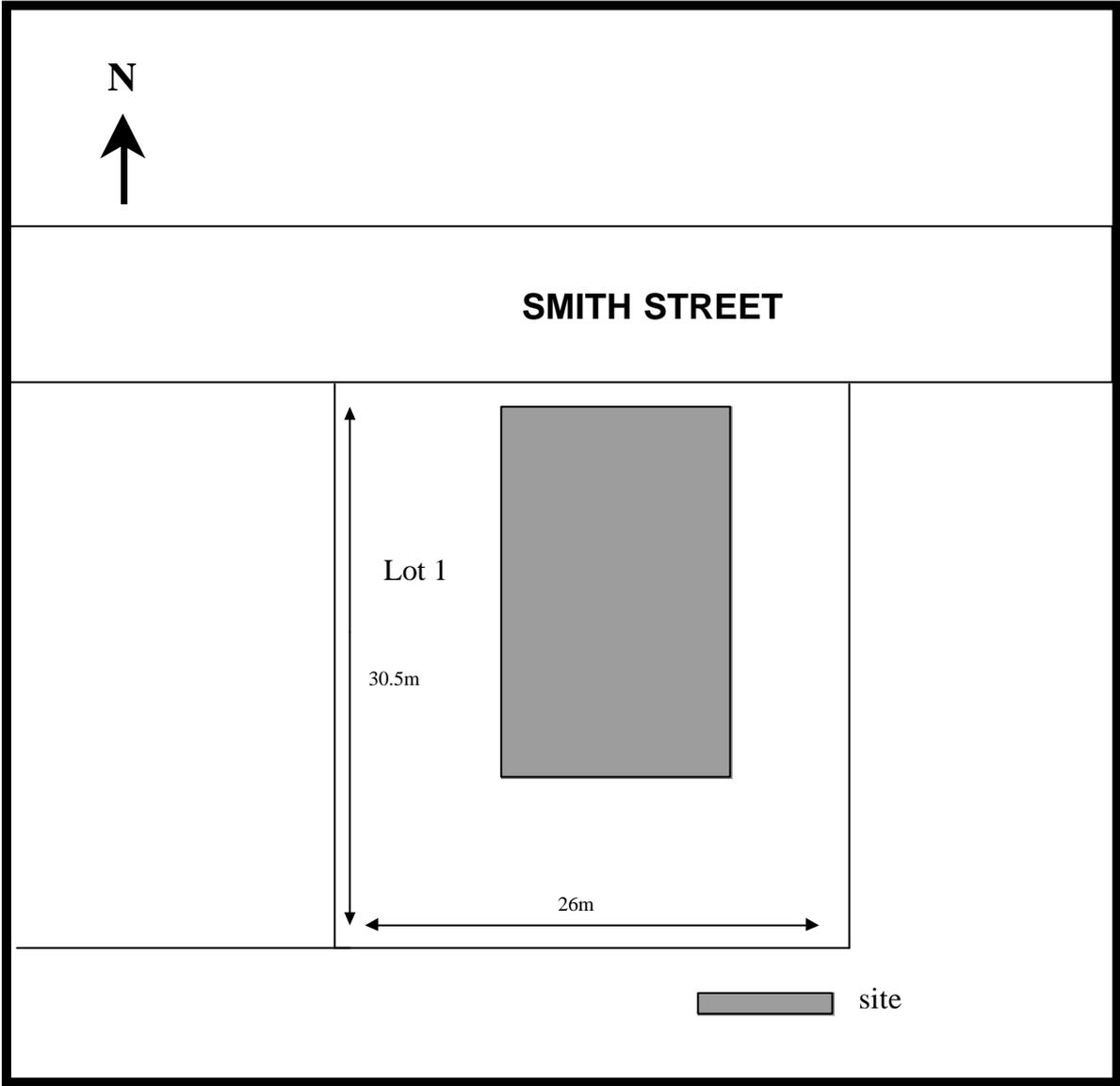
FAX No. (08) 9322 1598

INSTRUCT IF ANY DOCUMENTS ARE TO ISSUE TO
OTHER THAN LODGING PARTY

TITLES, LEASES, DECLARATIONS ETC LODGED
HEREWITH

- | | |
|----------|----------------|
| 1. _____ | Received Items |
| 2. _____ | Nos. |
| 3. _____ | |
| 4. _____ | |
| 5. _____ | Receiving |
| 6. _____ | Clerk |

Lodged pursuant to the provisions of the TRANSFER OF
LAND ACT 1893 as amended on the day and time shown
above and particulars entered in the Register.



APPENDIX D

APPLICATION FOR ACCESS TO INFORMATION IN RELATION TO CONTAMINATED SITES

APPENDIX D. APPLICATION FOR ACCESS TO INFORMATION CONTAINED IN RECORDS OF KNOWN OR SUSPECTED CONTAMINATED SITES



Please refer to the *Site Classification Scheme* (DEP, 2001) guideline for further information. If further space is required, please attach to form.

Applicant Details:

Full name	
Position	
Company	ACN and/or ABN
Address	Postcode
Phone	Fax

Site Details:

Lot No.	House No.	Street
Suburb	State	Postcode
Certificate of Title Details (including volume/folio if known)	Local Government Authority	
Site Plan attached? (if available)	<input type="checkbox"/> Yes	<input type="checkbox"/> No

Details of Interest with the Site:

The reason for requiring information in relation to the site (e.g. potential purchaser, adjacent landowner) and documentary evidence (please attach).

Certification by Applicant:

I certify that the information contained in this application (including attachments) is accurate and correct	Signature
	Date
Full Name and Title	

Please submit the application together with attachments to the Contaminated Sites Section, Environmental Regulation Division of the Department of Environmental Protection, PO Box K822, Perth 6842.