



Our Ref: 27.1.1

22 November 2004

Attn: **Manager, Land and Water Quality Branch**
Department of Environment
P O Box K822
PERTH WA 6842
By email: contaminatedsites@environment.wa.gov.au

Dear Sir/Madam

Re: Draft Contaminated Sites Regulations 2004

The Urban Development Institute of Australia (UDIA) is the peak industry body representing the urban development industry in Western Australia. It is in this capacity that we make the following submission on the Draft Contaminated Sites Regulations.

UDIA recognises the necessity for Western Australia to have an appropriate legislative framework to deal with issues of contamination in this state. In this regard we support the intent of the draft Contaminated Sites Regulations 2004 however our members have identified an issue which may cause implementation problems for the urban development industry and we would like to bring this to the attention of the Department of Environment (DoE).

This relates to the implementation of the requirement to disclose to a purchaser that a site is classified as contaminated in the context of acid sulphate soils and the pre-selling of land.

UDIA understands that sites that have a risk of actual or potential disturbance to acid sulphate soils will be classified as being contaminated on the register of contaminated sites. This will lead to a requirement for the developer to disclose to a purchaser that the site is potentially contaminated if the sale occurs prior to the construction and remediation of the site being finalised (i.e. the lot is pre-sold).

Developers have advised that they will be reluctant to advise purchasers of potential contamination issues for lots that are sold (contracts finalised) prior to the completion of construction on the basis that it will unnecessarily impact on lot value and cause concern among purchasers - when in reality the problem is being appropriately managed and all lots will undergo appropriate investigation, management and remediation prior to settlement and titles being issued (and will therefore not be contaminated at the time that the purchaser finally obtains ownership of the site).

Information that has been released to date regarding acid sulphate soils, including Planning Bulletin 64 suggests that a large number of sites in the metropolitan region are potentially impacted acid sulphate soil issues. This means that a large number of developers may be impacted by this problem, reducing their willingness and ability to pre-sell lots to the market.

While it may not appear to be a significant problem, pre-selling provides a number of benefits to both industry and consumers by:

- Ensuring the maintenance of a healthy land supply.



- Providing what the market wants (note – allows buy now, pay later and time to sell a house, get plans organised, arrange a builder etc which is very advantageous for some).
- Allowing consumers to 'lock in' land at a current, fixed price in a rising market.

We believe that, if a large number of developers were not able or reluctant to pre-sell due to regulatory issues regarding contaminated sites, it could have significant negative impacts on lot supply and lead to the artificial inflation of housing prices.

UDIA therefore requests that the DoE provide some clarification on this issue and, if required revise the draft regulations to address this problem.

We suggest that allowance is made in the regulations for developers to be able prepare and negotiate contracts of sale without disclosing the potential for acid sulphate soils to be an issue on the site if the developer has fulfilled all DoE requirements for site assessment and if an appropriate management plan has been prepared and is being implemented. Final settlement and the issuing of titles should not be undertaken until remediation is finalised and the site has been given a clean bill of health from the DoE. If this does not occur and there are ongoing issues with contamination of the site, the contract of sale could then be considered null and void.

Other issues that have been raised by our members in regards to the regulations relate to the potential high cost of implementing the proposed assessment and auditing requirements (potential for increased consultant, auditing and legal fees). In this regard we believe that there is a need for DoE to consider the availability of appropriate industry resources (such as accredited auditors) to undertake the work that will be required and the appropriate resourcing of the DoE to properly implement and enforce the regulations without causing undue delay to development projects.

Thank you for the opportunity to provide comment on this policy. We look forward to your response.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Marion Fulker', is positioned above the printed name.

MARION FULKER
Executive Director