

ANZVGP 115

Contamination Issues – Real Property

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Property and Valuation Standards Board
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Contamination Issues – Real Property (ANZVGP 115)

- Guidance paper (GP) has been updated
- Effective from 1 July 2023
- GP has application in both Australia and New Zealand



Introduction

Scope : to outline information, issues and approaches relating to contamination issues impacting and affecting real property assets

Who does it apply to : Both PINZ and NZIV member

CONTAMINATION ISSUES – REAL PROPERTY

Reference:	ANZVGP 115 – Contamination Issues – Real Property
Published Date:	30 November 2022
Effective Date:	1 July 2023
Exposure Draft Period:	Open: 24 August 2022 Closed: 30 September 2022
Review Date:	12 to 18 months after the effective date
Owner:	Manager Professional Standards



Introduction

- For the purposes of this GP “real property” (property) is defined as the land and any improvements, structures, or additions to the land.
- Polluted land is synonymous with contaminated land.
- Be Aware...



GP Scope, & Code of Ethics reminder

- Members providing professional services or advice in relation to contaminated or potentially contaminated property must do so to the standard of professionalism and skill required and consistent with membership of the Institutes and in compliance with the law.
- Code of Ethics Clause 2.4: *Valuer must have professional competency: members not to undertake any work for which they are not qualified or experienced*



When providing advice in relation to contaminated property the Member should consider:

- the existence and effect of contamination;
- the current interpretation of the law;
- the effect of legislation;
- the previous use of the land/buildings;
- the existing use of the land/buildings;
- and the proposed use of the land/buildings.



In summary Members should:

- not act outside their area of expertise,
- recognise polluting and potentially polluting activities and land uses,
- identify known or observable contamination issues,
- make the reader of the report or advice aware of any known of observable contamination issues,
- recommend that the client seek further expert advice in relation to identified contamination issues.



Integration with International Valuation Standards (IVS)

- Valuers' responsibility to comply with the IVS,
- GP 115 is consistent with concepts and definitions contained in the IVS,
- However, there may be departures from the IVS to reflect Australian and New Zealand law and practice.



Key definitions

Term	GP Interpretation
Contamination	The act of contaminating or the state of being contaminated or the presence of a foreign substance, impurity, or other undesirable element that spoils, corrupts, infects, makes inferior, unfit or unsuitable any asset for its current or intended use or any part thereof.
Contaminated Land (contaminated site)	Real property for which hazardous substances occur at concentrations where assessment indicates it poses or is likely to pose an immediate or long-term hazard to human health or the environment.



Land Contamination

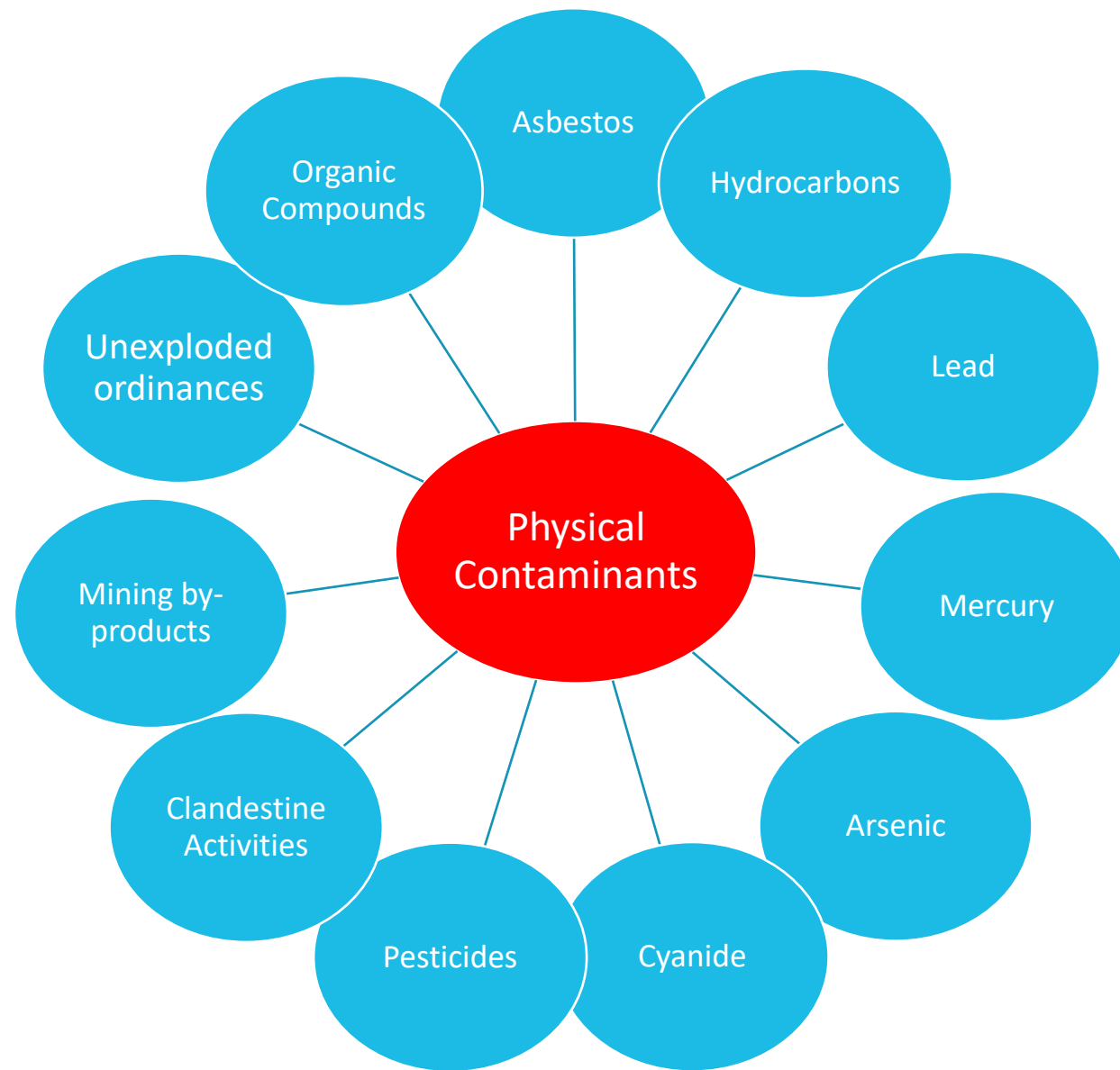
- **Hazardous Substances**

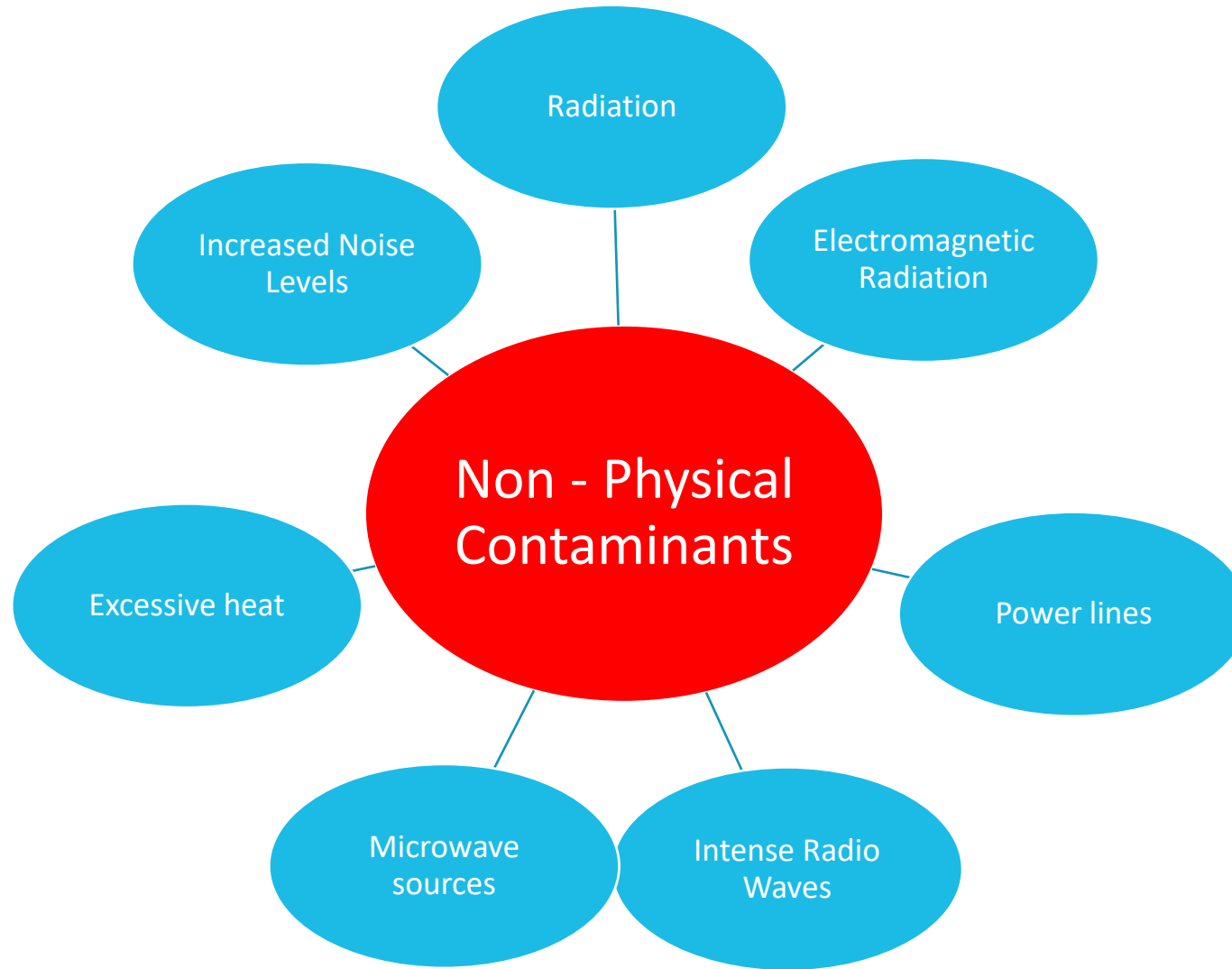
- Any substance that has one or more inherent hazardous properties. This includes flammability, explosiveness, toxicity, and the ability to oxidise.

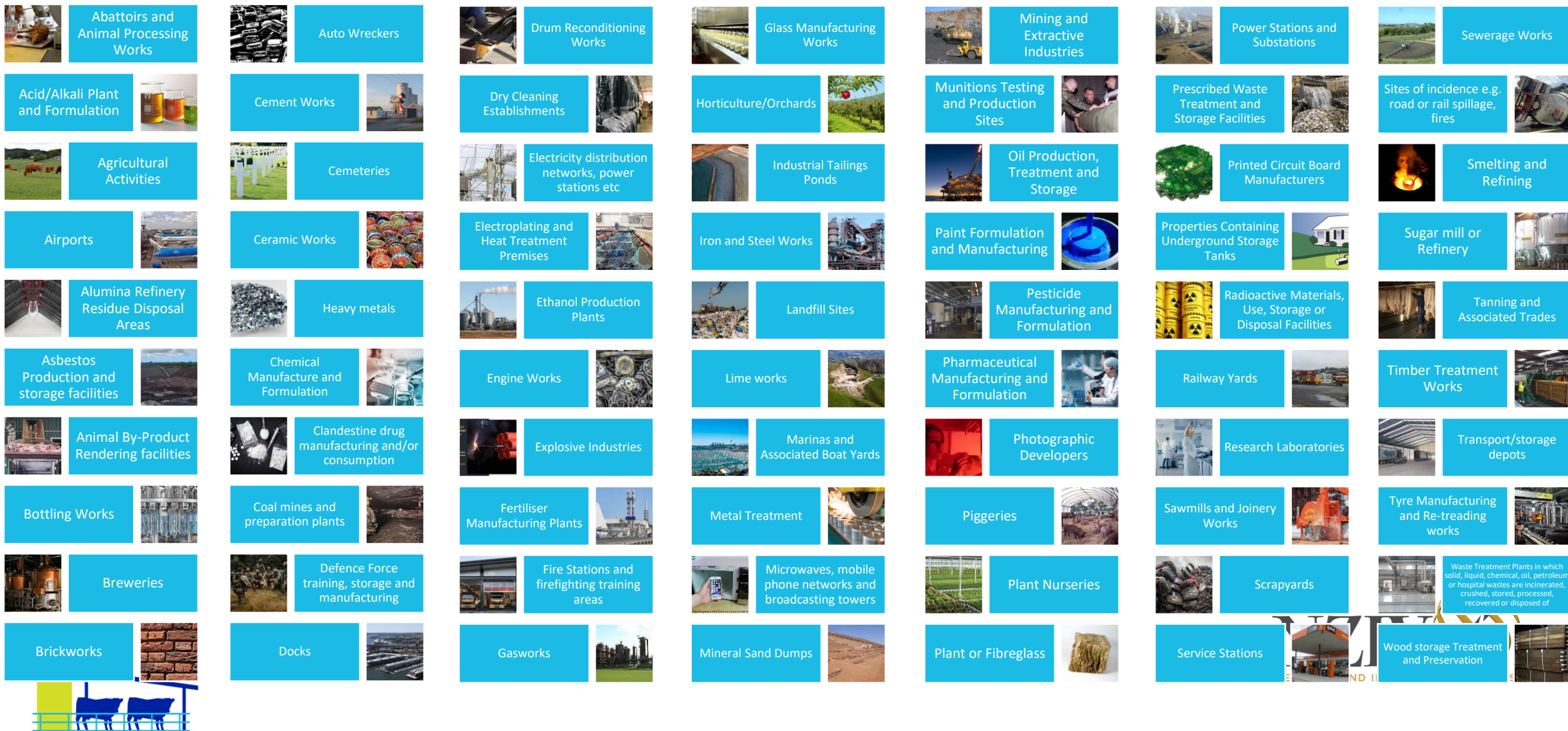
- **Contaminants**

- Contamination is the result of the introduction of harmful materials or hazardous substances. These harmful or hazardous substances are called contaminants (or pollutants).
- Contaminants can be classified as either physical or non-physical contaminants.



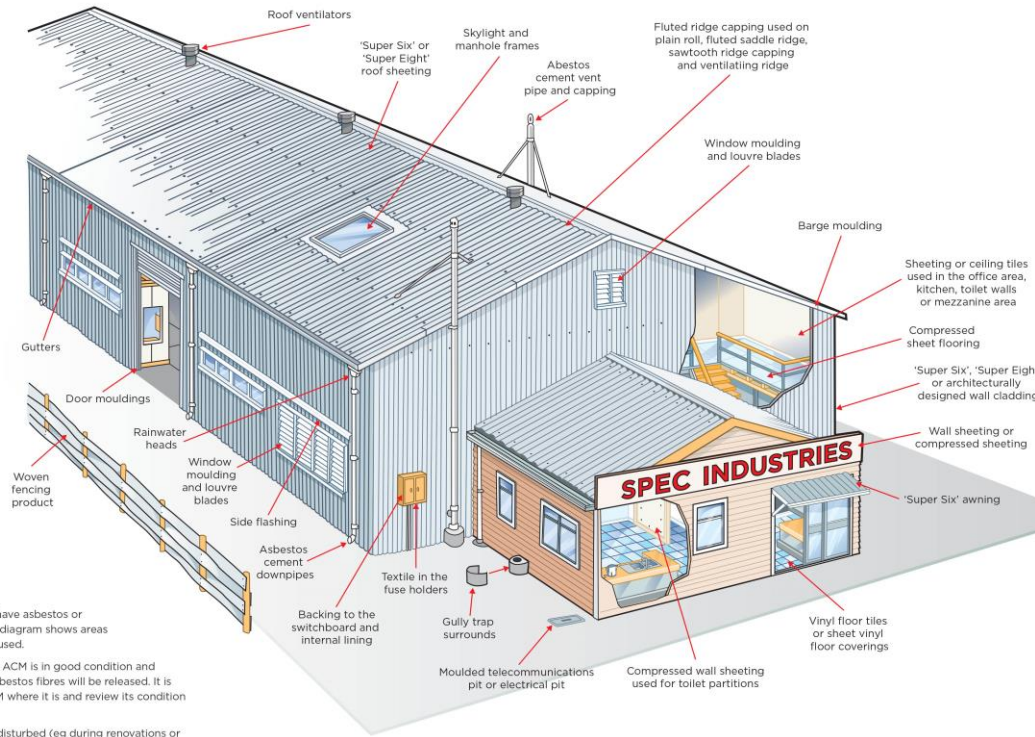






Asbestos

worksafe.govt.nz

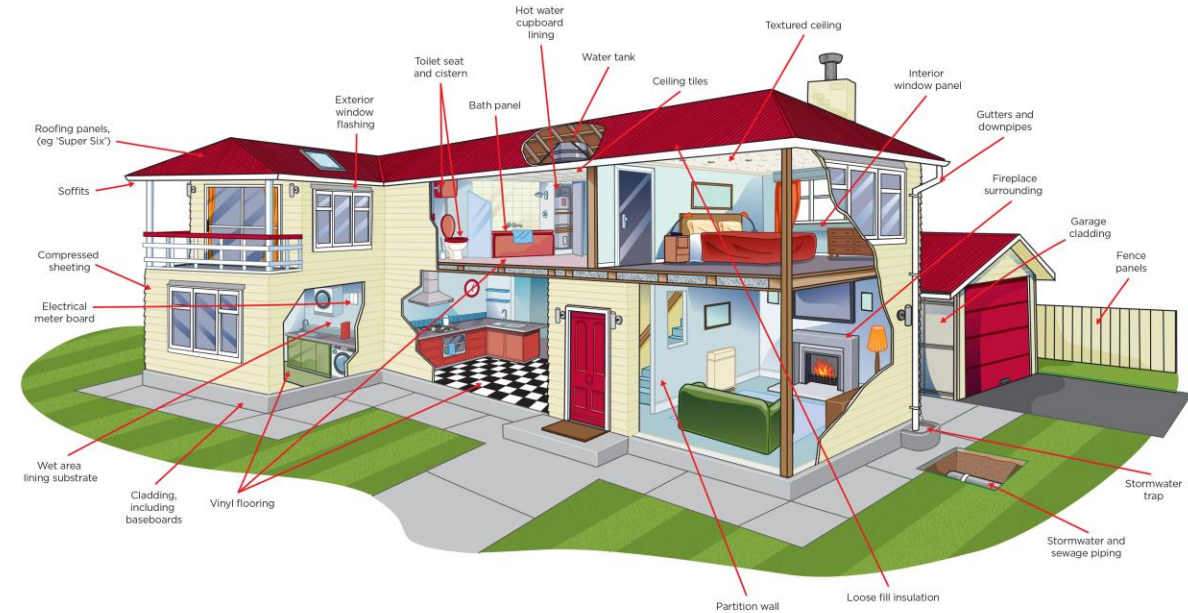


Buildings constructed before 2000 may have asbestos or asbestos-containing material (ACM). The diagram shows areas where asbestos or ACM were commonly used.

The risk to health is low if the asbestos or ACM is in good condition and undisturbed. It is unlikely that airborne asbestos fibres will be released. It is usually safer to leave the asbestos or ACM where it is and review its condition over time.

If the asbestos or ACM deteriorates or is disturbed (eg during renovations or repairs) it is more likely that asbestos fibres will be released. Breathing in airborne asbestos fibres is a serious risk to health.

worksafe.govt.nz



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Special Contamination Issues and Sources



Lead Paint and Products



PFAS



Toxins in the Home Environment



Underground Storage Tanks (UST)



Waste disposal facilities



Illegal drug manufacturing and use



Soil Contamination



Air Pollution



Noise Pollution



Legislation

- Members should be aware of applicable legislation relating to contamination issues
- **Responsibility to Report** - Members should understand the obligatory reporting requirements relating to contaminated property.
- Councils
- Environmental Protection Agencies (EPA)



The EPA in most jurisdictions maintains and manages an online contaminated site register.

Member to conduct a search of the contaminated site register.

Absence from a register should not be taken as blanket evidence that a site is not contaminated.

Members should disclose the results of any searches undertaken to the client in any report/advice.

The Member must recommend to the client for additional searches or investigations to be undertaken by suitably qualified environmental experts if contamination is identified.



HAIL

- In New Zealand the Ministry for the Environment's Hazardous Activities and Industries List (**HAIL**) provides guidance on industries and activities which have the potential to cause contamination

To determine whether these activities have taken place requires either:

- Sourcing dangerous goods files, property files, resource consent database and relevant registers at the City, District and Regional Councils; or
- Engaging a suitably qualified and experienced professional to conduct a site investigation

Useful Information may include:

- Land Information Memorandum (LIM)
- The property file held by the City, District or Regional Council
- Historical search of computer registers.
- Search of City, District or Regional Council on GIS portal,
- Ministry of Environment's Hazardous Activities and Industries List (HAIL).
- Historical aerial photographs
- Building reports



The Polluter Pays Principle

- The 'polluter pays principle' is the cornerstone of global environmental policy, and the basis of environmental laws throughout Australia.
- The situation in New Zealand differs to Australia.
- As at the date of publication of this GP, land contamination associated with a property has been the responsibility of a polluter, occupier, or the current landowner. The upcoming Natural and Built Environment Bill seeks to reform this approach and proposes to enact the 'polluter pays principle' in New Zealand.



Environmental Case Law

- Members should be aware of case law in relation to contaminated property and that judgements may establish new findings and directions.



Role of the Member

It is not the role of the Member to quantify the type and extent of contamination.

Members should not hold themselves out as an expert in issues of site or other contamination unless they hold appropriate qualifications and experience.

Role and expertise is limited to the detection of the existence (or possible existence) of known or observable contamination.

Detailed identification and quantification of contamination should be left to those who specialize in that field.



Where
contamination
is suspected



Where detailed
information is
unable to be
obtained or
provided

The *Member*
should refer the
matter back to
the client seeking
clarity on how to
proceed



Investigations and Inspections

Members undertaking an inspection should be aware that their role and expertise is limited to the detection of the existence (or possible existence) of known or observable contamination.

However, *Members* undertaking an inspection of a property are expected to be aware of the potential for, or of, contamination issues based on their inspection and report their findings, accordingly, including recommending addition expert investigations and advice from suitably qualified environmental experts.

It is important for *Members* to investigate and look for signs that may suggest that a former use, if not the present use, may have led to, or caused, some form of contamination.

A *Members* inspection and investigations are not intended to replicate a preliminary site investigation undertaken by experts in contamination issues.



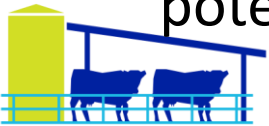
Investigations and Inspections (cont'd)

- Members can consider a range of property specific factors that could indicate contamination issues, these include:
 - site layout and contours,
 - storage areas,
 - geology,
 - water features,
 - onsite stockpiles,
 - debris as well as impacts from nearby developments which may affect the subject property
 - And the potential for contamination from off-site sources.



Investigations and Inspections (cont'd)

- There are often tell-tale signs that could indicate the possible presence of some contaminants. *Members* can look for:
 - disturbed or coloured soils,
 - disturbed vegetation,
 - the presence of any chemical containers or chemical odours,
 - view the quality of any surface water, and
 - surface soil or fill which may have been introduced to the property from other locations.
- Examination of historical land use may provide evidence of the potential for contamination.



Environmental Checklists



Members, including Valuers, may, in some instances, be requested to provide responses to questions in a standardised form/checklist which the Member may not be qualified or able to answer.

The Annexures to this paper contain an example “Environmental Checklist” that can be modified or adapted by Members as part of their data collection procedures.

The completion of any environmental checklist by a Valuer, or other Member is undertaken on the basis that the Member is not an expert in identifying, quantifying and/or reporting on environmental (contamination) issues, and that any ‘checklist’ (or answers) is provided by the Member in their capacity as a non-suitably qualified expert in environmental issues.

Members must not commit to providing definitive confirmations in an environmental checklist just because the instruction/request imply that the services to be provided so requires.

Members are reminded to ensure that they should not accept or agree to undertake professional services outside their area of expertise.



RISK

Members must advise their client if they identify or become aware of *land contamination* relating to the subject property

Clients, regardless of whether they are property owners, vendors, purchasers, financial institutions, receiver-managers, holders of major or minor property portfolios etc will often look to *Members* for advice and guidance on *land contamination* and how it impacts their property interest and value.

It is **not** the *Members* responsibility to be the expert in environmental matters / *contamination* issues.

Members should exercise caution in describing the nature/type and extent of any *contamination* or remediation/clean-up requirements, unless they are quoting the advice/report of suitably qualified environment experts.

Costs associated with remediation and/or clean-up of *contamination* issues is also a matter for experts in that field. *Members* should not provide advice or costings on remediation/clean-up requirements.

If information from suitably qualified environmental experts is available/provided, *Members* should be referring to that advice in their report or advice to their client.



Instructions

Get it in WRITING!



Expert
Widely recognized
knowledge
or deciding risk
knowledge



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Professional Indemnity Insurance

- Policy Exclusions
 - Members should be aware of any exclusions within their professional indemnity insurance policy related to pollution, contamination, or specific contaminants.
 - Some policies do not provide cover in relation to claims arising from or in connection with these matters. For example, many policies exclude liability for claims arising from nuclear radiation.
 - Members should refer to their professional indemnity insurance policy and consult with their insurer where required.



The Institutes recommend that Members seek appropriate legal advice as to the use and applicability of the legal and commercial efficacy of any proposed disclaimers and qualifications included in a report/advice.

The sample qualifications contained within the GP are strictly that, sample clauses that should be reviewed, modified, and adapted by Members to be fit for purpose for the specific circumstance that they are included in an report/advice.



Environmental Issues

Our enquiries indicate that the site has not previously been utilised for any industrial or manufacturing use or for the storage (either above ground or underground) of any chemical substance.

Our enquiries at [insert name of relevant authority] indicate that it is not aware of the existence of any site contamination. Whilst our visual inspection of the site surface has not revealed any evidence of site contamination, we have not investigated the site beneath the surface or undertaken vegetation or soil sampling, nor have we been provided with an environmental site assessment or similar. We have assumed that the property is not affected by site contamination. We reserve the right to review and if necessary vary our report and opinions provided if any contamination or other environmental issues are identified.

The site is (or has been) occupied by [insert description of land use] which, having regard to the nature of process or chemicals used or stored, has a potential to cause soil contamination. Whilst our enquiries at [insert name of relevant authority – e.g. the Environmental Protection Authority] indicate that it is not aware of the existence of any site contamination, we have not investigated the site beneath the surface or undertaken vegetation or soil sampling, nor have we been provided with an environmental site assessment (or similar). We have assumed that the property is not affected by site contamination. We recommend that this assumption be confirmed prior to reliance or use on the report by obtaining a satisfactory environmental site assessment report from environmental consultants. If such site assessment report reveals that the property is affected by site contamination, [insert name of Member/Member's firm] should be consulted to assess any effect on the opinions stated in this report.



Petroleum Products

The subject property is operated as a service station and workshop and therefore fuels, oils and other products capable of causing contamination are used on the site as part of the operation. There are no visible signs of any pollution on the property; however, we are unable to certify that there is no contamination of the property beneath the surface of the soil. We have assumed that the property is not affected by site contamination. We recommend that you confirm this assumption by obtaining a satisfactory contaminated site assessment report from environmental consultants. If such site assessment report reveals that the property is affected by site contamination, [insert name of Member/Member's firm] should be consulted to assess any effect on the opinions stated in this report.



Asbestos

Inspection of the improvements showed the use of asbestos products in the building. We have not sighted or been provided with an asbestos assessment report. We are not experts in this area and therefore, in the absence of an environmental consultant's report concerning the presence of any asbestos fibre within the subject property, this report is made on the assumption that there are no negative impacts, including health risks due to the presence of asbestos. As there is a risk of asbestos related health issues, we strongly recommend that this assumption is confirmed by obtaining a contamination site assessment report from suitably qualified environmental consultants. If such site assessment report reveals that the property is affected by asbestos contamination, [insert name of Member/Member's firm] should be consulted to assess any effect on the opinions provided in this report.



Impacts on Property

Low impact

- Requiring minimal clean-up costs and having little, or no impact on the current or potential use of the property and/or a negative impact on the value and marketability of the property

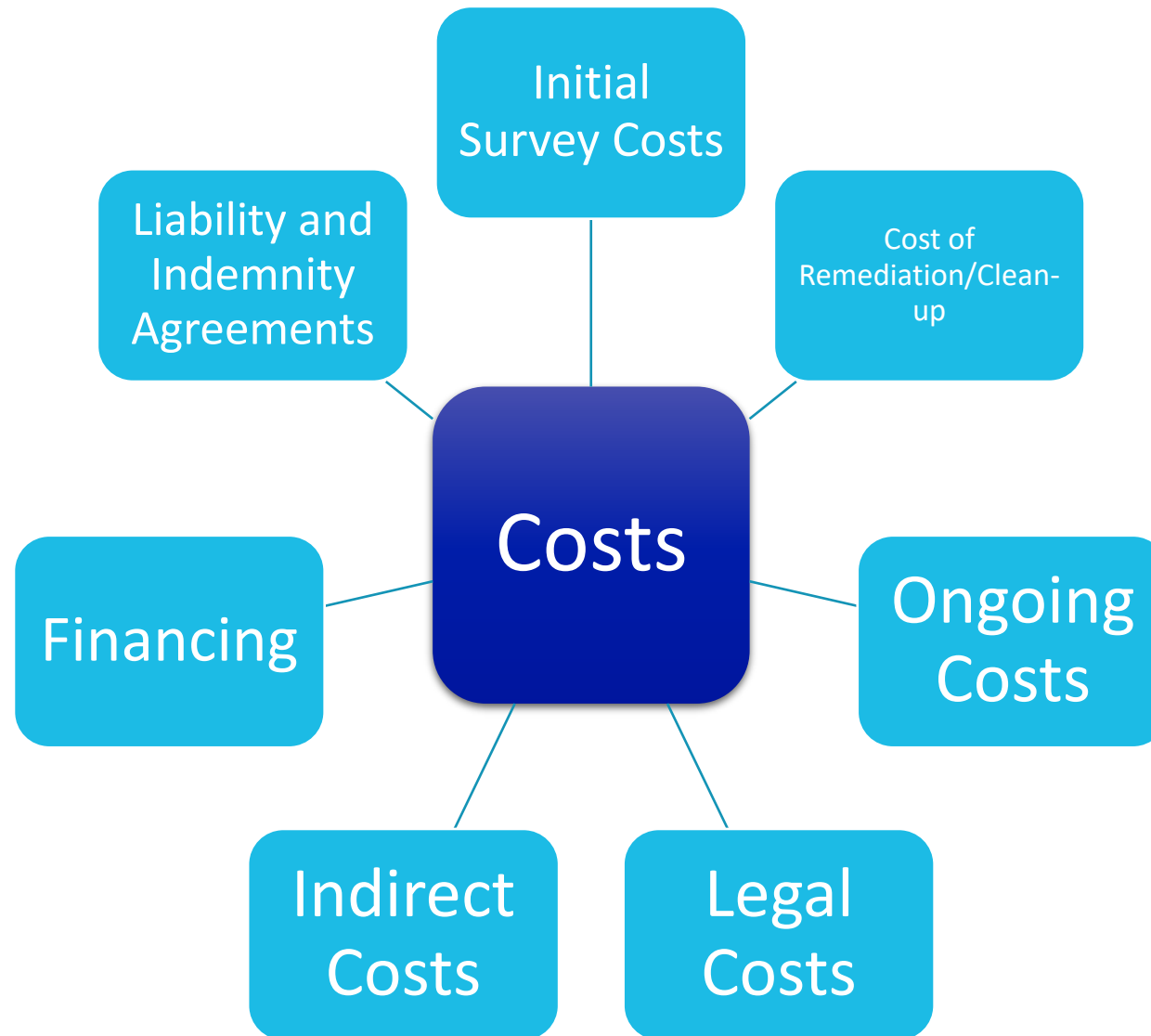
Moderate

- Where site contamination exists and either does not require remediation for contamination of the existing land use or can be remediated for alternative land uses.

Severe

- Where there is effectively no use of the property possible for the present or foreseeable future and costs to remedy and clean-up the contamination issue(s) are financially, economically and/or environmentally nonviable





Stigma

Stigma is an intangible factor which may not be as measurable as other value determinants. A stigmatized property is one that buyers or tenants may avoid for reasons not related to its physical condition, features, or use. Land contamination may be seen as blight or perceived blemish or stain on a property resulting from real or perceived risk associated with the property.

Due to the intangible nature of the stigma attached to contamination issues or contaminated land, the impact of marketability and value may be out of proportion to the cost to remediate and/or clean-up the contamination issues and can persist for many years.

Stigma makes a property less desirable even when the contamination has been remediated and/or cleaned-up. Where there is market perception that a property is or has been contaminated, then despite evidence that remediation or clean-up has occurred, the market may still pay less than normal unaffected values.

Stigma can also affect property adjacent to or nearby contaminated land and or previously contaminated land. In these situations, despite the presence of nearby contaminated land, the stigma attached to these properties may be overstated because the utility and/or value is not often demonstrably affected.





Contamination may not necessarily impact property use

The existence of contamination issues in or on a property may not necessarily result in a negative impact to the property or reduce its marketability of value with the land use classification or industry in which its current use is operating, for example, a service station.

In some jurisdictions an existing use may be permitted to be continued without remediation, clean-up, or any other mitigation requirements. Special licensing (or similar) issued by the relevant authority is generally required in these situations which permits the property to continue to be used as it is.

Members should confirm details and conditions of such 'licensing' in any report/advice and ensure that such report/advice is appropriately qualified including a warning that there may be impacts on the property if the current use ceased.





Valuation Approaches, and application of methodologies

General Standards

IVS 105 Valuation Approaches and Methods

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10. Introduction

10.1. Consideration *must* be given to the relevant and appropriate valuation approaches. One or more valuation *approaches may* be used in order to arrive at the *value* in accordance with the *basis of value*. The three approaches described and defined below are the main approaches used in *valuation*. They are all based on the economic principles of price equilibrium, anticipation of benefits or substitution.

The principal valuation approaches are:

- (a) market approach,
- (b) income approach, and
- (c) cost approach.



General Standards – IVS 105 Valuation Approaches



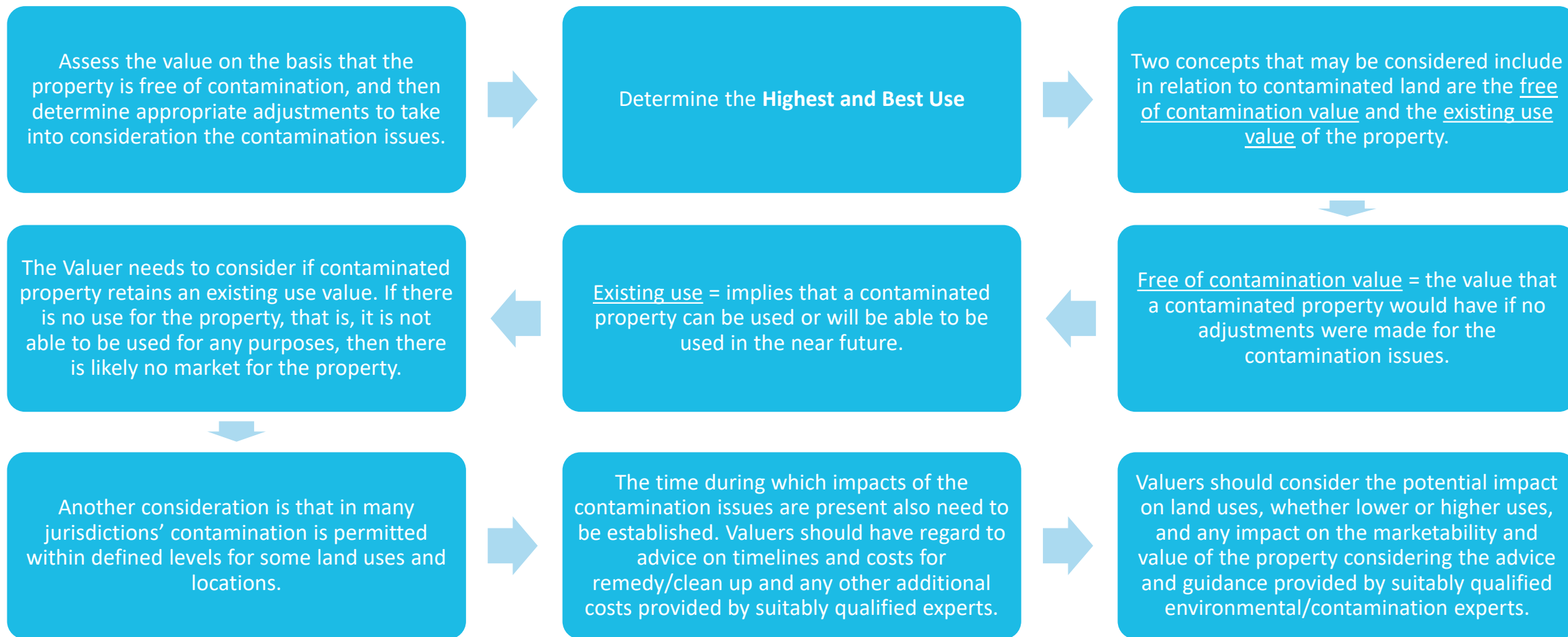
Valuation Methodology

The valuation of contaminated land is complex as the circumstances of each property are unique to the affected property and because there are often insufficient sales available for direct comparison purposes or the sales are subject to unknown or bespoke terms and conditions in relation to the contamination issues.

As noted previously, there are various methodologies that can be applied under the three (3) principal valuation approaches. Notwithstanding the difficulty and complexity in the valuation of contaminated land it is the Valuers responsibility to choose the appropriate method(s) for the valuation.



Valuation Considerations



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Valuation Reporting

- Reference to the instructions received,
- Details of the asset that is the subject of the valuation,
- Purpose,
- Client and any other parties who can use or rely on the valuation,
- An appropriately worded third party disclaimer,
- Valuation date, inspection date and date of issue of the report,
- The valuation approach selected, and method or methods applied,
- Supporting evidence for comparison purposes (eg: sales evidence),
- Details of any assumptions made,
- The conclusion(s) of value and explanation for any conclusion(s) reached,
- Details of any limitations, conditions, or qualifications on the valuation.



Effective Date

- This GP is applicable from 01 July 2023. Earlier adoption is permitted and encouraged

In NZ.

- This GP replaces NZVGP 506 Valuation of Contaminated Land, which was in effect from 1 July 2021 and was withdrawn 30 June 2023.



Questions

