



# Contaminated Land Policy

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## FOREWORD

Many land use or other activities have been carried out in the past without adequate environmental controls or safeguards. In recent years the legacy of land contamination has been widely recognised by Governments, industry and the community.

Where land is contaminated by chemical or other similar substances there may be risks to human health, the environment and potential risks to current or future uses of the land. The recent redevelopment of former industrial and service station sites has demonstrated that contaminated land is a significant issue requiring careful consideration and management.

The NSW Government has established a detailed framework for dealing with contaminated land matters, comprising:

- *Contaminated Land Management Act 1997* – Establishes a process for the investigation and remediation of sites that pose a significant risk to human health or the environment. The NSW Environment Protection Authority (EPA) is responsible for the regulation of these sites.
- *State Environmental Planning Policy No.55 – Remediation of Land* – This is an environmental planning instrument under the NSW Environmental Planning & Assessment Act 1979 that sets out matters that must be considered by Councils and other planning agencies when considering development applications and rezoning decisions.
- *Managing Land Contamination: Planning Guidelines* – Published by the then Department of Urban Affairs & Planning (now Department of Planning and Environment) and the EPA, assists Councils and other planning agencies undertake their functions and responsibilities. Agencies acting in accordance with the guidelines are granted a statutory exemption from liability.
- Policies adopted by individual Councils for managing the issue within their area that are consistent with the *Managing Land Contamination: Planning Guidelines*.

In addition to the above Councils also have responsibilities under the Environmental Planning & Assessment Act 1979 in considering broad land use issues relating to the ongoing management of land and public assets through the rezoning and development application processes.

## 1. INTRODUCTION

This policy forms the basis for the management of land contamination within Shoalhaven City Council. The policy is made in accordance with the *Managing Land Contamination: Planning Guidelines* and State Environmental Planning Policy No. 55 - Remediation of Land (SEPP 55) in order to implement a contaminated land management framework within Shoalhaven City Council. It applies to all land in the Shoalhaven City Council Local Government area.

In accordance with the requirements of SEPP 55 and the *Managing Land Contamination: Planning Guidelines*, this policy provides the framework for the integration of land contamination management into the planning and development process, and aims to:

- ensure changes of land use will not increase the risk to health or the environment;
- avoid inappropriate restrictions on land use; and
- provide information to support decision making and to inform the community.

The Environment Protection Authority regulates sites that are significantly contaminated under the *Contaminated Land Management Act 1997*. Sites that are contaminated but not declared as significantly contaminated are dealt with by Council under the provisions of the *Environmental Planning & Assessment Act 1979*, in accordance with *Managing Land Contamination: Planning Guidelines* and SEPP 55.

Councils who act substantially in accordance with these guidelines when carrying out specified planning functions are taken to have acted in good faith and receive statutory protection under Schedule 6 clause 2 and Schedule 6 clause 3 of the *Environmental Planning and Assessment Act*.

This policy does not intend to provide land owners with instructions for the responsible management of contaminated land or contaminating activities. The land owner is responsible for ensuring that their land is managed in accordance with the *NSW Protection of the Environment (Operations) Act 1997*, *Contaminated Land Management Act 1997* and relevant workplace health and safety legislation.

If your land is contaminated or potentially contaminated from a past or current land use, Council recommends that you engage a qualified contaminated land consultant to investigate the levels of contamination and advise you of your obligations under the relevant legislation.

Some industries have specific obligations to monitor for contamination and the relevant EPA industry guidelines provide further information.

## 2. COUNCIL'S DECISION MAKING PROCESS

In determining all rezoning, subdivision and development applications, Council must consider the possibility of land contamination and the implications it has for any proposed or permissible future uses of the land. A precautionary approach will be adopted to ensure that any land contamination issues are identified and dealt with early in the planning process.

### 2.1. Initial Evaluation

Council will conduct an initial evaluation as part of the development assessment process to determine whether contamination is an issue, and whether sufficient information is available for Council to carry out its planning functions in good faith. The initial evaluation will be based on readily available factual information provided by the applicant and information available to Council such as previous investigations about contamination on the land, previous zoning and uses of the subject land, and restrictions relating to possible contamination such as notices issued by the EPA. Council may also conduct a site inspection of the subject land.

Appendix 1 contains a minimal initial evaluation checklist taken from the *Managing Land Contamination: Planning Guidelines* for use by Council staff and landowners/consultants.

### 2.2. Council Procedures for Zoning and Rezoning Applications

SEPP 55 requires Council to consider contamination issues in zoning and rezoning proposals (including when Council is the proponent of the rezoning). Council will not include land in a zone that would permit a change of use of the land unless:

- Council has considered whether the land is contaminated, and
- if the land is contaminated, Council is satisfied the land is suitable in its contaminated state (or will be suitable, after remediation) for the range of uses for which land in the zone concerned is permitted to be used; and
- if the land requires remediation to be made suitable for any purpose for which land in that zone is permitted to be used, Council is satisfied the land will be so remediated before the land is used for that purpose (e.g. satisfied by provisions in LEP or DCP that contamination issues will be addressed at DA stage)

In accordance with clause 6(4) of SEPP 55 Council will require a preliminary investigation to be submitted with zoning and rezoning applications where the land concerned is:

- a) land that is within an investigation area (as defined by the Contaminated Land Management Act)
- b) land on which development for a purpose referred to in Table 1\* to the contaminated land planning guidelines is being, or is known to have been, carried out

- c) to the extent to which it is proposed to carry out development on it for residential, educational, recreational or child care purposes, or for the purposes of a hospital-land
  - i) in relation to which there is no knowledge (or incomplete knowledge) as to whether development for a purpose referred to in Table 1\* to the contaminated land planning guidelines has been carried out, and
  - ii) on which it would have been lawful to carry out such development during any period in respect of which there is no knowledge (or incomplete knowledge).

[NOTE: Table 1\* in the *Managing Land Contamination: Planning Guidelines* (1998), Department of Planning and Infrastructure & NSW Environment Protection Authority is reproduced in Appendix 2].

In addition to the requirements outlined in clause 6(4) of SEPP 55, Council will also require a preliminary investigation to be submitted if Council has reasonable grounds to believe the land may be contaminated because of the land's history, condition, or other information known to Council.

Council's procedure for considering land contamination issues for zoning or rezoning requests is shown in Figure 1.

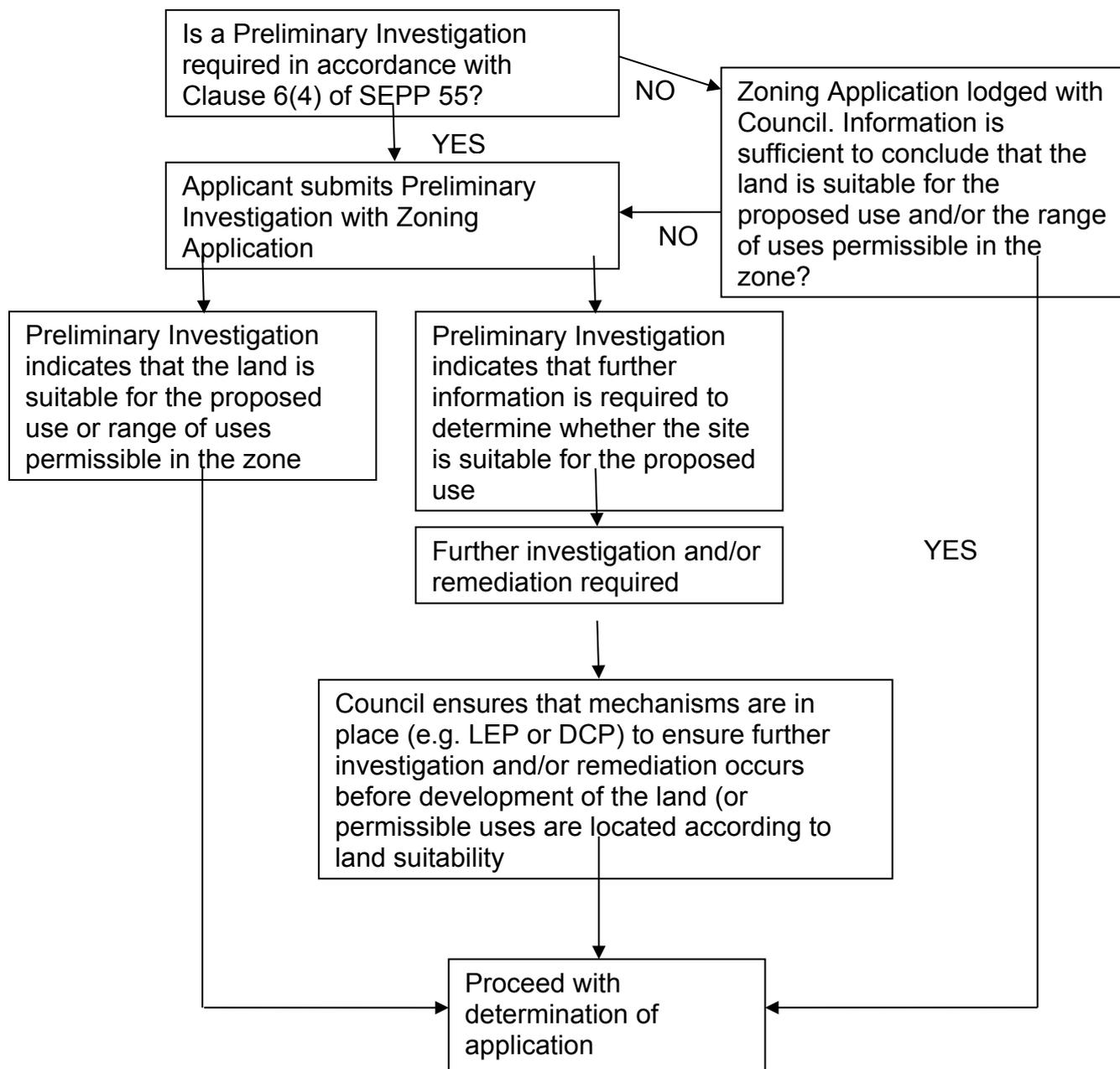
#### 2.2.1. Spot Rezoning

When Council receives a Planning Proposal (spot rezoning application) where a specific development or land use associated with the proposal is known, Council may also require a detailed investigation to be undertaken prior to Council determining the rezoning application.

#### 2.2.2. General Rezoning

When Council receives a Planning Proposal (rezoning application) that covers more than one property or Council itself proposes generalised rezoning, it may be difficult for Council to be satisfied that every part of the land is suitable for the permissible use(s) at the rezoning stage. In these circumstances Council will consider the findings of a preliminary investigation, and where appropriate will include provisions in a LEP or DCP to ensure the potential for contamination and the suitability of the land for any proposed use is investigated and addressed prior to the redevelopment of the land.

**FIGURE 1 – COUNCIL PROCEDURE FOR CONSIDERING LAND CONTAMINATION ISSUES FOR ZONING AND REZONING APPLICATIONS**



### **Council Procedures for Subdivision and Development Applications**

Section 4.15 of the *Environmental Planning and Assessment Act 1979* requires Council to consider “the suitability of the site for the development” when assessing development applications. The risk from contamination to health and the environment is included in this assessment.

In accordance with clause 7 of SEPP 55, Council will not consent to the carrying out of any development on land unless:

- a) It has considered whether the land is contaminated, and
- b) If the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out; and
- c) If the land requires remediation to be made suitable for any purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.

The following subsections outline when Council will require information relating to site contamination issues to be submitted with subdivision and development applications. Council’s procedure for considering land contamination issues for subdivision and development applications is shown in Figure 2.

#### 2.2.3. When Does Council Require a Preliminary Site Contamination Investigation (Stage 1)?

A Preliminary Site Contamination Investigation Report must be prepared if:

- a) It is required by SEPP No.55 and/or
- b) After having undertaken an initial evaluation, the Council is of the view that further information is required.

The objectives of a preliminary investigation report are to identify any past or present potentially contaminating activities and to provide a preliminary assessment of site contamination. The preliminary investigation typically contains a detailed appraisal of the site history and a report based on visual site inspection and assessment. Where information on site contamination is limited, some soil sampling may be warranted.

Council may require a preliminary site investigation to be carried out before determining an application for development or subdivision on land adjacent to a site that is potentially contaminated.

The Preliminary Site contamination investigation should be carried out in accordance with the requirements of the relevant guidelines made or endorsed by the EPA under the Contaminated Land Management Act (available on the EPA’s web site: [www.environment.nsw.gov.au](http://www.environment.nsw.gov.au)).

(A) SEPP No. 55

SEPP 55 requires Council to consider contamination issues in determining development and subdivision applications. In accordance with clause 7(4) of SEPP 55, Council will require a preliminary investigation to be submitted with a subdivision or development application where the land concerned is:

- a) Land that is within an investigation area (as defined by the *Contaminated Land Management Act*)
- b) Land on which development for a purpose referred to in Table 1\* to the contaminated land planning guidelines is being, or is known to have been, carried out
- c) To the extent to which it is proposed to carry out development on it for residential, educational, recreational or child care purposes, or for the purposes of a hospital-land
  - i) In relation to which there is no knowledge (or incomplete knowledge) as to whether development for a purpose referred to in Table 1\* to the contaminated land planning guidelines has been carried out; and
  - ii) On which it would have been lawful to carry out such development during any period in respect of which there is no knowledge (or incomplete knowledge).

[NOTE: Table 1\* in the *Managing Land Contamination: Planning Guidelines* (1998), Department of Urban Affairs & Planning (now Department of Infrastructure, Planning & Natural Resources) & NSW Environment Protection Authority which is reproduced in Appendix 2]

(B) Initial Evaluation by Council

In addition to the requirements outlined in clause 7(4) of SEPP 55, Council may also require a preliminary investigation report to be prepared and submitted when:

- Council has reasonable grounds to believe the land is contaminated because of the land's history, condition, or other information known to Council, and/or
- The site has been investigated and/or remediated but there is insufficient information available about the nature and extent of contamination and/or remediation, or the circumstances have changed, and/or
- There are restrictions on, or conditions attached to, the use of the site by a regulatory or planning authority which are, or may be, related to contamination, but there is insufficient information available about the nature and extent of contamination, and/or
- Council records have demonstrated the site is associated with pollution incidents or illegal dumping of wastes, and/or

- The site is adjoining land which has been associated with activities that may cause contamination listed in Appendix 2 and it is likely this may have contaminated the subject premises.

The preliminary site contamination investigation shall be carried out in accordance with the requirements of the relevant NSW EPA Guidelines. The proponent is responsible for engaging a suitability qualified consultant to undertake the preliminary site contamination investigation. In addition, the proponent is responsible for all costs borne in engaging the consultant and site auditor, if requested by Council (see Section 5 – Independent Auditing).

A list of information sources that may be useful in understanding the history of the site is included in Appendix 3. Applicants may also request Council to perform a search of its records to determine previous approved developments at the site (see Section 6 – Council Records and Community Information).

If Council is satisfied the preliminary site contamination investigation justifiably concludes the site is suitable for the proposed use, then Council will not require any further investigations to be conducted.

#### 2.2.4. When Does Council Require a Detailed Site Contamination Investigation (Stage 2)?

A Detailed Site Contamination Investigation Report will be required by Council if:

- a) After having made an initial evaluation and considered a Preliminary Investigation Report, Council is of the view that there is insufficient information to determine whether a site is suitable for the proposed use, and/or
- b) The results of the preliminary investigation demonstrate the potential for, or existence of contamination that may not be suitable for the proposed use of land.

In some cases Stage 1 (Preliminary Investigation Report) and Stage 2 (Detailed Investigation Report) investigations may be combined where the land is known to contain or have contained a potentially contaminating activity.

The objectives of a detailed site investigation are to:

- define the extent and degree of contamination;
- assess the potential risk posed by contaminants to human health and the environment; and
- obtain sufficient information for the development of a Remedial Action Plan (if necessary).

The detailed site contamination investigation shall be carried out in accordance with the requirements of the relevant EPA Guidelines. The proponent is responsible for engaging a suitability qualified consultant to undertake the detailed site contamination investigation. In addition, the proponent is responsible for all costs

borne in engaging the consultant and site auditor (see Section 5 – Independent Auditing).

The detailed site contamination investigation should include a statement that describes whether the site is suitable for the proposed use, or if remediation is necessary to make the site suitable for the proposed use. If remediation is required, the report should also list the feasible remediation options available to remediate the site.

The detailed site contamination investigation shall be carried out in accordance with the requirements of the relevant guidelines made or endorsed by the EPA under the *Contaminated Land Management Act 1997* (available on the EPA's web site: [www.environment.nsw.gov.au](http://www.environment.nsw.gov.au)).

#### 2.2.5. When Does Council require a Remedial Action Plan (RAP)?

Council will require the submission of a RAP if the detailed investigation concludes that the land is not suitable for the proposed use in its current state. Prior to determining the subdivision or development application, Council must be satisfied that remedial measures have been, or will be, undertaken in accordance with the submitted RAP to make the site suitable for the proposed use. An RAP is compulsory for Category 1 remediation works under SEPP 55.

The objectives of a RAP are to:

- set remediation objectives; and
- determine the most appropriate remedial strategy, including validation criteria; and
- identify necessary approvals that need to be obtained from regulatory authorities, including whether an additional development application for remedial works is or is not required.

The RAP should be prepared in accordance with SEPP 55, the associated Planning Guidelines, this Policy and any relevant Guidelines made under or endorsed by the EPA under the *Contaminated Land Management Act 1997* (available on the EPA's website: [www.environment.nsw.gov.au](http://www.environment.nsw.gov.au)). It should document the remedial works to be undertaken at the site and also contain an environmental management plan and occupational health and safety plan for the remedial works.

#### 2.2.6. When Does Council require a Validation and Monitoring Report?

Council will require a validation and monitoring report to be submitted after remediation works have been completed, and prior to the commencement of building construction works. This will normally be achieved by Council placing a condition on any consent granted requiring the submission of a validation and monitoring report prior to the issuing of a construction certificate. Alternatively, Council may issue a

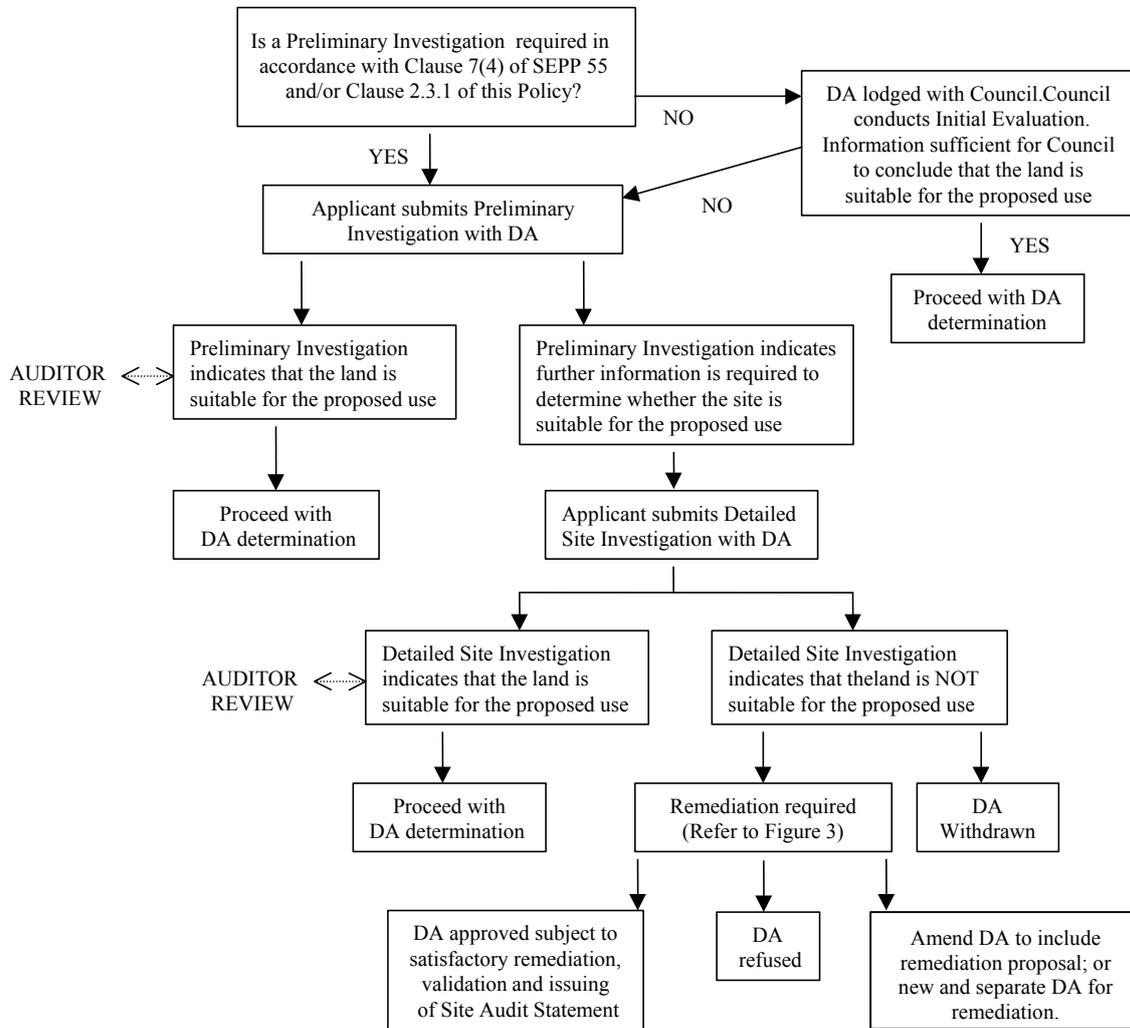
deferred commencement consent for the proposed use, requiring remediation and validation to be undertaken prior to other work commencing.

The objective of validation and monitoring report is to demonstrate that the objectives stated in the RAP have been achieved and any conditions of development consent have been complied with.

Ideally, validation should be conducted by the same consultant who conducts the site investigation and remediation process. Validation must confirm statistically that the remediated site complies with the clean-up criteria set for the site.

The validation and monitoring report shall be prepared in accordance with the requirements of relevant guidelines made or endorsed by the OEH under the Contaminated Land Management Act (available on the OEH's website: [www.environment.nsw.gov.au](http://www.environment.nsw.gov.au)).

**FIGURE 2 – COUNCIL PROCEDURE FOR CONSIDERING LAND CONTAMINATION ISSUES FOR SUBDIVISION & DEVELOPMENT APPLICATIONS**



### 3. COUNCIL’S REQUIREMENTS FOR REMEDIATION

SEPP 55 specifies when consent is required, and when it is not required, for remediation work. This section defines category 1 and category 2 remediation work, and outlines the site management provisions for category 2 remediation work. In accordance with clause 9(f) of SEPP 55, remediation work that is not carried out in accordance with the site management provision contained in Section 4 is category 1 remediation work which requires Council consent.

Council’s procedure for considering site remediation proposals is shown in Figure 3. The remediation of significantly contaminated land is regulated by the NSW EPA and is not dealt with in this policy. Land owners should refer to Part 2 of the *Contaminated Land Management Act 1997* and contact the EPA.

### **3.1. Category 1 Remediation Work**

Category 1 remediation work, as defined in clause 9 of SEPP 55, is work that requires consent. Category 1 remediation work is advertised development unless the remediation work is designated development or State significant development. All category 1 remediation work must be advertised for 30 days pursuant to *section 29A Advertised Development* of the *Environmental Planning and Assessment Act 1997*. *Note: Transitional arrangements apply to Advertised Development. Refer to Clause 16 of the Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017.*

If remedial works constitute category 1 remediation work, the applicant may either amend their current application to include a remediation proposal (if applicable) or lodge a new and separate development application for the remediation works.

### **3.2. Category 2 Remediation Work**

Category 2 remediation work is all remediation work that is not category 1 remediation work. In accordance with clause 16 of SEPP 55, prior notice of category 2 remediation work to Council is required at least 30 days before commencement of works.

In addition to the information that must be submitted to Council in clause 16(2) of SEPP 55, Council will require the following information to be submitted at least 30 days prior to the commencement of category 2 remediation works:

- copies of any Preliminary Investigation, Detailed Investigation and Remedial Action Plan for the subject site; and
- contact details for the remediation contractor and party responsible for ensuring compliance of remediation work with all relevant regulatory requirements (if different to remediation contractor).

Although consent is not required for Category 2 remediation work, Council will need to be satisfied that the site is suitable for the proposed use when considering any subsequent development applications for the subject site. Council will require a notice of completion of remediation works as well as a validation report to be submitted within 30 days of completion. Hence it is recommended that comprehensive records are maintained during the remediation and validation works for all sites.

## **4. SITE MANAGEMENT - REMEDIAL ACTION PLANS**

Council has identified a number of site management provisions for the conduct of category 2 remediation. These provisions have been formulated to ensure category 2 remediation work does not adversely impact on the environment or public amenity.

All category 2 remediation works shall be conducted in accordance with the site management provisions listed below. The site management provisions apply to all of the Shoalhaven Local Government Area (LGA). Category 2 remediation work that does not comply with the site management provisions outlined in this section will be classified as category 1 remediation work and will require consent.

Development applications lodged for category 1 remediation works should identify any areas of non-compliance with the site management provisions listed below and identify any alternative site management measures to be implemented.

**Note:** It is the responsibility of those remediating a site to ensure compliance with all relevant environmental legislation and regulations. Compliance with the site management provisions outlined below does not imply that all relevant environmental legislation and regulations have been complied with. Non-compliance with relevant environmental legislation and regulations may incur on-the-spot fines of up to \$1500 for minor offences, or fines up to \$1 Million and 7 years imprisonment for more serious offences.

#### **4.1. Hours of Operation**

All remediation work shall be conducted within the following hours:

Monday - Friday	7am - 6pm
Saturday	8am - 1pm

No work is permitted on Sundays or Public Holidays

#### **4.2. Soil and Water Management**

All remediation works shall be conducted in accordance with a soil and water management plan prepared by a suitably qualified person. A copy of the plan shall be kept on-site and made available to Council Officers on request. All erosion and sediment measures must be maintained in a functional condition throughout the remediation works.

A summary of the soil and water management measures for category 2 remediation work in relation to stockpiles, site access, excavation pump-out, landscaping/rehabilitation and bunding are discussed below:

##### **4.2.1. Stockpiles**

- No stockpiles of soil or other materials shall be placed on footpaths or nature strips unless prior Council approval has been obtained.
- All stockpiles of soil or other materials shall be placed away from drainage lines, gutters or stormwater pits or inlets.

- All stockpiles of soil or other materials likely to generate dust or odours shall be covered.
- All stockpiles of contaminated soil shall be stored in a secure area and be covered if remaining more than 24 hours.

#### 4.2.2. Site Access

Vehicle access to the site shall be stabilised to prevent the tracking of sediment onto the roads and footpath. Soil, earth, mud or similar materials must be removed from the roadway by sweeping, shovelling, or a means other than washing, on a daily basis or as required. Soil washing from wheels shall be collected and disposed of in a manner that does not pollute waters.

#### 4.2.3. Excavation Pump-out

All excavation pump-out water must be analysed for suspended solid concentration, pH and any contaminants of concern identified during the preliminary or detailed site investigation, prior to discharge to the stormwater system. The analytical results must comply with relevant EPA and ANZECC standards for water quality, having regard to the sensitivity and water quality of the receiving environment.

Other options for the disposal of excavation pump-out water include disposal to sewer with prior approval from Shoalhaven Water, or off-site disposal by a liquid waste transporter for treatment/disposal to an appropriate waste treatment/processing facility.

#### 4.2.4. Landscaping/Rehabilitation

All exposed areas shall be progressively stabilised and revegetated on the completion of remediation works.

#### 4.2.5. Bunding

All land farming areas for hydrocarbon contaminated soils shall be bunded to contain surface water run-off from the land farm areas and to prevent the leaching of hydrocarbons into the subsurface. All surface water discharges from the bunded areas to Council's stormwater system shall not contain detectable levels of TPH or BTEX.

### **4.3. Noise**

Category 2 remediation work shall comply with the EPA Industrial Noise Policy.

All equipment and machinery shall be operated in an efficient manner to minimise the emission of noise.

#### **4.4. Vibration**

The use of any plant and/or machinery shall not cause vibrations to be felt at any premises.

#### **4.5. Air Quality**

##### **4.5.1. Dust Control**

Dust emissions shall be confined within the site boundary. The following dust control procedures may be employed to comply with this requirement:

- erection of dust screens around the perimeter of the site;
- securely covering all loads entering or exiting the site;
- use of water sprays across the site to suppress dust;
- covering of all stockpiles of contaminated soil remaining more than 24 hours; and
- keeping excavation surfaces moist.

##### **4.5.2. Odour Control**

No odours shall be detected at any boundary of the site during remediation works by an authorised Council Officer relying solely on sense of smell. The following procedures may be employed to comply with this requirement:

- use of appropriate covering techniques such as the use of plastic sheeting to cover excavation faces or stockpiles;
- use of fine mist sprays;
- use of a hydrocarbon mitigating agent on the impacted areas/materials; and
- adequate maintenance of equipment and machinery to minimise exhaust emissions.

Volatile or semi-volatile compounds which could generate odours include monocyclic aromatic hydrocarbons (styrene, benzene, toluene, xylene, ethyl benzene, butyl benzene), polycyclic aromatic hydrocarbons (PAHs), hydrogen sulphide, hydrogen cyanide, pesticides, PCBs, and herbicides.

Records of volatile emissions and odours shall be logged, kept on-site and made available to Council Officers on request. Discharges from soil vapour extraction systems shall be regularly monitored in order to determine the mass of hydrocarbons that are being discharged to the atmosphere. Contingency measures for the collection and treatment of hydrocarbon off-gas shall be put in place prior to the commissioning of the soil vapour extraction systems. All discharge vents from soil

vapour extraction systems shall be located a minimum of 50 metres from any residential property boundary, road or recreational area. No material shall be burnt on-site.

#### **4.6. Groundwater**

A licence shall be obtained from the Water NSW for approval to extract groundwater under the provisions of *Part 5 Artesian wells* of the *Water Act 1912*. *Note: In accordance with section 129A of the Water Act 1912, Part 5 (section 118A excepted) does not apply to any part of the State to which Part 3 of Chapter 3 of the Water Management Act 2000 applies, in relation to water supply work or aquifer interference approvals within the meaning of that Act.*

Groundwater shall be analysed for pH, suspended solids and any contaminants of concern identified during the preliminary or detailed site investigation, prior to discharge to the stormwater system. The analytical results must comply with relevant EPA and ANZECC standards for water quality, having regard to the sensitivity and water quality of the receiving environment.

Other options for the disposal of groundwater include disposal to sewer with prior approval from Shoalhaven Water, or off-site disposal by a liquid waste transporter for treatment/disposal to an appropriate waste treatment/processing facility.

#### **4.7. Transport**

All haulage routes for trucks transporting soil, materials, equipment or machinery to and from the site shall be selected to meet the following objectives:

- comply with all road traffic rules;
- minimise noise, vibration and odour to adjacent premises; and
- utilise State roads and minimise use of local roads.

Applicants must consult Council prior to selecting the most suitable transport route.

Category 2 remediation work shall ensure that all site vehicles:

- conduct deliveries of soil, materials, equipment or machinery during the hours of remediation work identified in Section 4.1;
- securely cover all loads to prevent any dust or odour emissions during transportation;
- exit the site in a forward direction; and
- do not track soil, mud or sediment onto the road.

#### **4.8. Hazardous Materials**

Hazardous and/or intractable wastes arising from the remediation work shall be removed and disposed of in accordance with the requirements of the EPA and WorkCover Authority, together with the relevant regulations, including:

- a) *Work Health and Safety Act 2011*;
- b) Occupational Health and Safety Regulation 2017.
- c) Contaminated Land Management Act and Regulations; and
- d) Environmentally Hazardous Chemicals Act and Regulations

Under the *Protection of the Environment (Operations) Act 1997* the transportation of Schedule 1 Hazardous Waste is a scheduled activity and must be carried out by a transporter licensed by the EPA.

#### **4.9. Disposal of Contaminated Soil**

The disposal of contaminated soil shall have regard to the provision of both the Protection of the Environment Operations Act and Regulations and any relevant EPA guidelines such as the *NSW EPA publication Environmental Guidelines: Assessment, Classification and Management of Liquid and Non-Liquid Wastes (1999)*.

Any queries associated with the off-site disposal of “waste” from a contaminated site should be referred to the EPA’s Pollution Line on either 131 555 or (02) 9995 5000. If contaminated soil or other waste is transported to a site unlawfully, the owner of the waste and the transporter are both guilty of an offence.

#### **4.10. Containment/Capping of Contaminated Soil**

No contaminated soil shall be encapsulated or capped on the site that contains concentrations of contaminants that are above the soil investigation levels for urban development sites in New South Wales for the range of land uses permissible on the subject site. For example, a site zoned commercial/industrial shall not encapsulate or cap soil containing concentrations of contaminants above the ‘commercial or industrial NEHF F health-based investigation levels’. The soil investigation levels for urban redevelopment in New South Wales are contained in the EPA’s *Guidelines for the NSW Site Auditor Scheme*.

Note: This is not a prohibition of containment or capping as a remediation option. Rather it requires remediation proposals of this nature to be dealt with as Category 1 remediation requiring prior development consent (clause 9F of SEPP 55).

#### **4.11. Importation of Fill**

All fill imported onto the site shall be validated to ensure the imported fill is suitable for the proposed land use from a contamination perspective. Fill imported onto the

site shall also be compatible with the existing soil characteristic for site drainage purposes.

Council may require details of appropriate validation of imported fill material to be submitted with any application for future development of the site. Hence all fill imported onto the site should be validated by either one or both of the following methods during remediation works:

- imported fill should be accompanied by documentation from the supplier which certifies the material is not contaminated based upon analyses of the material or the known past history of the site where the material is obtained; and/or
- sampling and analysis of the fill material should be conducted in accordance with the *EPA Sampling Design Guidelines (1995)* to ensure the material is not contaminated.

#### **4.12. Site Signage and Contact Numbers**

A sign displaying the contact details of the remediation contractor (and site facilitator, if different to remediation contractor) shall be displayed on the site adjacent to the site access. This sign shall be displayed throughout the duration of the remediation works.

#### **4.13. Community Consultation**

Owners and/or occupants of premises adjoining, and across the road, from the site shall be notified at least two days prior to the commencement of category 2 remediation works.

#### **4.14. Site Security**

The site shall be secured to ensure against unauthorised access by means of an appropriate fence.

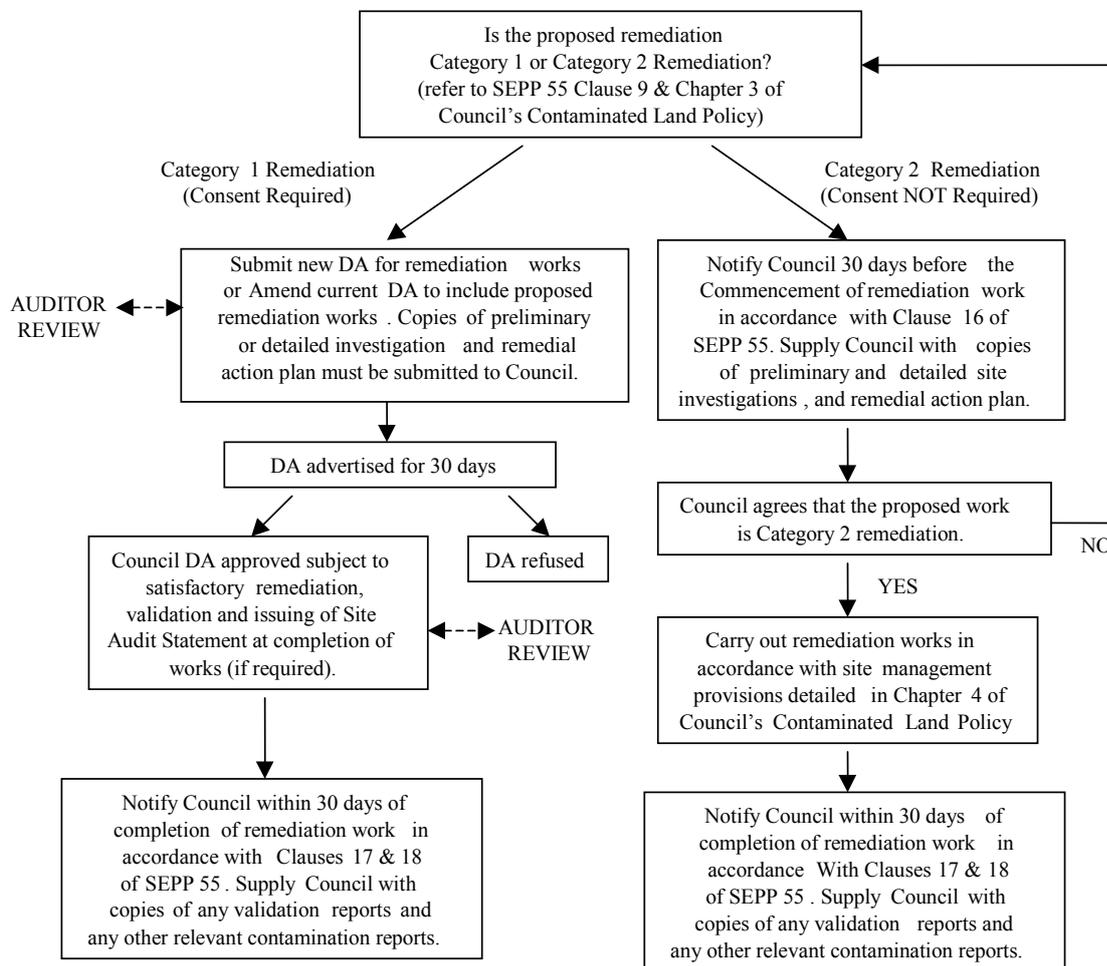
#### **4.15. Occupational Health & Safety**

It is the employer's responsibility to ensure that all site remediation works comply with Workcover Guidelines and NSW Work Health and Safety laws.

#### **4.16. Removal of Underground Storage Tanks**

The removal of underground storage tanks shall be undertaken in accordance with current Australian best practice including the NSW WorkCover Storage and Handling of Dangerous Goods Code of Practice, AS1940 – The Storage and handling of flammable and combustible liquids and AS4976 – The Removal and disposal of underground petroleum storage tanks.

**FIGURE 3 – COUNCIL PROCEDURE FOR CONSIDERING SITE REMEDIATION PROPOSALS INDEPENDENT AUDITING**



#### 4.17. NSW Site Auditor Scheme

The NSW Site Auditor Scheme commenced on 1 June 1998. Site Auditors are experts who can provide an independent review of the work of a primary consultant for all types of contaminated sites. Part 4 of the *Contaminated Land Management Act 1997* allows the EPA to accredit suitably qualified and experienced individuals as site auditors.

All Council requests for an independent review or site audit must be performed by an EPA accredited auditor for contaminated land. An up-to-date list of EPA accredited auditors can be obtained on the EPA's web page:

- <https://www.epa.nsw.gov.au/>

or by phoning the EPA's "Pollution Line" on 131 555.

#### 4.18. Site Audits

The *Contaminated Land Management Act, 1997* defines a site audit as: 'a review':

- a) that relates to investigation, or remediation, carried out (whether under this Act or otherwise) in respect of the actual or possible contamination of land, and
- b) that is conducted for the purpose of determining any one or more of the following matters
  - i) the nature and extent of any contamination of the land,
  - ii) the nature and extent of any management of actual or possible contamination of the land whether the land is suitable for any specified use or range of uses,
  - iii) what management remains necessary before the land is suitable for any specified use or range of uses,
  - iv) the suitability and appropriateness of a plan of management, long-term management plan or a voluntary management proposal

The EPA have also prepared *Guidelines for the NSW Site Auditor Scheme* which outline the NSW Site Auditor Scheme, the process of appointing site auditors, and the legal, administrative and technical directions and guidelines for site auditors and the preparation of site audits statements.

#### 4.19. Site Audit Statements

A site audit statement provides a clear statement about what land use is suitable for the site, including any conditions on that suitability (e.g. to maintain capping). A site audit statement must be prepared on an EPA approved form available through the EPA's website:

- ([www.environment.nsw.gov.au/clm](http://www.environment.nsw.gov.au/clm)).

When an accredited auditor for contaminated land is requested to conduct a site audit, they must also prepare a site audit statement.

Section 47 of the *Contaminated Land Management Act, 1997* states that "a reference to a statutory site audit is a reference to a site audit carried out in order to secure compliance with one or more of the following:

- a) A requirement under this Act, or
- b) An approved voluntary management proposal,
- c) A requirement imposed by State Environmental Planning Policy No. 55 Remediation of Land or by any other environmental planning instrument made under the Environmental Planning and Assessment Act 1979 or by any development consent given under that Act, or
- d) Any other requirement imposed by or under an Act,

unless it is carried out only in order to secure compliance with a legal obligation arising from an agreement or arising in such circumstances as the regulations may prescribe.

A statutory site audit statement may only be issued by a EPA accredited auditor for contaminated land. A copy of all statutory site audit statements must be given to the EPA and the planning authority (Council) at the same time as the site auditor gives the statutory site audit statement to the person who commissioned the site audit.

#### **4.20. When Council Requires a Site Audit**

Council may request a site audit to be undertaken at any or all stages in the site investigation process. In accordance with the *Managing Land Contamination Planning Guidelines*, Council will require a site audit prepared by a NSW EPA accredited auditor for contaminated land if Council:

- believes on reasonable grounds that the information provided by the applicant is incorrect or incomplete;
- wishes to verify whether the information provided by the proponent has adhered to appropriate standards, procedures and guidelines; or
- does not have the internal resources to conduct its own technical review.” p19.

The proponent will be informed by Council if a site audit is required after Council has conducted a review of the contamination reports and associated documents (eg development application) submitted to Council. The proponent is responsible for engaging an EPA accredited auditor for contaminated land to perform a site audit. In addition, the proponent is responsible for all costs borne in engaging an EPA accredited auditor for contaminated land.

For sites which have complex issues associated with either the contamination assessment or remediation it is wise to engage an EPA accredited auditor for contaminated land early on in the site assessment process.

#### **4.21. What Should a Site Audit Cover?**

The EPA *Guidelines for the NSW Site Auditor Scheme* outline what should be included in a site audit, however, the guidelines state that in some situations local planning authorities (Council) may also need to contribute to defining the scope of the site audit.

When Council requests a site audit, Council will also specify any issues that shall be included within the scope of the site audit. As well as requiring a site audit to address any issues raised in s47(1)(b) *Contaminated Land Management Act 1997*, the following are examples of issues where Council may request an EPA accredited auditor for contaminated land to address when conducting a site audit:

- Has the contaminated land consultant complied with all appropriate standards, procedures and relevant NSW EPA guidelines?
- What further investigations or remediation are required before the land is suitable for any specified use or range of uses?
- Whether the auditor considers the proposed remediation is adequate, and if undertaken, will render the site to be suitable for the proposed use.
- Whether the contamination conditions at the site prohibit the in-ground absorption of stormwater on the site.

Either the proponent or the appointed EPA accredited auditor for contaminated land shall liaise with Council during the preparation of the site audit to ensure the scope of the site audit addresses the concerns raised by Council.

Before issuing a site audit statement, the site auditor must prepare and finalise a summary site audit report. The EPA *Guidelines for the NSW Site Auditor Scheme* outlines what must be included in a site audit report.

## **5. COUNCIL RECORDS AND COMMUNITY INFORMATION**

Council has a statutory responsibility under s59 of the *Contaminated Land Management Act 1997* to include information provided to Council by either the EPA or accredited auditors on planning certificates issued for the purposes of section 10.7 *Environmental Planning and Assessment Act 1979*.

The process of information collection about land contamination is ongoing. Information available to Council concerning land use history, land contamination and remediation will be added to Council's property information system when development and subdivision applications are processed or when information is provided to Council via other sources.

This land use history information is intended for use by Council staff when considering applications for development, subdivision or rezoning in accordance with this policy.

### **5.1. How Council's Information is Managed**

Council's records regarding contamination issues are dynamic and will change over time as land is investigated, remediated and validated. Some registers may falsely imply comprehensive knowledge of site contamination issues that it is unfortunately not possible to have. Standards for remediation may also change over time to accommodate changing community values. For these reasons Council does not hold a 'register' of contaminated sites.

Council's records in relation to site contamination issues are kept on individual files for each identified parcel of land. To assist Council in the management of land contamination issues the following information may be available (if held) for the specific parcels of land:

- Site contamination reports submitted to Council (ie Preliminary Investigation, Detailed Investigation, Remedial Action Plans, Validation and Monitoring Reports).
- Site Audit Statements received by Council.
- EPA declarations and orders issued under the *Contaminated Land Management Act 1997* (including voluntary investigation and remediation proposals agreed by the EPA).
- Prior notification of category 2 remediation works.
- Notification of completion of category 1 and category 2 remediation work.
- Any other information or correspondence relevant to land contamination.

Council will only delete a file or remove a reference to a potentially contaminating land use from its property information system in the following circumstances:

- a) New and independent information is provided that confirms the potentially contaminating activity did not occur on the property.

- b) New information is provided that confirms that the activity carried out on the property was not a potentially contaminating activity.
- c) Where the site has been potentially contaminated by an activity on a neighbouring property, new investigations confirm that the land was not impacted by the neighbouring land use.

Requests for modification or deletion of the information held by Council shall be made in writing and include the evidence on which the request is made. Requests shall be considered by the Environmental Services Manager and be determined by the Development and Environmental Services Group Director.

## **5.2. Section 10.7 Planning Certificates**

Under section 10.7 of the *Environmental Planning & Assessment Act 1979*, a person may request from Council a planning certificate containing advice on matters about land which are prescribed in the *Environmental Planning and Assessment Regulation 2000*. One such prescribed matter is the existence of a Council policy to restrict the use of land.

Section 10.7 planning certificates issued by Council will not contain specific details of site contamination or potential site contamination for individual parcels of land unless the land, or part of the land is significantly contaminated. Council has adopted this approach for the following reasons:

- The Council records used in the preparation of section 10.7 Planning Certificates may not disclose land uses which may have resulted in land contamination that were established illegally and/or have existing use rights.
- Council's records regarding contamination issues are dynamic and will change over time as land is investigated, remediated and validated.

Section 59(2) of the *Contaminated Land Management Act, 1997* provides that specific notations relating to contaminated land issues must be included on section 10.7 certificates where:

- (a) that the land to which the certificate relates is significantly contaminated land—if the land (or part of the land) is significantly contaminated land at the date when the certificate is issued,
- (b) that the land to which the certificate relates is subject to a management order—if it is subject to such an order at the date when the certificate is issued,
- (c) that the land to which the certificate relates is the subject of an approved voluntary management proposal—if it is the subject of such an approved proposal at the date when the certificate is issued,
- (d) that the land to which the certificate relates is subject to an ongoing maintenance order—if it is subject to such an order at the date when the certificate is issued,
- (e) that the land to which the certificate relates is the subject of a site audit statement if a copy of such a statement has been provided at any time to the local authority issuing the certificate.

Section 10.7 planning certificates issued by Council will contain information on the prescribed matters listed above, where applicable and available.

As well as containing information on prescribed matters, all section 10.7 certificates issued by Council will contain a notation informing of the existence of this policy to restrict the use of land.

For those properties that Council holds further information on additional wording will be added to the above section 10.7 planning certificate.

### 5.3. Access to Council Information

There are several parties who may be interested in accessing Council’s records in relation to land contamination issues including current occupiers of sites, potential purchasers of land, contaminated land consultants and the community.

Council’s policy on contaminated land allows enquirers to access information on individual parcels of land in relation to the following:

Type of Information	How to Obtain Information
Current and past development, building, subdivision and rezoning requests.	Written request to the Council in accordance with the access provisions of the <i>Government Information (Public Access) Act 2009</i> . Fees and charges apply
Information on reports held by Council in relation to site contamination issues.	Written request to the Council in accordance with the access provisions of the <i>Government Information (Public Access) Act 2009</i> . Fees and charges apply in accordance with Councils Schedule of Fees & Charges.
Information on any restrictions placed on the land	Section 10.7 Planning certificates
Information on whether any declarations or orders made or voluntary proposals agreed to under <i>CLM Act</i> have been provided to Council by the EPA or whether Council has received any Site Audit Statements	Section 10.7 Planning certificate
Copies of any Site Audit Statements	Written request to the Council in accordance with the access provisions of the <i>Government Information (Public Access) Act 2009</i> . Fees and charges apply
Any other information held by Council (other than stated above) in relation to site contamination issues.	Written request to the Council in accordance with the access provisions of the <i>Government Information (Public Access) Act 2009</i> . Fees and charges apply

In some circumstances Council may not be able to provide full access to its records held on land contamination issues. These circumstances may include when the information held by Council is subject to legal privilege, copyright restrictions or where there is an overriding public interest against disclosure of information. Further enquiries regarding access to records held by Council should be directed to Councils Information Officer.

## APPENDIX 1 – MINIMUM CHECKLIST FOR INITIAL EVALUATION

The potential for contamination is often linked to past uses of land and a good early indicator of possible uses is land zoning. Contamination is more likely to have occurred if the land is currently, or was previously, zoned for industrial, agricultural or defence purposes. The following is a brief checklist for doing an initial evaluation.

- Is the planning authority aware of any previous investigations about contamination on the land? What were the results, including any previous initial evaluations?
- Do existing records held by the planning authority show that an activity listed in Appendix 2 has ever been approved on the subject land? (The use of records held by other authorities or libraries is not required for an initial evaluation.)
- Was the subject land at any time zoned for industrial, agricultural or defence purposes?
- Is the subject land currently used for an activity listed in Appendix 2?
- To the planning authority's knowledge was, or is, the subject land regulated through licensing or other mechanisms in relation to any activity listed in Appendix 2?
- Are there any land use restrictions on the subject land relating to possible contamination, such as notices issued by the EPA or other regulatory authority?
- Does a site inspection conducted by the planning authority [optional] suggest that the site may have been associated with any activities listed in Appendix 2?
- Is the planning authority aware of information concerning contamination impacts on land immediately adjacent to the subject land which could affect the subject land?

## APPENDIX 2 – SOME ACTIVITIES THAT MAY CAUSE CONTAMINATION

**Source:** Managing Land Contamination Planning Guidelines SEPP 55 - Remediation of Land, 1998, Department of Urban Affairs & Planning (now NSW Department of Planning and Environment) and NSW Environment Protection Authority – Table No.1

acid/alkali plant and formulation  
agricultural/horticultural activities  
airports  
asbestos production and disposal  
chemicals manufacture and formulation  
defence works  
drum re-conditioning works  
dry cleaning establishments  
electrical manufacturing (transformers)  
electroplating and heat treatment premises  
engine works  
explosive industry  
gas works  
iron and steel works  
landfill sites  
metal treatment  
mining and extractive industries  
oil production and storage  
paint formulation and manufacture  
pesticide manufacture and formulation  
power stations  
railway yards  
scrap yards  
service stations  
sheep and cattle dips  
smelting and refining  
tanning and associated trades  
waste storage and treatment  
wood preservation

### **APPENDIX 3 - POTENTIAL SOURCES OF SITE HISTORY INFORMATION FOR PRELIMINARY SITE INVESTIGATIONS (STAGE 1)**

- Past aerial photographs
- Council records - town planning, development and building applications, complaints, pollution incident reports
- Local Historical Publications
- Current and previous site owners
- Current and previous site workers
- Long-term residents
- Past and Present Telephone Books
- Noxious Trades Act register of Noxious Trades
- Street Directories
- NSW Environment Protection Authority Section 35 Notices, past and present scheduled premises, unhealthy building land
- Trade Waste Agreements
- SafeWork NSW
- Integral Energy sites containing present and past electrical substations

#### APPENDIX 4 - USEFUL REFERENCES

Australia and New Zealand Environment Conservation Council and National Health and Medical Research Council (1992). *Australian and New Zealand Guidelines for the Assessment and Management of Contaminated Sites*. ANZECC & NHMRC, Canberra.

Environment Protection Authority (1994). *Contaminated Sites: Guidelines for Assessing Service Station Sites*. EPA, Sydney.

Environment Protection Authority (1995). *Contaminated Sites: Sampling Design Guidelines*. EPA, Sydney.

Environment Protection Authority (1996). *Environmental Guidelines: Solid Waste Landfills*. EPA, Sydney.

Environment Protection Authority (1999). *Environmental Guidelines: Assessment, Classification and Management of Non-Liquid Wastes*. EPA, Sydney.

Environment Protection Authority (1997). *Guidelines for Consultants Reporting on Contaminated Sites*. EPA, Sydney.

Environment Protection Authority (1998). *Contaminated Sites: Guidelines for the NSW Site Auditor Scheme*. EPA, Sydney.

Environment Protection Authority (1999). *Guidelines on Significant Risk of Harm from Contaminated Land and the Duty to Report*. EPA, Sydney.

Department of Urban Affairs and Planning and the Environment Protection Authority (1998). *Managing Land Contamination: Planning Guidelines SEPP55 – Remediation of Land*. DUAP, Sydney.

NSW Government (1998). *State Environmental Planning Policy No. 55 – Remediation of Land*. NSW Government Gazette 126 of 28 August 1998.

Southern Sydney Regional Organisation of Councils (1999). *Model Policy on Contaminated Land*.

Newcastle City Council (March 2002). *Development Control Plan No. 43 – Contaminated Land Management and Remediation*.