

Contaminated Land Policy

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AUTHORITY	Council
CONTACT OFFICER	Director Planning and Growth

1 PURPOSE

1.1 The Contaminated Land Policy is made under the *Managing Land Contamination Planning Guidelines 1998* as notified in accordance with Schedule 6 of the *Environmental Planning and Assessment Act 1979* (EP&A Act). Council is taken to have acted in good faith where it acts substantially in accordance with these Guidelines. The Policy will, together with the Contaminated Land Management Plan (CLMP):

- i. Restrict the use of land under particular circumstances;
- ii. Determine how information is managed;
- iii. Identify when potential contamination is notified on Section 10.7 Planning Certificates;
- iv. Outline requirements for remediation;
- v. Set standards for consultants that report on contaminated land; and
- vi. Define when a site audit is required

2 SCOPE

2.1 The Policy will apply to all land with respect to the investigation and remediation of land contamination in relation to making planning decisions, keeping and providing relevant information and the monitoring of remediation.

3 DEFINITIONS

3.1 For the purposes of this Policy, the following definitions apply:

Term	Definition
Act	<i>Environment Planning and Assessment 1979</i>

4 POLICY STATEMENT

4.1 Restrictions on Land

4.1.1 Where Council is aware of any past or present potentially contaminating land uses or activities (as described in the CLMP) it will maintain relevant information about the land on which that use or activity occurred or is occurring to ensure:

- i. That land owners and other interested parties may be made aware of those uses; and
- ii. That Council can assess land contamination issues and monitor remediation under *State Environmental Planning Policy 55 Remediation of Land* (SEPP 55). The information held is intended to aid decision-making regarding contaminated land investigations, land use planning and development consents. This Policy will restrict the use of land by:
 - a. Requiring remediation or assessment of land contamination before consent can be granted for any development on that land or before the land can be rezoned; and
 - b. Enforcement of restrictions that, in the opinion of the consultant or auditor, are required through the imposition of a site management plan that may be imposed on the land following remediation.

4.1.2 This Policy relates to those land uses that have a reasonable potential to result in land contamination and which therefore may need to be addressed during development. The list of potentially contaminating land uses and activities are listed in Appendix A.

4.2 Information Access and Management

- 4.2.1 While Council will endeavour to develop and maintain a comprehensive collection of relevant information, it does not guarantee the completeness or accuracy of all the information held. Information that has not been required to be provided to, or kept by, Council may not be available for any given property at any given time. Council will hold information in a dedicated information system known as the Contaminated Land Register (the Register). Land will be included on the Register on the basis of past land use. In accordance with the information held, each parcel on the Register will be classified into one of five investigation statuses being:
- i. Identified;
 - ii. Assessed;
 - iii. Site Management Plan;
 - iv. Suitable for Limited Use; or
 - v. Unrestricted.
- 4.2.2 Information on the Register may be provided to any person in the form of a Section 10.7 Planning Certificate in accordance with the EP&A Act or a person with a valid interest may seek to view:
- i. Information contained in the Register; and
 - ii. Contamination reports held by Council. However, due to Council's privacy requirements and copyright restrictions (including the legislative requirements of the *Government Information (Public Access) Act 2009* (GIPA Act) and *Privacy and Personal Information Protection Act 1998* (PPIPA Act), Council may not be able to provide all information it holds.
- 4.2.3 Information provided on the Section 10.7(2) Planning Certificate shall include the restriction on the land as relevant to the investigation status on the Register. A notice will be placed on the Section 10.7(5) Planning Certificate where:
- i. The site is known to be subject to the *Protection of the Environment (Underground Petroleum Storage Systems) (UPSS) Regulation 2014* as regulated by Council;
 - ii. The land has been used for specific purposes listed in Appendix A;
 - iii. Council is in possession of contamination assessment reports;
 - iv. Council is in possession of a Site Audit Statement;
 - v. Remediation has been approved in accordance with SEPP 55; and
 - vi. Remediation has been notified in accordance with SEPP 55. Other information pertaining to the *Contaminated Land Management Act 1997* (CLM Act) will be provided as required by that Act and the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*. As a minimum requirement for all development applications and planning proposals, a list of former land uses should be provided to the best of the applicant's knowledge.

4.3 Rezoning

- 4.3.1 The rezoning of land is controlled by Part 3 Division 4 of the EP&A Act. A planning proposal is prepared by Council and submitted for consideration and determination by the Minister (gateway determination). A gateway determination will determine what further studies may be required.
- 4.3.2 Clause 6 of SEPP 55 has the effect of requiring the consideration of contamination before preparing a planning proposal that would have the effect of zoning or rezoning land. In order to assess the potential for land contamination, Council will need a thorough land use history for the site with reference to the potentially contaminated land uses and activities defined in this Policy.
- 4.3.3 Preliminary site investigations may be required prior to the preparation of the planning proposal if such an investigation can reasonably be carried out. A planning proposal may also recommend that further contamination investigations are carried out. Council must have regard to a preliminary site investigation, where such an investigation has been carried out or it is practicable that such an investigation can be carried out, before making a planning proposal where:
- i. The land is declared significantly contaminated land under Part 3 of the CLM Act;
 - ii. An activity referred to in Appendix A is being carried out on the land;
 - iii. Council's records show that an activity or use referred to in Appendix A has been carried out on the land; or
 - iv. Council has incomplete records about the use of the land, and the land is proposed to be used for residential, educational, recreational, childcare or hospital purposes (either as a dominant or ancillary use), and during the periods not covered by those records it would, according to the uses formerly permitted on the land, have been lawful to carry out an activity referred to in Appendix A.
- 4.3.4 If a planning proposal proposes to change a land use zone in a local environmental plan:
- i. For a particular parcel of land, it would not be appropriate to proceed with the planning proposal unless the land was proven suitable for all kinds of development that would be permitted in the new zone or for the development contemplated in the planning proposal or it could be demonstrated that the land could, and would, be remediated to make the land suitable; or
 - ii. For a large area of land (Generalised Rezoning), the planning proposal should seek to adopt measures in the Local Environmental Plan or Development Control Plan to ensure that the potential for contamination and the suitability of the land for any proposed use are assessed before any development consent within the rezoned land is granted.
- 4.3.5 If a preliminary site investigation indicates that contamination would make land unsuitable for particular uses, and:
- i. The land may be appropriately remediated for those uses, provisions are needed in the Local Environmental Plan or Development Control Plan to require the remediation before those uses can occur.
 - ii. Where remediation may not be appropriate for those uses, either the planning proposal should not proceed or the range of permissible uses should be restricted in the Local Environmental Plan for that land use zone; that is, the land use options should be reconsidered. Information on contamination possibilities can be used to locate uses according to land suitability, for example, sensitive uses only being allowed in areas of low contamination probability.

4.4 Development Assessment

4.4.1 Pre Development Application Meeting

4.4.1.1 A pre Development Application (DA) meeting is encouraged between Council staff and a potential applicant to discuss the matters that need to be considered under heads of consideration (s. 4.15 (1) EP&A Act), the Local Environment Plan and the Development Control Plan for Council.

4.4.1.2 A pre DA meeting is not a planning function covered by Schedule 6 of the EP&A Act, and any advice provided regarding land contamination matters is subject to the same limitations and liabilities as any other advice provided in a pre DA meeting.

4.4.1.3 Council's advice in a pre DA meeting should acknowledge:

- i. That the potential for land contamination must be considered for each and every Development Application;
- ii. That any pre-existing reports, studies or site audit statement need be considered in terms of the specific development proposal;
- iii. Whether or not the pre-existing reports or studies will meet the reporting requirements of Council at the time the Development Application is lodged. After acknowledging the factors above, Council may be able to provide advice as to whether any further site assessment is required in order to assess the specific proposal.

4.4.1.4 However, Council may not prejudice the assessment of suitability of the site for that proposed use. The provisions of the development assessment section may be applied regardless of any advice provided during any pre DA meeting.

4.4.2 Development Assessment consideration of contamination

4.4.2.1 Upon receipt of a DA in respect of any land SEPP 55 (cl. 7(1)) requires that land contamination must be considered. Any statement of environmental effects or environmental impact statement should address the historical uses of the land.

4.4.2.2 Land contamination shall be considered by Council's assessing officer by:

- i. Referring to the Contaminated Land Information System (CLIS) to determine if any information is held by Council regarding the potential for land contamination;
- ii. Considering the past known uses for the land having regard to the potentially contaminating land uses listed in Appendix A, and if there is an opportunity confirm past uses through a records search or seeking relevant information from the proponent;
- iii. Consideration of evidence of possible land contamination or potentially contaminating activities discovered during a site inspection relating to the Development Application; or
- iv. Considering information received through the public consultation process. Where land has been remediated in the past, the issue of land contamination must again be considered for any subsequent Development Application. Council will need to ensure that any remediation that has been carried out is appropriate in terms of the specific development proposal.

4.4.2.3 Council will need to determine if the remediation standards meet the requirements of the proposed use, if the standards have changed since the time of the remediation or if there is any residual contamination that may cause concern for the new proposal.

- 4.4.2.4 Where the information held by Council is not sufficient to determine if the land is suitable for the proposed development, relevant information, studies, investigations and or reports will be requested to assist in making the determination. Changes of use on contaminated land may proceed provided that:
- i. The land is suitable for the intended use; or
 - ii. Conditions are attached to the development consent to ensure that the subject land can and will be remediated to a level appropriate to its intended use prior to or during the development stage.
- 4.4.2.5 When considering the suitability of the land for development under s. 4.15 (1) of the EP&A Act, the risk to health and the environment from contamination must be included in this assessment. This includes risks during the construction and operation of the development. The former includes work safety issues as well as the potential for construction to disturb contamination and cause off-site movement of chemicals.
- 4.4.2.6 The Planning Guideline sets out the four stages of the contamination investigation process and all references to contamination investigations and reports should use the descriptions in the Planning Guideline, the national environment protection measures or this Policy.
- 4.4.2.7 In order to assess or determine the Development Application, information may be requested that does not constitute a contamination investigation as specified in the Planning Guideline or the national environment protection measures. In that case the requirements of the Contaminated Land Consultants section may not apply. Such information may include:
- i. Confirmation of past land uses;
 - ii. Plans identifying where certain activities have taken place; or
 - iii. Oral history of the use of the land.
- 4.4.2.8 This type of information should be accompanied by a Statutory Declaration from the person providing the information. If a development consent can be granted without the need to carry out any formal contaminated site investigation or remediation (for example, due the nature of the development or the circumstances of the potential contamination, such as contamination that is present under a building that it not being demolished), but there is a risk that physical evidence of past, potentially contaminating activities will be destroyed if the development goes ahead, then a photographic survey and oral history of the use of the land may be required to be submitted to Council for its records.
- 4.4.3 Triggers for preliminary site investigation
- 4.4.3.1 As a minimum requirement, a preliminary site investigation will be required when considering a development application for land on which Council:
- i. Has knowledge of a potentially contaminating land use specified in Appendix A having occurred; or
 - ii. Has reasonable grounds to believe the land may be contaminated because of the land's history, condition or other information known to Council, and one or more of the following circumstances have occurred:
 - a. The circumstances suggest that the past use could reasonably have significantly contaminated the site;

- b. The proposed development will involve any disturbance of soil including boring or trenching for foundations or services;
- c. The contaminating activity that potentially caused contamination on the land involved illegal or unauthorised work;
- d. The proposed development will include construction over land that may be contaminated;
- e. The proposed development will interfere with groundwater; or
- f. The potential contamination is from an underground petroleum storage system (not including operating sites subject to the UPSS regulation).

4.4.3.2 The triggers specified above are in addition to the minimum assessment criteria set by the SEPP 55 in cl. 7(2)-(4).

4.4.3.3 Note: land used for extensive agriculture should be assessed for site contamination where development applications relate to redevelopment in the vicinity of stock yards, stock dip or farm sheds where fuel or chemicals have been stored or handled.

4.4.4 Conditions of consent requiring remediation

4.4.4.1 Where a development will require remediation so that the site can be suitable for the proposed use the development consent may include conditions that require remediation and validation as well as a site management plan and site audit statement. Such conditions may be included as Deferred Commencement Conditions.

4.4.5 Unexpected findings protocol

4.4.5.1 In circumstances where land contamination has not been able to be identified prior to a development being approved and contamination or infrastructure is uncovered during development, work should cease and Council should be advised immediately.

4.4.5.2 Please be aware that in managing any unexpected finding of contamination, the provisions of SEPP 55 apply and modification to the development consent or a new development consent application may need to be considered.

4.5 Remediation

4.5.1 To ensure that contamination and remediation can be effectively managed and monitored for the benefit of the community, Council's standards for the conduct of remediation and reporting of contaminated land matters are as detailed below. Any remediation carried out as Category 2 remediation (carried out without consent, SEPP 55) must:

- i. Be notified to Council in writing, including all information required by cl. 16 of SEPP 55;
- ii. Be accompanied by a copy of the Remediation Action Plan (RAP); and
- iii. Comply with the Conduct of Remediation as detailed in the CLMP.

4.5.2 Underground Storage Tanks that are not regulated by the *Protection of the Environment (Underground Petroleum Storage Systems) (UPSS) Regulation 2014* must not be removed without validation sampling and laboratory analysis in accordance with appropriate guidelines.

4.5.3 Following any remediation, it is required that:

- i. A validation report be provided within 30 days of completion of the work (except where legislation or a development consent permits another time period); and
- ii. As specified in cl. 18, SEPP 55, a Notice of Completion is provided (which may be incorporated into the Summary Report, as specified in the CLMP, if provided with a complete validation report).

4.6 Consultants' Reports

- 4.6.1 All reports regarding the assessment of site contamination must be prepared by a suitably qualified person and be completed in accordance with the relevant reporting guidelines; currently, the NSW Office of Environment and Heritage's *Guidelines for Consultants Reporting on Contaminated Sites 2011*.
- 4.6.2 All reports must reference Council's Policy and Contaminated Plan Management Plan and specifically refer to any conditions for remediation and should not have liability exclusions that prevent Council from relying on the information provided for carrying out its functions including maintaining and sharing information in accordance with this Policy.
- 4.6.3 Reports provided to Council should contain factual information and avoid subjective opinion, language or analysis that has the potential to mislead Council or a third party to whom the report may be disclosed under s. 10.7 (5) of the EP&A Act.
- 4.6.4 All reports submitted to Council after 1 April 2017 for the purposes of fulfilling the SEPP 55 and the UPSS Regulation are to be prepared, or reviewed and approved, by a consultant who is certified under a Contaminated Land Consultant Certification Scheme recognised by the NSW Environment Protection Authority (EPA).

4.7 Summary Reports

- 4.7.1 Council requires that any Assessment of Site Contamination Report be accompanied by a Summary Report which provides a succinct overview of the site investigation or remediation on the parcel of land. A Summary Report cannot be relied upon solely for decision making under SEPP 55.

4.8 Site Audits

- 4.8.1 Under this Policy, a Site Audit Statement will be required for reports on sites.
- 4.8.2 Where Modified investigation threshold levels are used;
 - i. A risk assessment is relied upon for determination of suitability;
 - ii. A groundwater assessment (in accordance with UPSS Guidelines) is not carried out where underground tanks or infrastructure has been identified;
 - iii. A Site Management Plan is to be imposed;
 - iv. Council does not accept the consultant's recommendation; or
 - v. Council considers it necessary.

4.9 Site Management Plan (SMP)

- 4.9.1 A SMP is required when contamination is to remain onsite. The SMP should be developed in consultation with Council to determine that it can be reasonably complied with and enforced. It should make provisions for Council to carry out checks of relevant compliance. Where there is a SMP and where Council is able to do so, Council will require the owner or proponent to register a covenant on title requiring compliance with the SMP.

5 VARIATION

- 5.1 Council reserves the right to vary the terms and conditions of this Policy subject to a report Council.

6 APPENDICES

- 6.1 This Policy is supported by the following appendices:

Appendix No.	Description
1	Potentially Contaminating Land Uses

APPENDIX 1

Potentially Contaminated Land Uses

The following land use definitions generally relate to the land use definitions used in the Standard Instrument—Principal Local Environmental Plan. Additional definitions and comments are included in the table to assist in identifying the potential to contaminate land from that land use.

Note: * Should only be used where specific information about the site is available

Grouping	Potentially contaminating land use	Definitions or comments
Agriculture	Aquaculture	Cultivating or keeping fish or marine vegetation for commercial purposes; <i>Fisheries Management Act 1994</i> .
	Extensive agriculture*	Used to capture farm shed activities such as chemical storage and handling.
	Food manufacturing	All types of food and drink manufacturing that may have included boilers or cooking, needs to be at reasonable scale.
	Intensive livestock agriculture	Vineyards, orchards, irrigation cropping, turf farming.
	Livestock processing industries	Production of products derived from the slaughter of animals (including poultry) or the processing of skins or wool of animals, and includes abattoirs, knackeries, tanneries, wool scours and rendering plants.
	Rural supplies	Store large quantities of chemicals but should be only applied where chemicals are decanted or repackaged on site.
	Sheep and cattle dips	Public or private facilities.
	Stock and sale yards	Associated with waste, wash-down facilities and stock dips or other pest treatments.
	Tanning and associated trades	
Asbestos	Asbestos Disposal*	Where asbestos containing material has been buried for permanent disposal.
	Asbestos production and disposal	Includes mining and asbestos product manufacturing.
	Demolition without asbestos clearance	A building with significant ACM demolition without providing an asbestos clearance.
Chemical	Acid/alkali plant and formulation	
	Battery manufacture, storage and recycling	Commercial scale storage of used batteries.
	Chemical storage facilities	Includes the bulk storage and handling of chemical in associated with other activities.
	Chemicals manufacture and formulation	
	Defence works	UXOs, fuels and chemical use or storage.
	Dry cleaning establishments	
	Hospitals	Incinerators and boilers, radioactive wastes.
	Laboratory	Place equipped to conduct specific experiments, tests, investigations, etc., or to manufacture chemicals, medicines, or the like, includes large scale photographic labs etc.

Grouping	Potentially contaminating land use	Definitions or comments
	Paint formulation and manufacture	
	Paper and printing works	Commercial printeries with significant stores of ink and solvents.
	Pesticides manufacture and formulation	
	Wood preservation	
Fuel	Liquid fuel depots	
	Oil production and storage	Oil refineries.
	Service stations	
	Store and dispense 450L or more of fuel or oils	Fuel storage on land where primary land use is not otherwise listed.
Industry	Cement works	
	Drum re-conditioning works	
	Electrical manufacturing (transformers)	
	Electroplating and heat treatment premises	
	Engine works	Manufacture of engines.
	Explosives industry	Includes explosives, magazines, ammunition and fireworks manufacture and testing.
	Gas works	
	Heavy industrial storage establishment	Storage of goods, materials, plant or machinery for commercial purposes.
	Heavy industrial workshops and metal fabrication	Includes welding, sand blasting and spray painting.
	Iron and steel works	
	Metal treatment	
	Mining and extractive industries	Including mineral or ore processing or coal washing etc.
	Paper pulp or pulp products industries	
	Pet food manufacturing	As distinct from food manufacturing.
	Power stations	
	Sawmill or log processing works	Relating to often being off grid using steam or liquid fuel driven machinery, also drying kilns and use of pesticides.
	Small engine service and repairs	Lawnmowers and other small engine not considered motor vehicles.
	Smelting and refining	
Storage of plant and equipment	Generally informal storage of equipment that may lead to land contamination.	
Vehicle body repair workshops	Panel beaters and spray painting.	
Transport	Air transport facilities	Includes heliports and all ancillary buildings.
	Emergency services facilities	Police, Ambulance, Fire and SES often have fuel storage.
	Freight transport facility	
	Motor vehicle service and repairs	Including cars sales yards and tyre shops.
	Railway yards	
	Truck or transport depots	Place used for the servicing and parking of trucks, earthmoving machinery and the like.
	Vehicle washing	Where involved in truck washing or engine degreasing for the public or as a standalone operation.

Grouping	Potentially contaminating land use	Definitions or comments
Waste	Contaminated soil and groundwater treatment works	
	Junk yard	Land used for the collection, storage, abandonment or sale of scrap metals, waste paper, bottles or other scrap materials or goods, or land used for the collecting, dismantling, storage, salvaging, or abandonment of cars or other vehicles or machinery or for the sale of their parts.
	Landfill sites	Sites used for the disposal of waste
	Oil recycling	
	Scrap yards	
	Sewage treatment plants	
	Site use for illegal waste disposal	
	Use of uncertified fill	Land has been levelled or reshaped with fill material that has not been certified as suitable and/or the filling has not been approved.
Other	Waste storage and treatment	
	Commercial or industrial fixed plant with liquid fuels, e.g. generator sets Rifle or shooting range.	

Revision History

Version	Adoption Date	Authorised by	Approved by	Revision Date
1	17/10/2019	General Manager	Council	17/10/2021
2	17/10/2019	General Manager	Council	17/10/2021

Change History

Version	Change Details
1	Initial Policy (Public Exhibition for 42 days resolution 295/2019). Adopted by Council following public exhibition (no submissions received).
2	Document rebranded to new style. No change to content.

Related Documents

Title
<i>Managing Land Contamination Planning Guidelines 1998</i>
<i>Environmental Planning and Assessment Act 1979</i>
<i>Contaminated Land Management Plan</i>
<i>State Environmental Planning Policy 55 Remediation of Land</i>
<i>Contaminated Land Register</i>
<i>Government Information (Public Access) Act 2009</i>
<i>Privacy and Personal Information Protection Act 1998</i>
<i>Contaminated Land Management Act 1997</i>
<i>State Environmental Planning Policy (Exempt and Complying Development Codes) 2008</i>
<i>Forbes Development Control Plan</i>
<i>Forbes Local Environmental Plan 2013</i>
<i>Protection of the Environment (Underground Petroleum Storage Systems) (UPSS) Regulation 2014</i>
<i>Guidelines for Consultants Reporting on Contaminated Sites 2011 *(NSW Office of Environment and Heritage).</i>