

SSROC Model Policy on Contaminated Land

SSROC Environmental Management Group

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This policy is a model only and may be changed prior to adoption by individual councils. It was prepared by the SSROC Contaminated Land Working Group, a sub-group of the Environmental management Group, with assistance from the EPA Sydney Region Local Government Section.

This paper may be copied for educational and research purposes, with due acknowledgement to SSROC.

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ABBREVIATIONS

ANZECC	Australian and New Zealand Environment and Conservation Council
BTEX	Benzene/Toluene/Ethylbenzene/Xylene
DA	development application
d(BA)	Decibels – A weighted
DCP	development control plan
DLWC	Department of Land and Water Conservation
EPA	NSW Environment Protection Authority
HCB	Hexachlorobenzene
LEP	local environmental plan
LGA	local government area
NEHF	National Environmental Health Forum
RAP	remedial action plan
PAH	Polycyclic Aromatic Hydrocarbons
PCB	Poly chlorinated biphenol
SEPP 55	State Environmental Planning Policy No. 55 – Remediation of Land
SSROC	Southern Sydney Regional Organisation of Councils
TPH	total petroleum hydrocarbons

1. INTRODUCTION

This policy forms the basis for the management of land contamination within <<<<<<< Council. The policy is made as a policy under the *Managing Land Contamination: Planning Guidelines* (August 1998) and State Environmental Planning Policy No.55 - Remediation of Land (SEPP 55) in order to implement a contaminated land management framework within <<<<<<< Council. It applies to all land in <<<<< Council.

In accordance with 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 that 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's intervention in relation to contaminated land is triggered when land contamination poses a significant risk of harm to public health or the environment (s. 7 *Contaminated Land Management Act 1997*). Generally, sites not posing a significant risk of harm will be dealt with by <<<<<< Council under the provisions of the *Environmental Planning and Assessment Act 1979*, in accordance with *Managing Land Contamination: Planning Guidelines* and SEPP 55.

Council 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 s. 145B and s.145C of the *Environmental Planning and Assessment Act*.

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.

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 from the existing use unless:

- Council has considered whether the land is contaminated, and
- if the land is contaminated, Council is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for all the purposes 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 that 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,

(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 and Planning & NSW Environment Protection Authority which is reproduced in Appendix 1]

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 applications is shown in Figure 1.

2.2.1 Spot Rezoning

When Council receives a 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 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 may include provisions in a LEP or DCP to ensure that the potential for contamination and the suitability of the land for any proposed use is further addressed prior to the redevelopment of the land.

2.3 Council Procedures for Subdivision and Development Applications

From 1 July 1998 s. 79C(1) 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.

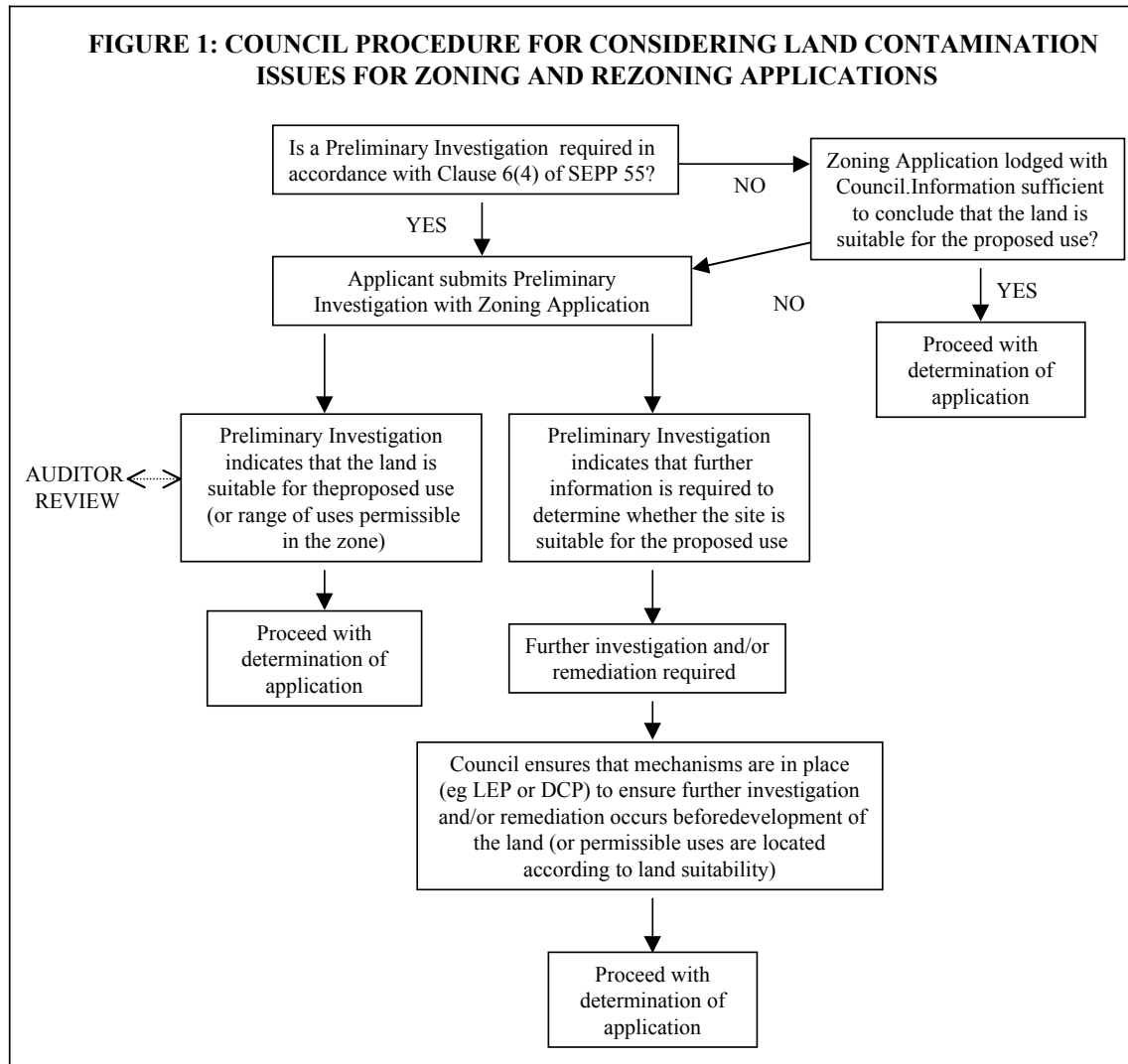
In accordance with clause 7 of SEPP 55, Council will not consent to the carrying out of any development on land unless:

“(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.

2.3.1 When Does Council Require a Preliminary Site Contamination Investigation (Stage 1)?

The objectives of a preliminary investigation 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.

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,

(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*

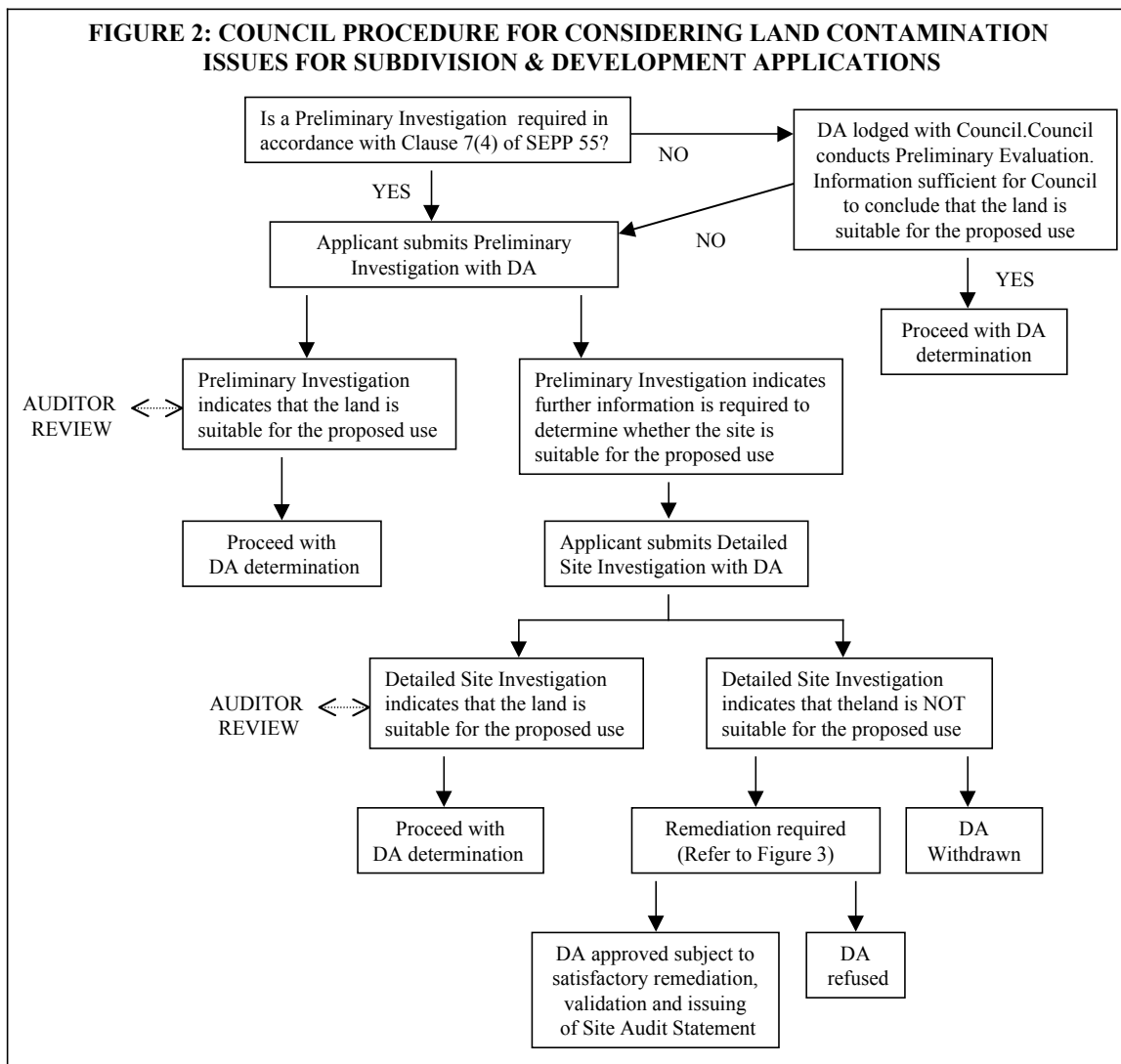
(ii) on which it would have been lawful to carry out such development during any period in respect of which there is no knowledge (or incomplete knowledge).”

[NOTE: Table 1* in the *Managing Land Contamination Planning Guidelines* 1998, Department of Urban Affairs and Planning & NSW Environment Protection Authority which is reproduced in Appendix 1]

In addition to the requirements outlined in clause 7(4) of SEPP 55, Council may also require a preliminary investigation to be 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.
- 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.

There are restrictions on, or conditions attached to, the use of the site by a regulatory or planning authority that are, or may be, related to contamination, but there is insufficient information available about the nature and extent of contamination.



- Council records have demonstrated that the site is associated with pollution incidents or illegal dumping of wastes.
- The site is adjoining land that has been associated with activities that may cause contamination listed in Appendix 1 and it is likely that 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 Chapter 5 – Independent Auditing).

A list of information sources that may be useful in understanding the history of the site is included in Appendix 2. Applicants may also request Council to perform a search of its records to determine previous approved developments at the site (see Chapter 6 – Council Records and Community Information).

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

2.3.2 When Does Council Require a Detailed Site Contamination Investigation (Stage 2)?

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).

Council will require a detailed site contamination investigation to be undertaken when the results of the preliminary investigation demonstrate the potential for, or existence of contamination which may not be suitable for the proposed use of the land. In some cases Stage 1 and Stage 2 investigations may be combined where the land is known to contain or have contained a potentially contaminating activity.

The detailed 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 detailed site contamination investigation. In addition, the proponent is responsible for all costs borne in engaging the consultant and site auditor (see Chapter 5 – Independent Auditing).

The detailed site contamination investigation should include a statement which 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.

2.3.3 When Does Council require a Remedial Action Plan (RAP)?

The objectives of a remedial action plan (RAP) are to:

- set remediation objectives;
- determine the most appropriate remedial strategy;
- identify necessary approvals that need to be obtained from regulatory authorities.

The RAP 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.

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 present 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.

2.3.4 When Does Council require a Validation and Monitoring Report?

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 that conducted the site investigation and remediation process. Validation must confirm statistically that the remediated site complies with the clean-up criteria set for the site.

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 that remediation and validation is undertaken prior to other work commencing.

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 Chapter 4 is category 1 remediation work which requires Council consent.

Council's procedure for considering site remediation proposals is shown in Figure 3.

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 s. 29A of the *Environmental Planning and Assessment Act*.

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.

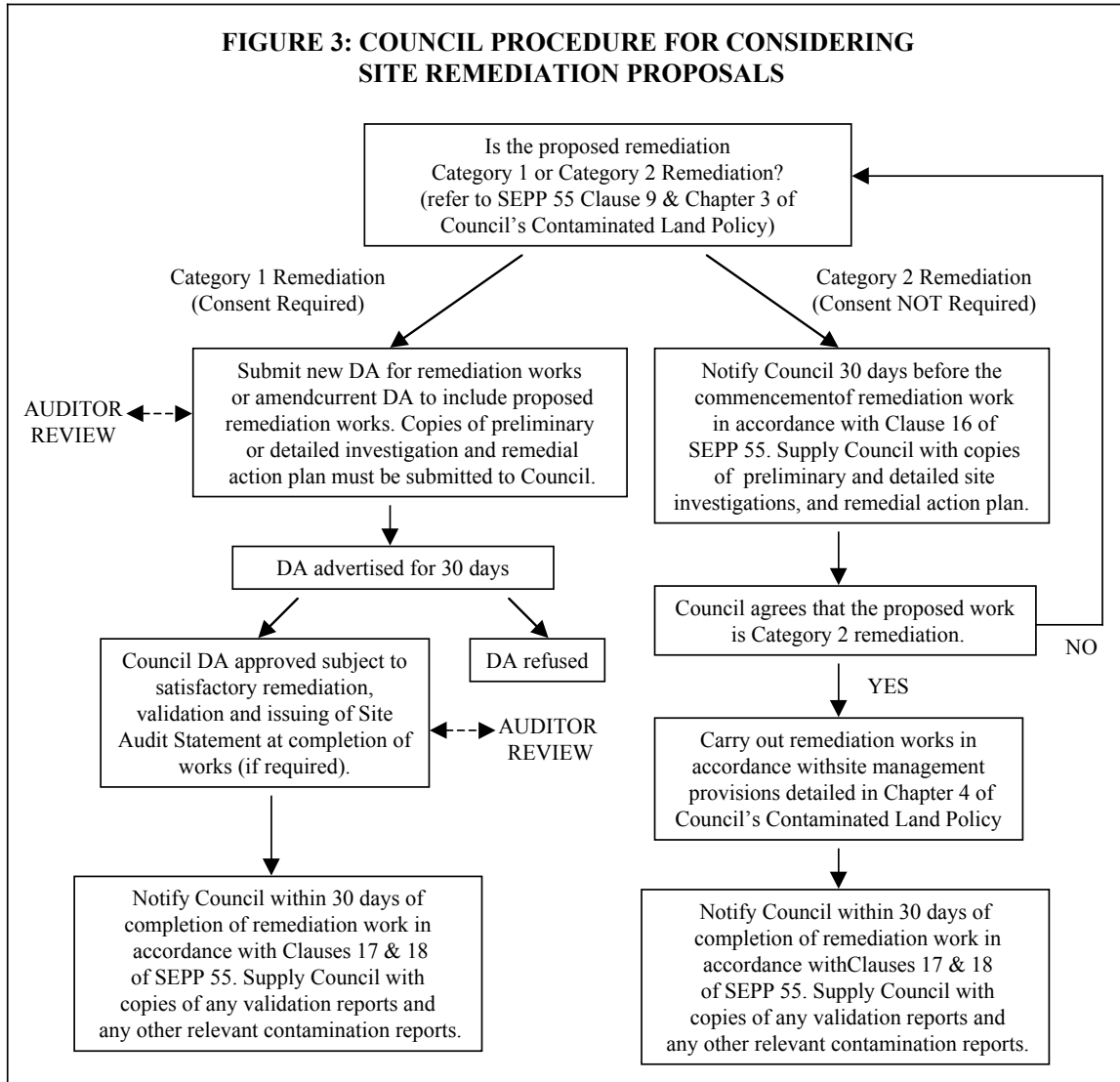
3.2 Category 2 Remediation Work

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 14 days prior to the commencement of category 2 remediation works:

- X copies of any Preliminary Investigation, Detailed Investigation and Remedial Action Plan for the subject site.
- X 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. 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 that 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 <<<<<<< 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

The Southern Sydney Regional Organisation of Councils brochure A Soil and Water Management for Urban Development outlines Council's requirement for the preparation of a soil and water management plan. All remediation works shall be conducted in accordance with a soil and water management plan. 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 washings 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 also be analysed for suspended solid concentrations, 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.

Other options for the disposal of excavation pump-out water include disposal to sewer with prior approval from Sydney 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 landfarming areas for hydrocarbon contaminated soils shall be bunded to contain surface water runoff from the landfarm 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 Environment Protection Authority Environmental Noise Manual for the control of construction site noise which specifies that:

- For a cumulative period of exposure to construction activity noise of up to four weeks, the LA10 (15 minutes) emitted by the works to specific residences should not exceed the LA 90 background level by more than 20 dBA.
- For a cumulative construction noise exposure period of between four to 26 weeks, the emitted LA10 noise level should not exceed the LA90 level by more than 10 dBA.
- For a cumulative construction noise exposure period greater than 26 weeks, the emitted LA10 noise level should not exceed the LA90 level by more than 5 dBA.

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 or capable of being measured 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 that 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 offgas 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 Department of Land and Water Conservation for approval to extract groundwater under the provisions of *Part V* of the *Water Act, 1912*.

Groundwater shall be analysed for 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.

Other options for the disposal of groundwater include disposal to sewer with prior approval from Sydney 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 may consult Council prior to selecting the most suitable transport route. A map showing the state roads in the <<<<<< LGA is provided in Figure 4.

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 NSW EPA and WorkCover Authority, together with the relevant regulations, namely:

- (a) *New South Wales Occupational Health and Safety Act 1983;*
- (b) *Regulation 84A-J "Construction Work Involving Asbestos Or Asbestos Cement" 1983, as amended 1984, 1986, 1990 and 1996 of the New South Wales Construction Safety Act 1912;*
- (c) *Occupational Health and Safety (Hazardous Substances) Regulation 1996;*
- (d) *Occupational Health and Safety (Asbestos Removal Work);*
- (e) *Contaminated Land Management Act and Regulations; and*
- (f) *Environmentally Hazardous Chemicals Act and Regulations.*

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

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 Non-Liquid Wastes (1997).

Any queries associated with the off-site disposal of waste from a contaminated site should be referred to the EPA's Hazardous Materials Advice Unit on (02) 9325 5784. 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 NSW 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 NSW are contained in the EPA's *Guidelines for the NSW Site Auditor Scheme*.

4.11 Importation of Fill

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

all Occupational Health and Safety and Construction Safety Regulations of the NSW WorkCover Authority. Safety monitoring for hydrocarbon emissions should be undertaken in accordance with Worksafe Time Weighted Averages Guidelines, 1991.

4.16 Removal of Underground Storage Tanks

The removal of underground storage tanks shall be undertaken in accordance with NSW WorkCover requirements which includes writing to the Chief Inspector of Dangerous Goods and complying with any conditions imposed. The tank removal shall be conducted in accordance with the Australian Institute of Petroleum's Code of Practice "The Removal and Disposal of Underground Petroleum Storage Tanks (AIP CP22-1994). In the event of conflict between the Code of Practice and NSW WorkCover requirements, the latter shall prevail.

5. INDEPENDENT AUDITING

5.1 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 a NSW EPA accredited auditor for contaminated land. An up-to-date list of NSW EPA accredited auditors can be obtained on the EPA's webpage www.epa.nsw.gov.au

5.2 Site Audits

The *Section 47(1)* of the *Contaminated Land Management Act, 1997* defines a site audit as: *An independent 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 the investigation or remediation,

(iii) what investigation or remediation remains necessary before the land is suitable for any specified use or range of uses.≡

The NSW 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.

5.3 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 (eg to maintain capping). A site audit statement must be prepared on a prescribed form (see *Contaminated Land Management (Site Auditor) Regulations 1998*). When an accredited auditor for contaminated land is requested to conduct a site audit, they must also prepare a site audit statement.

Section 47(2) of the *Contaminated Land Management Act, 1997* states that “*a reference to a site*

audit carried out for the purposes of a statutory requirement is a reference to a site audit carried out in order to secure compliance with:

(a) a requirement under this Act, or

(b) 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

(c) 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 NSW 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.

5.4 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 control 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 (e.g. development application) submitted to Council. The proponent is responsible for engaging a NSW EPA accredited auditor for contaminated land to perform a site audit. In addition, the proponent is responsible for all costs borne in engaging a NSW 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 a NSW EPA accredited auditor for contaminated land early on in the site assessment process.

5.5 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 s. 47(1)(b) *Contaminated Land Management Act 1997*, the following are examples of issues that Council may request a NSW 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 is required before the land is suitable for any specified use or range of uses?
- Whether the auditor considers that the proposed remediation is adequate, and if undertaken, will render the site to be suitable for the proposed use?
- Whether it can be concluded that there is no unacceptable off-site migration of contaminants, particularly via ground water?
- Whether the contamination conditions at the site are suitable for in-ground absorption of stormwater?

Either the proponent or the appointed NSW EPA accredited auditor for contaminated land shall liaise with Council during the preparation of the site audit to ensure that 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.

6. COUNCIL RECORDS AND COMMUNITY INFORMATION

Council has an important role in supplying the community with information regarding land use history, land contamination and remediation. Council also has a statutory responsibility under s. 59 of the *Contaminated Land Management Act 1997* to include information provided to Council by either the EPA or accredited auditors on certificates issued for the purposes of s. 149 *Environmental Planning and Assessment Act 1979*.

The process of information collection about land contamination is ongoing. Information concerning contaminated land 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.

6.1 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. Registers falsely imply comprehensive knowledge of site contamination issues which 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 property files for each parcel of land. To assist Council in the management of land contamination issues the following information is recorded for individual parcels of land:

- Site contamination reports submitted to Council (i.e Preliminary Investigation, Detailed Investigation, Remedial Action Plans, Validation and Monitoring Reports).
- Site Audit Statements received by Council.
- EPA declarations and orders issued under the CLM Act (including voluntary investigation & remediation proposals agreed by the EPA).
- prior notification of category 2 remediation works.
- notification of completion of category 1 and category 2 remediation work.

6.2 Section 149 Certificates

Under s.149 of the *Environmental Planning & Assessment Act 1979*, a person may request from Council a planning certificate containing advice on matters about land that are prescribed in the Regulation. One such prescribed matter is the existence of a council policy to restrict the use of

land.

Section 149(2) certificates issued by Council will not contain specific details of site contamination or potential site contamination for individual parcels of land. Council has adopted this approach for the following reasons:

- Council records may not disclose land uses that 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 s. 149 certificates where:

“(a) the land to which the certificate relates is within an investigation area or remediation site – if it is within such an area or site at the date when the certificate is issued,

(b) the land to which the certificate relates is subject to an investigation or remediation order – if it is subject to such an order at that date,

(c) the land to which the certificate relates is the subject of a voluntary investigation proposal (or voluntary remediation proposal) that is the subject of the EPA's agreement under section 19 (or 26) if it the subject of such a proposal, and the proposal has not been fully carried out, at the date when the certificate is issued,

(d) 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 149(2) certificates issued by Council will contain information on the prescribed matters listed above, where applicable. Council will not provide any additional information in relation to site contamination issues under s. 149(5).

As well as containing information on prescribed matters, all s. 149(2) certificates issued by Council will contain the following wording about the existence of a council policy to restrict the use of land:

A Council has adopted by resolution a policy on contaminated land. This policy will restrict development of land:

(a) which is affected by contamination;

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 and when the information requested is intended to be published without prior permission of Council, the current site owner and author of the contamination reports.

APPENDIX 1 – SCHEDULE OF POTENTIALLY CONTAMINATING ACTIVITIES

Source: Managing Land Contamination Planning Guidelines SEPP 55 - Remediation of Land, 1998, Department of Urban Affairs and Planning & NSW Environment Protection Authority

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 2 - SOURCES OF SITE HISTORY INFORMATION FOR PRELIMINARY SITE INVESTIGATIONS (STAGE 1)

- X Past aerial photographs
- X Council records - town planning, development and building applications, complaints, pollution incident reports
- X Local Historical Publications - list ones relevant to your LGA
- X Current and previous site owners
- X Current and previous site workers
- X Long-term residents
- X Past and Present Telephone Books
- X Noxious Trades Act register of Noxious Trades
- X Sand=s Sydney and New South Wales Directory 1858-1932/3
- X NSW Environment Protection Authority Section 35 Notices, past and present scheduled premises, unhealthy building land
- X Sydney Water Corporation Trade Waste Agreements
- X WorkCover Authority Dangerous Goods Branch
- X Pacific Power sites containing present and past electrical substations