



# CONTAMINATED LAND POLICY

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## 1 Preamble

Contaminated land is managed by Council to minimise the impacts of past land use on the orderly development of land in the future. Land may have become contaminated by actions in the past when issues around contamination, pollution and waste management were not considered important by the community and the long-term effects of some chemicals on the environment and human health were poorly understood.

The Environment Protection Authority (EPA) is the State body that regulates contaminated land under the *Contaminated Land Management Act 1997*; however, Council has responsibility to ensure that when exercising its statutory planning functions in relation to the development of contaminated land, all the relevant information is considered.

To do this Council must:

- Consider the likelihood of land contamination as early as possible in the planning and development control process;
- Link decisions about the development of land with the information available about contamination possibilities;
- Adopt a policy approach which will provide strategic and statutory planning options based on the information about contamination; and
- Exercise statutory planning functions with a reasonable standard of care.

This policy is made to guide Council on how it will carry out its planning functions, and to provide a local context for decision making in relation to contaminated land.

This policy sets out the local requirements for Council and is predicated on the requirements of Chapter 4 ('Remediation of Land') of the *State Environmental Planning Policy (Resilience and Hazards) 2021 (Resilience and Hazards SEPP)*<sup>1</sup>, as elaborated in its contaminated land planning guidelines.<sup>2</sup>

This policy is based on the Central West Councils Regional Contaminated Land Policy Template, developed with assistance from the New South Wales Government through the EPA's Contaminated Land Management Program under funding by the NSW Environment Trust.

## 2 Policy Objectives

The purpose of this policy is to establish a framework that outlines how Council will act in good faith with the contaminated land planning guidelines when considering the

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<sup>1</sup> The content of Chapter 4 of the *Resilience and Hazards SEPP* was formerly the *State Environmental Planning Policy No.55 – Remediation of Land* guidelines for which can be found in *Managing Land Contamination: Planning Guidelines: SEPP55 – Remediation of Land*, <https://www.epa.nsw.gov.au/-/media/epa/corporate-site/resources/clm/managing-contaminated-land-guidelines-remediation.pdf>.

<sup>2</sup> These guidelines, referred to in the *Resilience and Hazards SEPP*, are those found in Schedule 6(3) of the *Environmental Planning and Assessment Act 1979*.

potential of site contamination in its land-use planning and development control decision-making processes.

The objectives of the policy are to describe how Council will keep relevant records, provide information to interested parties and make decisions regarding contaminated land. Specifically, this policy will describe how:

- Information about potentially contaminated land is collected;
- Information is to be maintained in a Contaminated Land Register(Register);
- Council will use information to appropriately manage the use of land and what information is required for the development of the land;
- Information will be provided to owners of affected land and the public;
- Information will be provided on s10.7 planning certificates;
- Council should be notified of remediation activities within its LGA;
- Clarify where Category 1 remediation activities will be identified;
- How remediation activities should be conducted;
- Consultants should report on contaminated sites;
- A Site Audit Statement may be required;
- A Site Management Plan will be enforced;
- Council will use contaminated land standards and principles to address illegal land filling;
- The Protection of the Environment (Underground Petroleum Storage Systems) (UPSS) Regulation is to be administered by Council.

### 3 Application

This policy applies to all land within the Narromine Shire Local Government Area and includes:

- 1 Where Council is duly exercising one of the following planning functions:
  - a. Preparation of a planning proposal;
  - b. Processing and determination of a development application or the modification of a development consent;
  - c. Processing and determination of an application for a complying development certificate; and
  - d. Furnishing of advice in a certificate under section 10.7; or
- 2 Where Council is:
  - a. Investigating or remedying illegal land filling; or
  - b. Administering the *Protection of the Environment Operations (Underground Petroleum Storage Systems) Regulation 2019*.

**Note:** the functions described in paragraph 2 above are not 'planning functions' to which Council is afforded protection from liability under Schedule 6 of the EP&A Act.

## 4 Policy Statement

Council will act in good faith with the *Contaminated Land Planning Guidelines* by ensuring due care and diligence in considering land contamination in Council's land-use planning and development control functions.

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

- That land owners and other interested parties may be made aware of those uses; and
- Council can assess land contamination issues and monitor remediation under *State Environmental Planning Policy (Resilience and Hazards) 2021*.

The information held is intended to aid decision-making regarding contaminated land investigations, land use planning and determinations.

This policy will restrict the use of land by:

- 1 Prescribing the circumstances where land is required to undergo some level of assessment for land contamination, or remediation, before consent can be granted for any development on that land or the land can be rezoned; and
- 2 Enforce the 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.

Council will set standards for the conduct of remediation and reporting of contaminated land matters to ensure that contamination and remediation can be effectively managed and monitored for the benefit of the community.

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. To the degree that information is not required to be provided to Council or hitherto has not been required to be kept by Council, Council may not be in possession of all the relevant information for any given property at any given time.

## 5 Abbreviations

Register	Contaminated Land Register
CLM	Contaminated Land Management
CLM Act	<i>Contaminated Land Management Act 1997</i>
DA	Development Application
DSI	Detailed Site Investigation
EPA	NSW Environment Protection Authority
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Reg	<i>Environmental Planning and Assessment Regulation 2000</i>
EPI	Environmental Planning Instrument

LEP	Local Environment Plan
NEPM	National Environmental Protection (Assessment of Site Contamination) Measure 1999
POEO Act	Protection of the Environment Operation Act 1997
PSI	Preliminary Site Investigation
RAP	Remediation Action Plan
SAS	Site Audit Statement
SEPP 55	State Environmental Planning Policy 55 - Remediation of Land
SMP	Site Management Plan
UPSS	Underground Petroleum Storage System
UST	Underground Storage Tank

## 6 Glossary

Assessment of site contamination	A formal investigation and report carried out by a contaminated land consultant in accordance with the Planning Guideline, the Reporting Guidelines or the UPSS Regulation and may include a preliminary site investigation, a detailed site investigation, a remediation action plan or a validation report.
Category 1 remediation	As defined in <i>Resilience and Hazards SEPP</i> , being remediation that requires development consent.
Category 2 remediation	As defined in <i>Resilience and Hazards SEPP</i> , being remediation that may be undertaken without development consent.
Contaminated Land	In regard to Council's responsibilities: The Management management of records relating to past or present land use, assessment of site contamination, provision of relevant information, monitoring of remediation and the determination of suitability for rezoning and development consents as described within this policy.
Contamination	As defined in EP&A Act: <b>contaminated land</b> means land in, on or under which any substance is present at a concentration above the concentration at which the substance is normally present in, on or under (respectively) land in the same locality, being a presence that presents a risk of harm to human health or any other aspect of the environment or in CLM Act: <b>Contamination</b> of land, for the purposes of this Act, means the presence in, on or under the land of a substance at a concentration above the concentration at which the substance is normally present in, on or under (respectively) land in the same locality, being a presence that presents a risk of harm

	to human health or any other aspect of the environment. Note: Contamination and Pollution have similar statutory definitions, and while Council has statutory powers to regulate pollution (in particular under the <i>Protection of the Environment Operations Act 1997</i> ) this policy is primarily concerned with contamination. A pollution incident is considered to be a matter that is dealt with in the short term by the relevant powers. Pollution can result in contamination if the pollution is not cleaned up in the short term or Council does not become aware of the issue within a reasonable time to be able to enforce a suitable remedy.
Contamination assessment Deferred Commencement	See Assessment of site contamination. A development consent is granted subject to a condition that the consent is not to operate until the applicant satisfies the consent authority as to any matter specified in the condition, in accordance with s 4.16(3) of the <i>Environmental Planning and Assessment Act 1979</i> .
Detailed Site Investigation	Stage 2 – Detailed Investigation as defined in Planning Guideline, the Reporting Guidelines and the NEPM. An investigation that will define with high precision the nature, extent and risks posed by contamination.
Environmental Management Plan Phase	See Site Management Plan  A term commonly used to refer to the formal stages of contamination assessment; however, it is not reliably consistent with the terms defined in this policy.
Planning Guideline	<i>Managing Land Contamination Planning Guideline</i> (Department of Urban Affairs and Planning and EPA 1998) or otherwise specified by Schedule 6 (3) of the <i>Environmental Planning and Assessment Act 1979</i> .
Pollution	As defined in POEO Act <b>pollution</b> means: a water pollution, or b air pollution, or c noise pollution, or d land pollution.  <b>pollution incident</b> means an incident or set of circumstances during or as a consequence of which there is or is likely to be a leak, spill or other escape or deposit of a substance, as a result of which pollution has occurred, is occurring or is likely to occur. It includes an incident or set of circumstances in which a substance has been placed or disposed of on premises, but it does not include an incident or set of circumstances involving only the emission of any



noise.

**land pollution** or **pollution of land** means placing in or on, or otherwise introducing into or onto, the land (whether through an act or omission) any matter, whether solid, liquid or gaseous: a that causes or is likely to cause degradation of the land, resulting in actual or potential harm to the health or safety of human beings, animals or other terrestrial life or ecosystems, or actual or potential loss or property damage, that is not trivial, or b that is of a prescribed nature, description or class or that does not comply with any standard prescribed in respect of that matter, but does not include placing in or on, or otherwise introducing into or onto, land any substance excluded from this definition by the regulations. See note under **contamination**.

Preliminary Site Investigation

Stage 1 – Preliminary investigation as defined by the Planning Guideline, the Reporting Guidelines and the NEPM. An investigation that defines the potentially contaminating activities carried out on a site, the areas where contamination is most likely to exist and, if necessary, sufficient soil or groundwater sampling to confirm whether the land has been contaminated or not.

Reporting Guidelines

*Guidelines for Consultants Reporting on Contaminated Sites 2020.*

Remediation

As defined in *Resilience and Hazards SEPP*, remediation means:

- a. removing, dispersing, destroying, reducing, mitigating or containing the contamination of any land, or
- b. eliminating or reducing any hazard arising from the contamination of any land (including by preventing the entry of persons or animals on the land).

Remediation Action Plan

Stage 3 – Site Remediation Action Plan (RAP) as defined by the Planning Guideline and the Reporting Guidelines. A plan that sets out how a contaminated site can be made suitable for its intended use including methodology, clean-up criteria and validation procedures.

S10.7 planning certificate

A planning certificate as defined under section 10.7 of the EP&A Act.

Site Audit

**Non Statutory Site Audit** means a site audit undertaken by a site auditor that is not a requirement of a statutory instrument such as a development

	consent or regulation by the <i>Contaminated Land Management Act (1997)</i> .
	<b>Statutory Site Audit</b> as defined in section 47 of the <i>Contaminated Land Management Act (1997)</i> means a site audit carried out in order to secure compliance with, among other things, a requirement of SEPP55 or a development consent.
	<b>Site Audit Statement</b> contains the Site Auditor's findings and is in the form approved by the EPA. See s. 53B CLM Act. Further information about Site Audits can be found in the NSW EPA website: <a href="http://www.epa.nsw.gov.au">http://www.epa.nsw.gov.au</a>
Site Management Plan	A plan that is intended to manage residual contamination following suitable remediation of a site.
Specific potentially contaminating land use	A land use specified in Appendix A that will, if determined to land use have been carried out on the land, be used to identify land for contaminated land management under this policy.
Suitably qualified person	Means a person who has such competence and experience in relation to the assessment of site contamination as is recognised as appropriate by the contaminated land management industry. They will also be, or be reasonably able to be, or supervised by a consultant who is, certified under a contaminated land consultant certification scheme recognised by the EPA.
UPSS regulation	<i>Protection of the Environment Operations (Underground Petroleum Storage Systems) Regulation 2019</i>
Validation Report	Stage 4 – Validation and monitoring as defined by the Planning Guideline and the Reporting Guidelines. A report detailing the results of the post-remediation testing against the clean-up criteria stated in the RAP.

## 7 Legislation

### *Contaminated Land Management Act 1997*

Provides for Site Auditing (s47), and specific requirements for 10.7 planning certificates in relation to the Act (s59).

### *Environmental Planning and Assessment Act 1979*

Provides the basis of the planning system in NSW and permits the creation of State Environmental Planning Policies. Schedule 6 specifically details the liabilities for Planning Authorities in respect of contaminated land and defines the contaminated land Planning Guideline.

*Environmental Planning and Assessment Regulation 2021*

Sets out the requirements for s10.7 planning certificates (Schedule 2).

*National Environmental Protection (Assessment of Site Contamination) Measure 1999.*

Sets a national standard for contaminated site assessment.

*Protection of the Environment Operations Act 1997*

Enables the EPA, and Councils, to regulate pollution and waste in NSW.

*Protection of the Environment Operations (Waste) Regulation 2014*

Regulation of waste in NSW.

*Protection of the Environment Operations (Underground Petroleum Storage Systems) Regulation 2019*

Self-regulation regime of underground fuel storage in NSW

*State Environmental Planning Policy (Resilience and Hazards) 2021*

Establishes the mandatory considerations for consent authorities when considering development applications in relation to contaminated land, and criteria for remediation of land before development can occur.

*Narromine Local Environmental Plan 2011*

## 8 Potentially contaminating land uses

This policy will identify those land uses that have a reasonable potential to result in land contamination that may need to be addressed during development.

The list of land uses and activities that this policy will specifically identify as having the potential to result in land contamination are in **Appendix A**. These land uses have the potential to cause land contamination because of the materials typically used, processed or stored on-site, the generation of contaminating waste products or the use of thermal processing.

In addition, the storage of significant volumes of petroleum or chemicals or activities involving the maintenance of motor vehicles or mechanical plant will be considered to be potentially contaminating land uses.

Where a property has been identified as having been associated with one or more of these land uses or activities, it will be included in the Contaminated Land Register so that relevant information can be recorded and used for the purpose of this policy.

## 9 Information management

**Note:** Council's records and classifications are not intended to reflect the risk of harm to human health or the environment for a property in its current state or by its current land use. Where there are concerns that need to be addressed in the short term, the

Council should use its powers under the *Protection of the Environment Operations Act 1997* or refer the matter to the EPA.

## 9.1 Contaminated Land Site Register

Council will maintain a Contaminated Land Register (Register) to record relevant information regarding land, its historical uses and activities carried out on it, assessments for contamination, remediation and Site Audits.

The list of sites in the contaminated land register will be compiled, maintained and updated in good faith in the interests of responsible land-use planning and development control and is to be used as a first point of reference by Council.

Information pertaining to a specific location shall include:

- Current and historical property description;
- Historical land uses or activities that have the potential to contaminate (See Appendix A);
- The land contamination investigation status;
- Reports and notices relating to contamination assessment;
- Reference to and brief comments relating to development applications, development consents, planning proposals to rezone land approved (or refused on the basis of contamination-related issues) and complying development certificates;
- Site Audit Statements; and
- EPA correspondence.

The information will not include personal information except personal information that is included in an assessment report.

## 9.2 What the information is used for

The information held in the Register will be used for the purpose of fulfilling the policy statement (see Section 4 Policy Statement above).

Specifically, the information will be used to:

- Provide information on s10.7 planning certificate;
- Inform development applications, modification applications, complying development certificate applications and assessments, including pre-DA meetings and assessment;
- Inform strategic planning and the preparation of Planning Proposals;
- Monitor and regulate remediation of contaminated land; and
- Administer the UPSS regulation.

## 9.3 Including or removing land from Council's Register

Land is included in the Register based primarily on information known to Council regarding land use and does not necessarily reflect whether the land is actually contaminated or not. Land will be identified on the Register if Council:

- Holds records, or is aware, that the land has been used for a potentially contaminating land use, not limited to uses as defined in **Appendix A**;
- Has carried out an inspection that suggests the land is likely to have been affected by contamination, pollution, landfilling, or by being used in an environmentally unsatisfactory manner (refer to definitions in the POEO Act);
- Is aware that the land has been the subject of remediation;
- Believes the land could have lawfully been used for a purpose listed in **Appendix A** and has no evidence to the contrary; or
- Is aware that the land is, or has been, zoned for industrial purposes.

Any land where a new development is commenced, whether approved by Council, subject to a Complying Development Certificate or exempt development, that is consistent with land uses defined in **Appendix A** will be included on the Register when Council becomes aware of it.

Land will not be included where:

- The use is at a domestic scale;
- The land use is clearly operated at a scale that is unlikely to cause land contamination; or
- The activity is, and has always been, generally of a retail or warehousing nature provided that any fuels, oil and chemicals remain in sealed containers from the manufacturer and are not dispensed or decanted into other containers; and,
- Council is not otherwise aware that the land is likely to be contaminated.

Note: It is acknowledged that both agricultural and residential land can be subject to incidental contamination and that, in some circumstances, could give rise to a risk to human health and the environment, however it is considered unreasonable to apply this policy where there is no evidence of circumstances presenting such a risk. Areas of agricultural land such as fuel storages and stock dips will be considered for contamination assessment when a DA is received however the whole land parcel will not be included in the Register unless specific reports are provided to Council.

The Register will allow for three land use descriptors to be applied to each record to allow for multiple land uses for each parcel to be clearly identified.

Where practical Council will notify the owners of any land that is identified as needing to be placed on the register and will undertake a consultation process to ensure that the owner is aware of the implications of the land being recorded on the Register.

As it is a requirement that Council review its records every time it issues a s10.7 planning certificate and considers land contamination before determining a development application, a record of land must not be removed from the Register unless Council is satisfied that the information held does not relate to the land, or that any potentially contaminating activity has not taken place on the land.

Where land is subdivided or consolidated, information about the former land uses on the land will be carried onto the new property description(s).

## 9.4 Land Contamination Investigation Status

To assist Council to monitor and communicate the level and quality of information about contamination on any land parcel, each parcel on the Register will be classified according to the significance of the information the Council holds about the parcel. Each parcel on the Register will be classified into one of five classifications:

Table 1. Contaminated site investigation status classification

Investigation Class	Description
A - Identified	<ul style="list-style-type: none"> <li>Council has identified that the land should be included on the Register because a potentially contaminating land use is known to have been undertaken (<b>Appendix A</b>), but the results of any formal investigation have not been provided to Council.</li> <li>At this status, it is not possible to determine if land could be suitable for any particular use.</li> </ul>
B - Assessed	<ul style="list-style-type: none"> <li>Council has been provided with a contamination assessment report or other documentation indicating that the land is (or has been) contaminated, but is not satisfied, based on information provided in contamination assessment reports, that the land is suitable for any specific land uses and, therefore, further consideration of investigation, remediation or validation is required to determine a relevant application. Reports may indicate that the land may be suitable for some uses with conditions such as limited depth of excavation or contamination remaining in inaccessible areas due to existing structure etc.</li> <li>For any land adjacent to identified potentially contaminated land where a contamination assessment report received by Council has identified that contamination has migrated to the adjoining land will be classified as assessed.</li> </ul>
C – Site Management Plan	The land has been remediated, however, is subject to a site management plan (SMP). Any new DA must consider the requirements of a SMP that applies to the land.
D - Suitable for Limited Uses	<ul style="list-style-type: none"> <li>Council has been provided with a contamination assessment report or other documentation indicating that the land is (or has been) contaminated, but is satisfied, based on information provided in contamination assessment reports, that the land is suitable for some specific land uses without conditions.</li> <li>Further consideration of investigation, remediation or validation would be required to determine a relevant application for more sensitive land uses.</li> </ul>
E - Unrestricted	Council is satisfied based on information provided in contamination assessment reports that the land is suitable for all land uses and, therefore, no further investigation is required to determine a relevant application. This category shall only be used where no further assessment of contamination is required to determine the suitability of any permissible DA.

The land contamination investigation status classification does not necessarily indicate that land is or is not contaminated but indicates whether or not appropriate information is available to make a decision in respect of the land.



Whenever new information about a land parcel or property is received by Council, the status classification should be reconsidered and changed if necessary.

If contamination investigations standards change, it should be considered whether any land with a status class of "E – Unrestricted" should have its status changed. If investigation thresholds are reduced it may be appropriate that all "D - suitable for limited uses" and "E – Unrestricted" statuses be changed to "B - Assessed" until a thorough review of each assessment report can be carried out.

## 9.5 Provision of information

Information on the Register may be provided to any person in the form of an s10.7 planning certificate in accordance with the EP&A Act.

Otherwise, a person with a valid interest may seek to view:

- 1 The Register information; and
- 2 Reports held by Council.

However, due to Council's Privacy Management Plan or copyright restrictions (and the legislative requirements of *Government Information (Public Access) Act 2009* and *Privacy and Personal Information Protection Act 1998*), Council may not be able to provide all information it holds.

A person with a valid interest may include the following people in respect of the relevant land:

- 1 The owner;
- 2 The owner of neighbouring land;
- 3 State Government agencies such as the NSW Environment Protection Authority;
- 4 Contaminated land consultants investigating the land or neighbouring land;
- 5 Utilities providers;
- 6 Conveyancers acting on behalf of the owner; or
- 7 With the owner's permission:
  - a. A potential purchaser;
  - b. A purchaser's conveyancer; or
  - c. A real estate agent.

The general release of information on the Register is not considered to be in the public interest.

## 9.6 Information provided on the s. 10.7 planning certificate

S10.7 planning certificates provide a range of information regarding the rights and restrictions placed on a parcel of land.



Council is obliged to provide certain information on the s10.7 planning certificate as specified in Schedule 2 of the *Environmental Planning and Assessment Regulation 2021* and s59 of the *Contaminated Land Management Act 1997*. That is:

- 1 Section 10, Schedule 2 of the *Environmental Planning and Assessment Regulation 2021* requires that the certificate identify whether or not the land is affected by any policy (adopted by Council or by a public authority for the express purpose of its adoption being referred to in s10.7 certificates issued by Council) that restricts the development of land because of the likelihood of any risk. (This Policy is adopted as such, to restrict the development of land because of the likelihood of contamination, with reference Schedule 2) ; and
- 2 Section 59 of the *Contaminated Land Management Act 1997* requires that the certificate address the specific matters relating to the management of contaminated land set out in that section. Information pertinent to s59 is noted in 2A and 2B below.

The following wording will be used for each Contamination Investigation Status and where other relevant information is known about the land:

**1A Notation to be included on s. 10.7 planning certificate issued under s10(2), as required by Clause 7, Schedule 4 of the EP&A Reg – adopted policies that restrict the development of the land because of the likelihood of any risk:**

- Land not considered to require restriction under this policy  
*Council's adopted Contaminated Land Policy does not place any specific restriction on the land to which this certificate relates at this time.*
- Land classed as "A - Identified"  
*The land to which this certificate relates has been used for purposes that have the potential to contaminate land. Council records do not have sufficient information to determine whether the land is contaminated. Council's adopted Contaminated Land Policy restricts the development on the land by requiring that the land undergoes some level of assessment for land contamination, and/or remediation if required, where zoning changes are proposed or consent is required for the carrying out of any development. Council's adopted policy provides information on how these restrictions will be applied in accordance with provisions under relevant State legislation. It is recommended that persons relying on this certificate undertake their own assessment of the land's suitability for purposes that do not require development consent.*
- Land classed as "B - Assessed"  
*The land to which this certificate relates has been used for purposes that have the potential to contaminate land. Council's adopted Contaminated Land Policy restricts the development on the land by requiring that the land undergoes some level of assessment for land contamination, and/or remediation if required, where zoning changes are proposed or consent is required for the carrying out of any development. Council's adopted policy provides information on how these restrictions will be applied in accordance*

with provisions under relevant State legislation. It is recommended that persons relying on this certificate undertake their own assessment of the land's suitability for purposes that do not require development consent.

- Land classed as C - Site Management Plan  
*The land to which this certificate relates has been used for purposes that have the potential to contaminate land. Council has been advised that the site has undergone some remediation of site contamination; however, remains subject to a site management plan to mitigate the risk posed by land contamination on the land. The site management plan may place restrictions on development or use of the land and may include ongoing obligations by the owner or occupier. Council's adopted Contaminated Land Policy restricts the development of the land by ensuring compliance with the applicable site management plan. Further investigation may be required where zoning changes are proposed or consent is required for the carrying out of any development. Council's adopted policy provides information on how these restrictions will be applied in accordance with provisions under relevant State legislation. It is recommended that persons relying on this certificate undertake their own assessment of the land's suitability for purposes that do not require development consent.*
- Land classed as D - Suitable for Limited Uses  
*The land to which this certificate relates has been used for purposes that have the potential to contaminate land. An assessment of site contamination has recommended that the land is suitable for certain types of use. Council's adopted Contaminated Land Policy restricts the development on the land by requiring that the land undergoes some level of assessment for land contamination, and/or remediation if required, where zoning changes are proposed or consent is required for the carrying out of development not consistent with the assessment of site contamination recommendations. Council's adopted policy provides information on how these restrictions will be applied in accordance with provisions under relevant State legislation. It is recommended that persons relying on this certificate undertake their own assessment of the land's suitability for purposes that are not consistent with the assessment of site contamination recommendations and do not require development consent.*
- Land classed as E - Unrestricted  
*The land to which this certificate relates has been used for purposes that have the potential to contaminate land. An assessment of site contamination has recommended that the land is suitable for all types of use.*

**1B Notation to be included on s.10.7 planning certificates issued under s10.7(5) of the EP&A Act – advice on such other relevant matters affecting the land of which Council may be aware.**

- Where the site is known to be subject to the UPSS regulation as regulated by Council  
*The land is subject to the Protection of the Environment (Underground Petroleum Storage System) Regulation 2019.*

- Where the land has been used for specific purposes listed in this policy  
*The land has been used for the following purposes:  
(see list from Appendix A for potentially contaminating land uses and activities that may be listed).*
- Where Council is in possession of contamination assessment reports  
*Council has one or more reports on the assessment of site contamination.  
(Where Council is able to provide investigation results or summaries of results held by Council without disclosing confidential information it will do so as part of the planning certificate.)*
- Where Council is in possession of a Site Audit Statement  
*Council has a site audit statement.  
(Council will, where it is able to, provide a copy of the site audit statement with the planning certificate.)*
- Where remediation has been approved in accordance with Resilience and Hazards SEPP.  
*Development consent has been granted to carry out Category 1 Remediation on the land.*
- Where remediation has been notified in accordance with Resilience and Hazards SEPP.

*Council has been notified that Category 2 remediation is to be carried out on the land.*

**2A Notation to be included on s. 10.7 planning certificate issued under s. 10.7(2) of the EP&A Act, as required by s. 59(2) of the CLM Act**

- Where Council has received a Site Audit Statement that relates to the land  
*Council has received a Site Audit Statement that relates to the land.*
- Where the site has not been regulated by the CLM Act  
*The land to which this certificate relates is not presently subject to regulation under the Contaminated Land Management Act 1997.*
- Where the site has been declared significantly contaminated under the CLM Act  
*The land to which this certificate relates is significantly contaminated land under the Contaminated Land Management Act 1997.*
- Where the site is subject to a management order under the CLM Act  
*The land to which this certificate relates is subject to a management order under the Contaminated Land Management Act 1997.*
- Where the land is subject to a voluntary management proposal under the CLM Act  
*The land to which this certificate relates is subject to an approved voluntary management proposal under the Contaminated Land Management Act 1997.*
- Where the land is subject to an ongoing maintenance order under the CLM Act  
*The land to which this certificate relates is subject to an ongoing maintenance order under the Contaminated Land Management Act 1997.*

## **2B Notation to be included on s. 10.7 planning certificates issued under s. 10.7(2) of the EP&A Act, as required by section 59(3) of the CLM Act**

- Where the land has been, but is no longer declared significantly contaminated under the CLM Act  
*The land to which this certificate relates was, but is no longer significantly contaminated land under the Contaminated Land Management Act 1997.*
- Where the land has been, but is no longer subject to a management order under the CLM Act  
*The land to which this certificate relates was, but is no longer subject to a management order under the Contaminated Land Management Act 1997.*
- Where the land has been, but is no longer subject to a voluntary management proposal under the CLM Act  
*The land to which this certificate relates was, but is no longer subject to an approved voluntary management proposal under the Contaminated Land Management Act 1997.*
- Where the land has been, but is no longer subject to an ongoing maintenance order under the CLM Act  
*The land to which this certificate relates was, but is no longer subject to an ongoing maintenance order under the Contaminated Land Management Act 1997.*

## **10 Rezoning/Planning Proposals**

In alignment with Local Planning Directions 4.4 ('Remediation of Contaminated Land'), Council will require and submit a preliminary site investigation report with a planning proposal if that proposal seeks to rezone land to a proposed use that is a sensitive receptor (as defined by this policy), and there is no knowledge (or incomplete knowledge) as to whether that and adjacent land involve a land use or activity listed in **Appendix A**.

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.

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:

- 1 The land is declared significantly contaminated land under Part 3 of the CLM Act;
- 2 An activity referred to in Appendix A is being carried out on the land;
- 3 Council's records show that an activity or use referred to in Appendix A has been carried out on the land; or
- 4 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.

If a planning proposal proposes to change a land use zone in a local environmental plan:

- 1 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
- 2 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.

If a preliminary site investigation indicates that contamination would make land unsuitable for particular uses, and:

1. 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.
2. 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.

## 11 Exempt and complying development

Development must not be carried out on land designated as 'significantly contaminated land' within the meaning of the CLM Act for complying development specified for Codes identified in section 1.19 under Part 1 of the *Exempt and Complying Development Codes SEPP*.

During development work on land subject to a complying development certificate, if land contamination is detected or reasonably suspected, Council requires that:

- a. all development work immediately ceases;
- b. Council and the EPA be notified of the potential contamination;
- c. the notification be sent by the PCA or by the person who issued the complying development certificate.

Exempt development must not be carried out on land designated as 'significantly contaminated land' within the meaning of the CLM Act.

## 12 Development Applications

### 12.1 Pre-Development Application Meetings

A pre-DA meeting may be held between Council staff and a potential applicant to discuss the matters that need to be considered under heads of consideration (s4.15 EP&A Act), the Local Environment Plan and the Development Control Plan for the Council. A pre-DA meeting is not a planning function covered by Schedule 1 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.

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

- 1 That the potential for land contamination must be considered for each and every development application;
- 2 That any pre-existing reports, studies or site audit statement need to be considered in terms of the specific development proposal;
- 3 Whether or not the pre-existing reports or studies will meet the reporting requirements of the 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. However, Council may not prejudice the assessment of suitability of the site for that proposed use.

The provisions of the Development Assessment section 11.2 below may be applied regardless of any advice provided during any pre-DA meeting.

### 12.2 Development Assessment consideration of contamination

In alignment with section 4.15(1)(c) of the EP&A Act, Council shall consider land contamination in subdivision and development applications, particularly when a change in land use is proposed. This is to ensure that contaminated land:

- a. is suitable for its proposed use in its contaminated state
- b. can be made suitable for its proposed use through remediation
- c. presents no increased risk of harm to human health and the environment.

Any Statement of Environmental Effects or environmental impact statement should address the historical uses of the land.

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

- 1 Referring to the Register to determine if any information is held by Council regarding the potential for land contamination;
- 2 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;



- 3 Consideration of evidence of possible land contamination or potentially contaminating activities discovered during a site inspection relating to the development application; or
- 4 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. 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.

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.

If the initial evaluation identifies a potential for land contamination then, in alignment with section 4.6(4) of the Resilience and Hazards SEPP, Council will initiate an assessment of site contamination to ascertain the nature and extent of contamination.

Changes of use on contaminated land may proceed provided that:

- 1 The land is suitable for the intended use; or
- 2 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.

When considering the suitability of the land for development under s. 4.15 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.

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 NEPM or this policy.

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 NEPM. In that case the requirements of section 14 Contaminated Land Consultants may not apply.

Such information may include:

- Confirmation of past land uses;
- Plans identifying where certain activities have taken place; or
- Oral history of the use of the land.

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 to 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.

### 12.3 Preliminary site investigation

If the initial evaluation identifies a potential for land contamination, then, in alignment with section 4.6(4) of the *Resilience and Hazards SEPP*, Council will require a preliminary site investigation to be submitted with a subdivision works or development application to carry out development where the land concerned is:

- a. land that is within an investigation area (within the meaning of the CLM Act)
- b. land on which development for a purpose listed in **Appendix A** is currently 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 childcare 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 listed in **Appendix A** has been carried out
  - 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).

In addition, as a minimum requirement, a preliminary site investigation will be required when considering a development application for land on which Council:

- 1 Has knowledge of a potentially contaminating land use specified in **Appendix A** having occurred; or
- 2 Has reasonable grounds to believe the land may be contaminated because of the land's history, condition or other information known to Council,
- 3 There are restrictions on, or conditions attached to, the use of the land by a regulatory or planning authority that are or may be related to contamination, but there is insufficient information available to Council on the nature and extent of contamination
- 4 Council records show that the land is associated with pollution incidents or the illegal dumping of waste
- 5 The land is adjacent to land historically or currently being used for a purpose listed in **Appendix A**, and Council reasonably suspects it is likely that this use may have contaminated the land subject to the preliminary site investigation.

and one or more of the following circumstances have occurred:

- 6 The circumstances suggest that the past use could reasonably have significantly contaminated the site;



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

**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.*

## 12.4 Detailed site investigation

Council will require a detailed site investigation to be undertaken when either:

- a. the results of the preliminary site investigation state the potential for or existence of contamination that may not be suitable for the proposed use of the land
- b. Council is not satisfied with the content and/or completeness of the preliminary site investigation.

Council may request the preliminary and detailed site investigations to be combined when the land is known to be contaminated.

The detailed site investigation is to be carried out in accordance with the requirements of relevant guidelines made or approved by the NSW EPA in alignment with the requirements of the CLM Act. The applicant is responsible for engaging a suitably qualified consultant to undertake this investigation.

A report on the detailed site investigation must include a statement as to whether the land is suitable for its proposed use or if remediation is necessary to make the land suitable for its proposed use. If remediation is required, the report must list the feasible remediation options available.

## 12.5 Remediation action plan

A remediation action plan is to be provided to Council if the report on the preliminary or detailed site investigation states that the land is not suitable for its proposed use but can be made suitable through remediation (refer to section 13).

Prior to determining a subdivision or development application, Council must be satisfied that remedial measures have been or will be undertaken in accordance with the remediation action plan lodged with Council.

A remediation action plan must identify, upon completion of remediation works, the need for ongoing land management due to residual contamination. This plan may also include an outline of the environmental management plan.

### 12.5.1 Conditions of consent requiring remediation

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.

### 12.6 Validation report

A validation report must be lodged with Council after remediation works have been completed.

Where applicable, Council will include a condition of development consent requiring this report to be provided to Council prior to issuance of the subdivision works or construction certificate.

Council must be notified within 30 days of the completion of remediation works, in alignment with section 4.14(2) of the Resilience and Hazards SEPP. This notice is required to include:

- a. information prescribed in section 4.15 of the Resilience and Hazards SEPP
- b. a validation report.

### 12.7 Unexpected findings protocol

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

Council will impose a condition on all development consents to this effect.

## 13 Remediation

### 13.1 Remediation Overview and Resilience and Hazards SEPP

Remediation is any process that will remove, disperse, destroy, reduce, mitigate or contain contamination of land or eliminate or reduce any hazard arising from the contamination on land (including by preventing the entry of persons or animals to the land).

Remediation activities should be defined in a Remediation Action Plan (RAP), being a plan that sets out how a contaminated site can be made suitable for its intended use including methodology, clean-up criteria and validation procedures. A RAP must be prepared by an appropriately qualified consultant in accordance with the applicable EPA guidelines.

The consultant will determine the most suitable way to remediate a site and prepare a RAP.

Where remediation of contaminated land is necessary, the remediation should be carried out (whenever reasonably possibly to do so) within the context of a proposed development to achieve the highest best use. If there is doubt over whether remediation must be carried out to ensure the land is suitable for the use, then it is preferred that remediation be carried out.

Under Resilience and Hazards SEPP there are two categories of remediation Category 1 and Category 2.

<b>Category 1 Remediation Work</b>	<b>Category 2 Remediation Work</b>
Remediation work that requires development consent is category 1 remediation work.	Remediation work that does not require development consent is category 2 remediation work. Section 4.11 of the Resilience and Hazards SEPP defines what constitutes category 2 remediation work
Category 1 remediation work is remediation work that is either: a. identified in section 4.8(a)–(f) of the Resilience and Hazards SEPP b. not being work to which section 4.11(b) of the Resilience and Hazards SEPP applies c. not carried out in accordance with this Policy.	Council must be notified of the intent to undertake category 2 remediation work at least 30 days before commencement. This notification is to include the information identified in section 4.13(3) of the Resilience and Hazards SEPP.

Please note that s 9.44 of the EP&A Act requires compliance with Resilience and Hazards SEPP and s 9.45 provides provision by which Council may enforce compliance through the NSW Land and Environment Court.

### 13.2 Category 1 remediation (requires consent)

Clause 4.8 of Resilience and Hazards SEPP sets out the criteria for Category 1 remediation and it is recommended that each remediation proposal considers whether or not it should be considered Category 1 or 2.

The following information is provided in order to identify land that is referred to in the SEPP:

<b>Resilience and Hazards SEPP</b>	<b>Equivalent Narromine LEP 2011 mapped land</b>
(b) land declared to be a critical habitat,	not mapped and would need to be assessed on a site by site basis
(c) critical habitat or a threatened species, population or ecological community	not mapped and would need to be assessed on a site by site basis
(e) (i) coastal protection	such an area or zone is not classified by the Narromine LEP
(ii) conservation or heritage conservation	such an area or zone as identified by the Narromine LEP
(iii) habitat area, habitat protection area, habitat or wildlife corridor	such an area or zone is not classified by the Narromine LEP
(iv) environment protection	identified as "Biodiversity" on the Terrestrial Biodiversity Map identified as "Groundwater Vulnerable" on the Groundwater Vulnerability Map
(v) escarpment, escarpment protection or escarpment preservation	such an area or zone is not classified by the Narromine LEP
(vi) floodway	land identified as "Flood Planning Area" on the Flood Planning Map, and other land at or below the flood planning level
(vii) littoral rainforest	such an area or zone is not classified by the Narromine LEP
(viii) nature reserve	Zone E1 National Parks and Nature Reserves
(ix) scenic area or scenic protection	such an area or zone as identified by the Narromine LEP
(x) wetland	land identified as "Wetlands" on the Wetlands Map

**Note:** any *Environmental Planning Instrument (EPI)* made or amended after the adoption of this policy should be considered when determining the remediation category under Resilience and Hazards SEPP.

The above information does not limit the consideration of Resilience and Hazards SEPP clause 4.8 (a) designated development and (d) development for which another State environmental planning policy or a regional environmental plan requires development consent.

In accordance with Clause 4.8(f) of Resilience and Hazards SEPP, it is considered that where Category 2 remediation will not or cannot be conducted in compliance with this policy (see section 13.3.2 below), the remediation should be considered as Category 1 remediation. A RAP will be required to be submitted with any application for Category 1 remediation.

In assessing a proposal for Category 1 remediation, the consequences of not carrying out the remediation will need to be considered and weighed up against the environmental impacts of carrying out the remediation. This involves an assessment of matters such as how the work will contribute to a net improvement in environmental quality, reduce health risks or promote the economic use and development of the land. Both the applicant and Council need to consider this issue.

However, Council must not refuse development consent for Category 1 remediation work unless Council is satisfied that there would be a more significant risk of harm to human health or some other aspect of the environment from the carrying out of the work than there would be from the use of the land concerned (in the absence of the work) for any purpose for which it may lawfully be used (clause 4.10 Resilience and Hazards SEPP).

Standard conditions that may be applied to the consent of any Category 1 Development Application.

In addition to the matters listed for consideration under section s. 4.15 of the EP&A Act, the following issues may also be relevant when assessing a development application for Category 1 remediation:

- 1 Is the Site Management Plan acceptable?
- 2 Does the proposal require other approvals from regulatory authorities?
- 3 Is the remediation proposed to be supervised by an appropriately qualified consultant?
- 4 Is the proposal for validating the remediation adequate?
- 5 Are reporting and monitoring mechanisms and proposals adequate?

## 13.3 Category 2 remediation (carried out without consent)

### 13.3.1 Notification

The Council will be notified in writing, consistent with notice requirements set out in clause 4.13 of Resilience and Hazards SEPP.

A copy of the RAP is to be provided with the notification.

Council will acknowledge receipt of the notification and provide any relevant comments as soon as practicable prior to the proposed works start date if possible. The notice period for Category 2 remediation is 30 days, however Resilience and Hazards SEPP permits a lesser notice period in specific circumstances (cl 4.13(2)).

Failure to notify Council within the prescribed timeframes or to carry out remediation in the manner described in this policy shall be considered as a contravention of the *Environmental Planning and Assessment Act 1979*.

The notice must—

- (a) be in writing, and
- (b) provide the name, address and telephone number of the person who has the duty of ensuring that the notice is given, and
- (c) briefly describe the remediation work, and
- (d) show why the person considers that the work is category 2 remediation work by reference to sections 4.8, 4.11 and (if it applies) 4.12(1), and
- (e) specify, by reference to its property description and street address (if any), the land on which the work is to be carried out, and
- (f) provide a map of the location of the land, and
- (g) provide estimates of the dates for the commencement and completion of the work.

### 13.3.2 Conduct of remediation

To reduce the potential for offsite impacts and to comply with the requirements of the POEO Act, Category 2 remediation shall be conducted in the following manner:

#### Communication

- 1 Adjoining property owners must be notified in writing of the commencement date, duration and nature of the remediation activities at least 7 days prior to remediation activities commencing on site.
- 2 A sign identifying the contact details of the remediation contractor must be displayed at the site for the duration of the remediation activities. The sign must identify the phone numbers for the duration of the remediation activities.
- 3 While the remediation activities are being undertaken the contractor must maintain a written record of any complaints received in relation to the conduct of the remediation. The written record must include each complainant's name and address, the time and date that each complaint was made, the nature of each complaint and the actions taken to address the complaint. The record may be requested by Council officers during the conduct of remediation, in which case the record must be made available to Council.
- 4 Any complaint received by the contractor in relation to the remediation activities must be notified to Council during Council business hours as soon as possible, and in all cases no later than 2 business days following the date that the complaint was received by the contractor.

#### Managing Impacts

- 5 Remediation activities must not cause any environmental harm outside of the area nominated for remediation within the site.
- 6 Remediation must not create visible dust that extends beyond any site boundary.
- 7 Remediation activities must not cause offensive noise (as defined by POEO Act) and avoid the production of vibration that may impact nearby properties.



- 8 Remediation activities must be managed to ensure that dust, odour, gases or fumes are not emitted beyond the boundary of the remediation site. Appropriate monitoring equipment must be used to demonstrate compliance with the condition.

#### Dealing with Waste

- 9 All liquid and solid waste must be classified in accordance with the Protection of the Environment (Waste) Regulation 2014 and related guidelines.
- 10 All waste transported from the remediation site must be covered in a vehicle suitable for that waste material. There must be no tracking of soil onto public roads.
- 11 Any receiver of waste material must be properly licensed by the EPA to receive that waste. If a non-licensed premises is intended to receive waste from the site then an approved notice within the meaning of s143(4) of the POEO Act (s143 notice) must be supplied prior to removal of the material from the remediation site.
- 12 Details of material removed including volume, mass, classification, destination and any s. 143 notices are to be included in the validation report.
- 13 All waste transport routes must avoid where possible all sensitive land uses such as residential areas, schools, preschools, etc., avoid bus routes and particularly school bus pick up and drop off periods.

#### Validation report

- 14 A validation report shall be provided to Council along with the notice of completion required under clause 4.15(2) of Resilience and Hazards SEPP to confirm that the remediation has been carried out in accordance with the requirements of the SEPP. The validation report must be prepared in accordance with Council's Contaminated Land Policy, the Managing Land Contamination Planning Guidelines (1998), relevant EPA Guidelines and the National Environmental Protection (Assessment of Site Contamination) Measure (1999). Please note the requirements specified in Council's Contaminated Land Policy relating to consultants reporting and Site Audits.

#### Site management plan

- 15 If the validation report recommends or requires the implementation of an ongoing site management plan or a site management plan is otherwise required, assistance must be provided to Council (including by executing relevant documents) to enable registration of a restriction or covenant requiring compliance with the site management plan that must be registered on the title under section 88E of the Conveyancing Act 1919 or section 29(3) of the Contaminated Land Management Act 1997. Council is to be named as the only party able to vary or release the restriction or covenant.

### **13.4 Underground Storage Tanks and Underground Petroleum Storage Systems**

The presence of an underground storage tank (UST) may not always be associated with an Underground Petroleum Storage System (UPSS) within the meaning of the

*Protection of the Environment (Underground Petroleum Storage Systems) (UPSS) Regulation 2019*. In particular USTs used for material that is waste or is not petroleum or if the UST has not been operated since before 1 June 2008 may not necessarily be regulated by the UPSS Regulation.

For the removal of doubt, the removal of any underground storage tank (UST) used for the storage of liquids that in themselves constitute potential contaminants, will be considered to be remediation for the purpose of the SEPP only if validation of surrounding soils is carried out. Validation of UST removal or replacement is a requirement for sites that come under the UPSS regulation.

Where no validation sampling and laboratory analysis (in accordance with appropriate guidelines) is carried out, the site will be considered unremediated and will require suitable validation sampling before any determination under the SEPP can be made. However, to carry out the removal of a UST without validation is considered to be development that requires consent.

The modification of an Underground Petroleum Storage System as defined in clause 3 of the *UPSS Regulation 2019* is deemed to be development that requires consent.

### 13.5 Validation reports and Notice of completion of remediation

The Planning Guideline highlights the importance of validation reporting to remediation process.

The UPSS Regulation requires that a validation be submitted in relation to modification and decommissioning of UPSS (cl 11 and 13).

The Reporting Guidelines state that:

*Where remedial action has been carried out, the site must be 'validated' to ensure that the objectives stated in the RAP have been achieved. A report detailing the results of the site validation is required.*

The Resilience and Hazards SEPP does not explicitly require that a validation report be submitted to Council following remediation works; however, a Notice of Completion is required. The Notice of Completion criteria is specified in clause 4.15 of the SEPP.

For the purpose of this policy, a validation report is not considered to be the same as a Notice of Completion.

Following any remediation, it is required that:

- 1 A validation report be provided within 30 days of completion of work (except where legislation or a development consent permits another time period).
- 2 The Notice of Completion may be incorporated into the Summary Report, as specified in section 13.4, where it is provided with a complete validation report.



## 14 Contaminated Land Consultants

### 14.1 Reports

All reports regarding the assessment of site contamination, as set out in the Planning Guideline and the NEPM, must be prepared by a suitably qualified person and be completed in accordance with the Reporting Guidelines.

A report may be provided to Council as:

- 1 A validation report for Category 2 remediation;
- 2 A validation report required by clauses 11 and 13 of the UPSS Reg following modification or decommissioning of an UPSS;
- 3 A contamination assessment report in order for Council to carry out its planning function in relation to development applications or compliance with development consent; or,
- 4 A report intended to provide information in order to amend the Register status.

Council may need to determine whether or not a report meets the requirements of relevant standards, and may enforce compliance with the relevant standards of reporting if necessary.

If a report is to be used for DA assessment or for amending the Register, whether or not it was provided in the first instance for that or another purpose, Council will only consider that report if it meets the reporting standards of this policy. Council may not necessarily advise at the time of submission whether a report is considered to be satisfactory for another purpose at a later time.

If Council does consider that it cannot rely on a particular report because it does not meet the standards of this policy, it may request that another report be submitted to address the particular concern.

The following matters set out in this section of the policy below will be considered by Council in determining if any given report should be relied upon.

Any report received may be subject to review by Council staff and consideration of a Site Audit may be considered. Conclusions and recommendations will not necessarily be accepted or adopted by Council.

Council may choose to refer any report to other Council's within the Central NSW Contaminated Lands group for further comment.

All reports must:

- 1 Reference Council's policy and specifically refer to any conditions for remediation;
- 2 Be accompanied by a Summary Report as defined in this Policy in section 14.4.
- 3 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.

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 of the EP&A Act.

## 14.2 Certification of consultant

All reports submitted to Council for the purposes of fulfilling the Resilience and Hazards SEPP 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 EPA.

The front cover of a report submitted to Council is to include the details of the consultant's certification.

Prior to 1 April 2017, consultants who are not certified should provide evidence that their qualifications, experience and breadth of expertise would meet the expectations of a certification scheme and are appropriate for the nature of the investigation or plan being reported on.

Any report received by Council after 1 April 2017 that does not include the consultant's certification details will not be accepted.

Any report provided to Council following the adoption of this policy that does not meet the requirements set out above may not be recognised for the purpose of any subsequent Development Application.

## 14.3 Insurance

Consultants must carry professional indemnity insurance that specifically identifies contamination and pollution coverage to a value of at least \$20,000,000.

## 14.4 Summary Report

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. The report will assist Council, landholders, purchasers and neighbours in reviewing matters associated with that land. A summary report cannot be relied upon solely for decision making.

A summary report shall be one A4 page with one A4 page site plan or map. It should be completed on the template (see **Appendix B** for an example template). The report will provide a summary of the key facts:

- 1 Consultant's name and contact details;
- 2 Real property description (Lot, DP, address);
- 3 Main areas of concern;
- 4 Source of contamination;
- 5 Dates of investigations and remediation;
- 6 Nature and extent of contamination;

- a Key contaminants involved;
- b Highlight concentrations eg highest, % of samples above HSL, HIL etc;
- c On the plan, an estimate of the lateral extent and depths;
- d A cross section if useful;
- 7 What remediation was carried out including waste removed;
- 8 What contamination remains and where;
- 9 Brief recommendations of next steps;
- 10 Recommendation of suitability; and
- 11 Sign off, certification details and reference to full report.

Council shall be granted the right to copy summary reports for the use of owners or developers of the subject land or adjoining land.

## 15 Site Auditing

A statutory site audit in accordance with s47 *Contaminated Land Management Act 1997* may be required as a condition of consent or as partial notice of completion of remediation work

The Planning Guideline states:

*"As a general principle, a site audit is only necessary when the planning authority:*

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

Under this policy, a site audit statement will be required for reports on sites where:

- Modified investigations threshold levels are used;
- A risk assessment is relied upon for determination of suitability;
- A groundwater investigation is not carried out where underground tanks or infrastructure has been identified;
- A Site Management Plan is to be imposed;
- Council does not accept the consultant's recommendation; or,
- Council considers it necessary.

A Site Audit Statement (SAS) may be requested at any stage of the investigation (Preliminary, Detailed, RAP Validation or Site management Plan) to assist Council in making its determinations under Resilience and Hazards SEPP, however, Council will not require a SAS at every stage without cause.

The SAS needs to establish that the land is suitable, or could be made suitable, subject to any specific requirements of the site auditor for the specified land uses. Council will determine which of the land uses specified on the site audit statement best characterises the development and specify this in relevant development assessment or consent conditions.

## 16 Site Management Plans

A Site Management Plan (SMP) is required when contamination is to remain on site. 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.

Further information of the use and need for an SMP can be found in section 3.4.6 Environmental management plans in the *Guidelines for the NSW Site Auditor Scheme (3rd Edition)* (EPA NSW 2017).

Council may charge a fee for inspections or other services in relation to the monitoring of compliance of the SMP in accordance with provisions of the *Local Government Act 1993*.

Any SMP should be provided to Council along with any other report that recommends such a plan. The existence of an SMP will be noted on s. 10.7 planning certificates and included in the Register.

Where there is an SMP, and where Council is able to do so, a standard condition of consent will require the registration of a covenant on title requiring compliance with the SMP. This shall be a standard condition of consent for all development applications and Category 1 remediation where there is an SMP. It is a requirement relating to the conduct of Category 2 remediation under this policy.

Council will endeavour to have any SMP that Council is aware of, or relating to a consent condition predating this policy, registered on title by the land owner or relevant party.

## 17 Contaminated land standards for pollution

Individual pollution incidents, illegal dumping or spills of hazardous materials do not necessarily constitute contamination. Pollution incidents and waste offences should primarily be managed under the legislative framework set out in Chapters 4, 5, 7 and 8 of the *Protection of the Environment Operations Act 1997* and Schedule 9 of the *Environmental Planning and Assessment Act 1979*.

Such offences include but are not limited to:

- Filling land without consent under s. 4.2 of the EP&A Act;
- Filling land with material that is not approved ie where a development consent specifies that imported fill must meet certain standards;
- Water or land pollution as described in the POEO Act; or
- Unlawfully applying waste to land ss143,144 POEO Act

Waste is defined in the POEO Act and may include any type of soil with or without contaminants.

When dealing with matters of waste or pollution, it is not appropriate to use the NEPM as the basis for investigation. Waste classification (as per EPA guidelines) should be used.

When considering clean-up criteria for pollution incidents, illegal dumping or spills of hazardous materials, the original state of the land or “background” levels of contaminants should be used as the clean-up goal.

Only if the land cannot be returned to its original condition or the pollution or waste activities are deemed to be no longer current, may it be considered a potentially contaminated site.

## **18 The Protection of the Environment Operations (Underground Petroleum Storage Systems (UPSS) Regulation (2019) enforcement**

The Protection of the Environment Operations (Underground Petroleum Storage Systems) Regulation 2019 requires that the local Council is to be advised of certain matters including the validation reports for UPSS removal or modification and the notification of environmental harm.

All reports for validation of remediation under the UPSS regulation must meet the requirements for consultants' reporting set out in this policy, specifically consultant certification and the provision of summary reports.

The requirement of the UPSS regulation is generally to ensure that:

- 1) Infrastructure and equipment are properly designed, installed, commissioned and operated;
- 2) A secondary loss detection system is in place; and,
- 3) An environmental protection plan is in place.

The regulatory authority (the EPA until 1 June 2017, then Council) has the right under the POEO Act to enter the property and request to view records at any reasonable time.

At the time when regulatory responsibility for the UPSS regulation is handed to Council, Council may schedule routine inspections of UPSS sites to ensure compliance with the regulation. A fee may be charged in line with Council's Schedule of Fees and Charges.

Council is able to issue penalty infringement notices for any non-compliance with the regulations.

## Appendix A - Potentially contaminating 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.

# Should only be used where specific information about the site is available

Grouping	Potentially contaminating land use	Definition or comments
<b>Agriculture</b>	Aquaculture	Cultivating or keeping fish or marine vegetation for commercial purposes; Fisheries Management Act 1994
	Extensive agriculture <sup>#</sup>	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	Feed lots, piggeries, dairies, concentrated waste products Designated development triggers
	Intensive plant agriculture	Vineyards, orchards, irrigated 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	
<b>Asbestos</b>	Asbestos Disposal <sup>#</sup>	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
<b>Chemical</b>	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 association with other activities

Grouping	Potentially contaminating land use	Definition or comments
	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 scientific experiments, tests, investigations, etc., or to manufacture chemicals, medicines, or the like. Includes large scale photographic labs etc.
	Paint formulation and manufacture	
	Paper and printing works	Commercial printerries with significant stores of ink and solvents
	Pesticide manufacture and formulation	
	Wood preservation	
<b>Fuel</b>	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
<b>Industry</b>	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, spray painting
	Iron and steel works	



Grouping	Potentially contaminating land use	Definition or comments
	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
<b>Transport</b>	Air transport facilities	Includes heliports and all ancillary buildings
	Emergency services facilities	Police, Ambulance Fire, SES have often included 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
<b>Waste</b>	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 use for the disposal of waste
	Oil Recycling	
	Scrap yards	
	Sewage treatment plants	
	Site used for illegal waste disposal	



Grouping	Potentially contaminating land use	Definition or comments
	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
	Waste storage and treatment	
<b>Other</b>	Commercial or industrial fixed plant with liquid fuels, e.g. generator sets.	
	Rifle or shooting range	
	Site that includes large electrical transformers or switch gear	Including electrical substations and transformers or switchgear for large industrial premises.
	Site that is impacted by off-site contamination <sup>#</sup>	Sites that would require contamination assessment due to the impacts of contamination derived from land that is being regulated by the EPA under Part 3 of the CLM Act.

## Appendix B Summary Report Template

Contaminated Land Management Summary Document -Pursuant to Narromine Shire Council Contaminated Land Policy

<b>Real property Description and address</b>					
Address	Lot	DP	Parish	County	
<b>Dates of investigation or remediation</b>					
<b>Main Areas of Concern</b>					
e.g. fuel tanks, waste area, storage of chemicals, processing area					
<b>Notable contaminant concentrations eg maximum specific concentrations and validation results</b>					
Maximum soil concentrations in soil removed – Analyte mg/kg, Residual soil concentration - Analyte mg/kg Maximum ground water concentration Analyte mg/l					
<b>Nature of works carried out</b>					
Soil investigation, ground water investigation, excavation, on-site remediation, removal of soil etc. Validation sampling, backfilled with imported soil with ENM classification.					
<b>Nature and extent of residual contamination</b>					
Contamination identified in investigation. Contamination unable to be remediated within the scope of the work, or areas not assessed.					
<b>Risk Factors</b>					
Reference to conceptual site model.					
<b>Waste removed</b>					
During remediation					
<b>Remediation Summary</b>					
What was removed or treated? Was it successful, is residual remediation remaining?					
<b>Statement of suitability</b>					
The land is considered suitable for [residential, residential with limited soil access, open space, industrial/commercial] land use, other (describe)					
<b>Endorsement</b>					
This is an accurate summary of the report titled:					
Produced by:					
Dated:					
Provided to Narromine Shire Council on:					
Name:			Signature:		
Certification details					

Summary Document - Textual description may not extend beyond one page.

**Summary Document – Site Plan.** Please note areas of concern, contamination removed or remediated and any residual contamination or risk factors.

Summary Document – Site Plan description may not extend beyond one page.