



MODEL Regional Contaminated Land Policy - Land Use Planning

APRIL 2017

This publication was produced by the Hunter Joint Organisation of Councils

Hunter Joint Organisation of Councils

Acknowledgements

This resource has been made possible by the New South Wales Government through the EPAs Contaminated Land Management Program under funding provided by the NSW Environmental Trust



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Suggested Bibliographic Citation:

Hunter Joint Organisation of Councils, 2017. *MODEL Regional Contaminated Land Policy - Land Use Planning*. Hunter Joint Organisations of Councils, Thornton NSW.

Disclaimer

The development of this Model Contaminated Land Policy has been coordinated by the Hunter Joint Organisation of Councils. It is designed as a model for Councils to consider when developing their Contaminated Land Policy. The content of this model policy is current at the time of publication. While every effort has been made to ensure accuracy and completeness, no responsibility is taken, nor guarantee given, by the Hunter Joint Organisation of Councils with respect to errors or omissions in the materials contained in the model policy. The contents do not constitute legal advice, are not intended to be a substitute for legal advice, and should not be relied upon as such. The Hunter Joint Organisation of Councils does not accept any responsibility or liability in regard to your use of any information given in this model policy.

FOREWORD

The appropriate management of contaminated land is important to protect human health and the environment. Since contaminated land can restrict the development and certain uses of land it has economic, legal and planning implications for the community and for regulatory authorities.

Contaminated land in New South Wales (NSW) is primarily managed through two avenues:

1. Sites where contamination is considered significant enough to warrant regulation are the management responsibility of the NSW Environment Protection Authority (EPA) through the powers provided to it under the *Contaminated Land Management Act 1997*.
2. Other sites are managed by Councils via land use planning instruments, through the powers provided to it under the *Environmental Planning and Assessment Act 1979*.

Why develop a Local Contaminated Land Policy?

The NSW Managing Land Contamination Planning Guidelines – SEPP 55 Remediation of Land 1998 (“the Planning Guidelines”) strongly recommend that “*each local council develop and adopt a formal policy for managing land contamination to provide a local context for decision making*” and that “*the policy should be consistent with the Guidelines and either adopt or be based on them, with variations based on local conditions and procedure*”.

The Planning Guidelines also identify that “*council’s policy on contaminated land may be contained within a number of documents, such as planning instruments that contain land use restrictions relevant to contamination and a DCP or plans. However it is also advisable to have a formal “stand alone” policy document*”.

The development and consistent application of a local contaminated land policy by Council therefore provides a valuable tool to ensure and demonstrate adherence to the Planning Guidelines. Its implementation will directly assist Councils to ensure they act in “good faith” with their legislative obligations.

How to Use This Model Policy

This model policy should be tailored by Councils in the Hunter Region to develop their own Contaminated Land Policy – Land Use Planning.

Advice and instructions are provided in dotted boxes throughout the Model Policy. It is intended that all dotted boxes be removed from the final policy adopted by Council, as they are provided for development purposes only.

Policy statements are provided in boxes for easy identification and differentiation from the contextual text, which is also provided for each section of the policy. Council may chose to keep the contextual text in its own policy, or only adopt the policy statements.

The following table provides instructions to Council (for each section of the Model Policy) to assist them adapt the Model Policy to their individual Local Government Area.

| Section | Instructions for Adapting to Local Policy |
|---|---|
| 1. Scope 2. Purpose 3. Objectives 4. Application | These sections are recommended to be included in their entirety |
| 5. Responsibility | Council to insert Council specific roles and responsibilities |
| 6. Relationship to other Policies, Procedures and Guidelines | Council to insert references to relevant local documents. References to documents applying to all the NSW Councils are included, and it is recommended that the list is adopted for the final local policy |
| 7. Review of this Policy | Council to insert relevant timeframe for policy review |
| 8. Managing Land Contamination through the Planning Process in the Local Government Area 8.1 Land Use Planning Functions 8.2 Information Management 8.3 Certification Requirements 8.4 Investigation and Reporting Standards 8.5 Site Investigation, Remediation and Validation 8.6 Site Audits 8.7 Control of Remediation Works 8.8 Duty to Report 8.9 Preventing Contamination | Adoption of all policy statements is recommended. Council to choose whether or not to include the contextual text as part of their Local Contaminated Land Policy |
| Attachment A - Notations for s.149 Certificates | Notations advising of matters included under Section 59(2) of the <i>Contaminated Land Management Act</i> are recommended to be included in their entirety. Two different options advising of matters included under Schedule 4 of the <i>Environmental Planning and Assessment Regulation</i> are provided (<i>i.e.</i> notifying that Council has adopted a policy that restricts the development of the land due to potential contamination). Council is to select one option and exclude the other from its final policy. |
| Attachment B - Potentially Contaminating Activities Attachment C - Category 1 Remediation Works | These attachments are recommended to be included in their entirety |
| Attachment D - Site Management Requirements Remediation Works | Council to tailor this attachment to its specific requirements |

The model policy is accompanied by supporting guides and resources, as described in the flowchart below, which are designed to assist Councils effectively implement the Model Policy at the local level.

POLICY FOCUS AREAS

SUPPORTING RESOURCES AND GUIDES

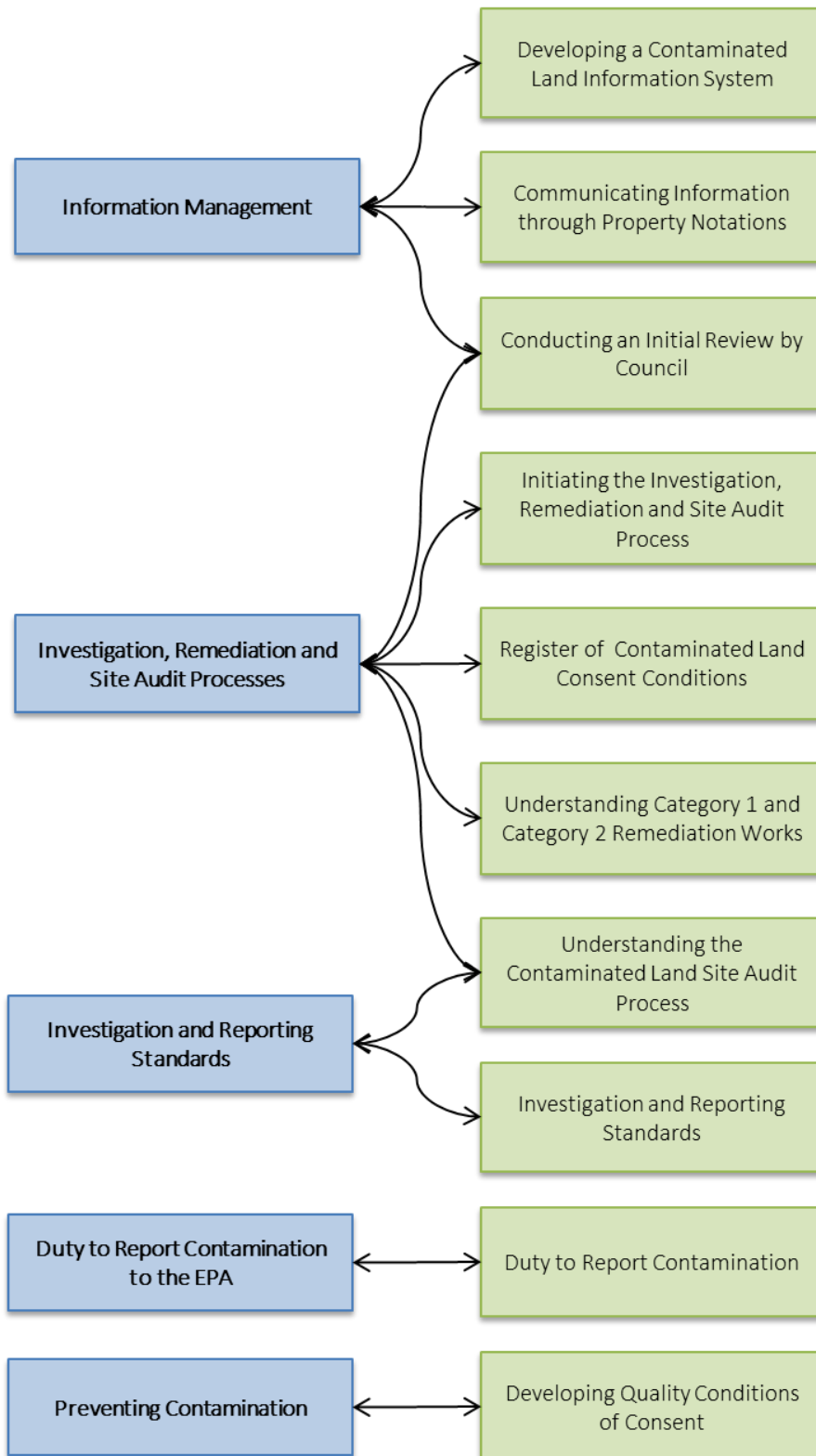


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Key Terms and Acronyms

| | |
|--|---|
| Category 1 Remediation | Remediation works requiring Development Consent |
| Category 2 Remediation | Remediation works that do not require Development Consent (but must be notified to Council) |
| Contamination | The condition of land or water where any chemical substance or waste has been added as a direct or indirect result of human activity at above background level and represents, or potentially represents, an adverse health or environmental impact |
| CLM Act | <i>Contaminated Land Management Act 1997 (NSW)</i> |
| Detailed Site Investigation (DSI) | An investigation with the objective to define the nature, extent and degree of contamination; assess potential risk posed by contaminants to health and the environment; and obtain sufficient information to develop a Remedial Action Plan (if needed) |
| Development Application | A Development Application is a formal request for consent to carry out development and is considered under Part IV of the <i>Environmental Planning & Assessment Act 1979</i> |
| Development Consent | Formal approval from Local Councils to proceed with a development. Development Consent is required prior to commencement of any works associated with development governed by Part IV of the <i>Environmental Planning & Assessment Act 1979</i> |
| Duty to Report | The duty to report significant contamination to the NSW EPA is a requirement under the <i>Contaminated Land Management Act 1997</i> , with updates provided in the <i>Contaminated Land Management Amendment Act 2008</i> . The triggers for reporting are presented in the “Guidelines on the Duty to Report Contamination under the <i>Contaminated Land Management Act 1997</i> ” (2015) |
| EPA | Environment Protection Authority |
| Initial Evaluation | An evaluation undertaken by Council to determine whether contamination is likely to be an issue, and to assess whether further information is required for it to conduct its planning functions in good faith |
| Land Contamination | Land contamination may be the result of past or current uses. The land may be contaminated by a current or historical land use activity directly on that site or through migration of contamination from adjacent sites. See also definition of “contamination” |
| LEP | Local Environmental Plan. An LEP guides planning decisions for Local Government Areas through zoning and development controls, which provide a framework for the way land can be used. LEPs are Planning Instruments from the <i>Environmental Planning & Assessment Act 1979</i> |
| LGA | Local Government Area |
| Ongoing Environmental Management Plan (OEMP) | A plan outlining monitoring and management requirements where contamination remains on site, and there is uncertainty as to its potential to migrate; and / or the effectiveness of the management measures implemented to contain the contamination following remediation and validation; and / or monitoring and ongoing management forms part of the remediation strategy |

| | |
|--------------------------------------|--|
| Planning Application | A Development Application or Planning Proposal made to Council in accordance with the <i>Environmental Planning and Assessment Act 1979</i> (NSW) |
| Planning Guidelines | NSW Managing Land Contamination Planning Guidelines – SEPP 55 Remediation of Land (1998) |
| Planning Proposal | A formal application submitted to Council that proposes to rezone land or to change the land use controls applicable to that land |
| POEO | <i>Protection of the Environment Operations Act 1997</i> (NSW) |
| Preliminary Site Investigation (PSI) | An investigation to identify any past or present potentially contaminating activities, to provide a preliminary assessment of any site contamination, and if required, to provide a basis for a more detailed investigation |
| Remedial Action Plan (RAP) | A plan that sets objectives, and documents the process, for remediating a contaminated site |
| s149 Certificate | Planning Certificate under Section 149 of the <i>Environmental Planning and Assessment Act 1979</i> (NSW) |
| SEPP 55 | State Environmental Planning Policy No 55 – Remediation of Land |
| Significantly Contaminated Land | A site is declared Significantly Contaminated Land by the EPA where contamination is considered significant enough to warrant regulation under the <i>Contaminated Land Management Act 1997</i> (with changes made through the <i>Contaminated Land Management Amendment Act 2008</i>) given the site’s current or approved use |
| Site Audit | An independent review by a Contaminated Land Auditor, accredited by the NSW EPA, of any or all stages of the site investigation process, conducted in accordance with the requirements of the <i>Contaminated Land Management Act 1997</i> |
| Site Audit Report (SAR) | A report which summarises the report(s) audited, and provides the Auditor’s opinion and conclusions. A Site Audit Report must be accompanied by a Site Audit Statement |
| Site Audit Statement (SAS) | A statement which outlines the conclusions of a site audit. A Site Audit Statement must be accompanied by a Site Audit Report |
| Table 1 of the Planning Guidelines | List of Potentially Contaminating Activities included in Table 1 of the “NSW Managing Land Contamination Planning Guidelines” (1998) |
| Validation | The objective of the validation stage of the contaminated land process is to demonstrate whether or not the objectives stated in the Remedial Action Plan have been achieved |

Key Legislative Instruments, Regulations, Policies & Guidelines

| | |
|---|---|
| <i>Contaminated Land Management Act 1997</i> | Sets out the role of the EPA and the rights and responsibilities of parties it might direct to manage land where contamination is significant enough to warrant regulation |
| <i>Contaminated Land Management Amendment Act 2008</i> | Introduced amendments aimed to allow sites to be cleaned up more efficiently while reinforcing the 'polluter pays' principle |
| <i>Contaminated Land Management Regulation 2013</i> | Sets out the recovery of administrative costs for the EPA relating to regulated sites and the auditor system. It also sets out timeframes for administrative matters under the <i>CLM Act</i> |
| Duty to Report Guidelines | Details the circumstances that can trigger the requirement to notify the EPA about contamination under Section 60 of the <i>CLM Act</i> |
| <i>Environmental Planning & Assessment Act 1979</i> | Provides the overarching structure for regulation of planning and development in NSW together with the <i>Environmental Planning and Assessment Regulation 2000</i> |
| <i>Environmental Planning and Assessment Regulation 2000</i> | Provide the overarching structure for the regulation of planning and development in NSW together with the <i>Environmental Planning and Assessment Act 1979</i> |
| National Environment Protection (Assessment of Site Contamination) Measure 1999 (as amended 2013) | Establishes a nationally consistent approach to the assessment of site contamination to ensure sound environmental management practices by the community which includes regulators, site assessors, site auditors, landowners, developers and industry |
| NSW Managing Land Contamination Planning Guidelines – SEPP 55 Remediation of Land (1998) | The Planning Guidelines support SEPP55 and address the policy framework, identification and investigation of contamination, the decision making process, management of contaminated sites and remediation, information management, and principles for proactively preventing future contamination |
| State Environmental Planning Policy No 55 – Remediation of Land | Ensures planning decisions take into account possible land contamination, and promotes remediation to reduce risk of harm |

1 Scope

This document outlines Council's Policy in relation to the management of Contaminated Land that is under the regulatory control of Local Government, as stipulated by the *Environmental Planning and Assessment Act 1979* and Managing Land Contamination Planning Guidelines SEPP 55 - Remediation of Land (1998) ("the Planning Guidelines").

This Policy seeks to align Council activities and management processes to the Planning Guidelines and achieve the key principles of:

- Ensuring any land use changes will not increase risk to human health or the environment
- Avoiding inappropriate restrictions on land use
- Providing information to support decision making and to inform the community of Council's requirements.

2 Purpose

The purpose of the Contaminated Land Policy is to provide a framework for Council to appropriately manage land contamination through the land use planning process, and in doing so, ensure Council acts in "good faith" with its legislative obligations.

The Policy sets out the preferred practice of Council Officers in relation to:

- Identifying, evaluating and managing contaminated land through the land use planning process
- Recording, managing and disclosing contaminated land information
- Reporting contamination to the NSW EPA
- Preventing or minimising the potential for contamination.

It is not the intent of this Policy that an act or omission of any Officer of the Council shall be called into question or held to be invalid on the grounds of failure to comply with this Policy.

3 Objectives

The objectives of this policy are to:

- Ensure that changes in land use will not increase the risk to human health or the environment
- 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 possible contamination
- Ensure Council exercise its functions relating to the development of contaminated land with a reasonable standard of care and diligence
- Ensure that site investigations and remediation works are carried out in a satisfactory manner, and where appropriate, are independently verified by a Site Auditor
- Avoid inappropriate restrictions on land use arising from contamination
- Provide information to support decision making, and to inform the community of potential restrictions on property arising from contaminated land matters.

4 Application

This Policy relates to Council’s responsibility in contaminated land matters as the regulatory authority for land use planning.

This Policy applies to all land within the Local Government Area.

5 Responsibility

Advisory Note

Each Council to insert specific staff roles and responsibilities for policy implementation in the following table. Current information included in the table is for guidance only. It is recommended that Council include role descriptions that are unlikely to date following potential Council restructures.

| Position Title | Responsibility |
|---|--|
| Manager Waste, Health & Regulatory Services | Responsible for the implementation and regular review of the policy, and for ensuring staff are sufficiently trained to implement the policy |
| Environmental Health Coordinator & Environmental Health Staff | Provide support and advice on implementation of the policy |
| Strategic Planning and Development Assessment Staff | Ensure adherence to the policy when undertaking planning functions under the <i>Environmental Planning and Assessment Act 1979</i> |
| Section 149 Planner | Provide information on Section 149 Planning Certificates that is consistent with the policy] |

6 Relationship to other Policies, Procedures and Guidelines

Advisory Note

Insert relevant local policies and procedures below that relate specifically to implementation of the Contaminated Land Policy for Land Use Planning.

Documents relevant to all Councils are presented in the below section.

Note. The Model Policy is supported by a number of guides and resources to assist Councils effectively adapt and implement the Model Policy at an LGA level. Individual Councils may also wish to reference these resources in this section of their local policy.

This Policy is supported by a number of legislative instruments, regulations, guidelines and other relevant Council documents, as listed below:

1. *Contaminated Land Management Act 1997*
2. *Contaminated Land Management Regulation 2013*
3. *Environmental Planning and Assessment Act 1979*
4. *Environmental Planning and Assessment Regulation 2000*
5. *Government Information (Public Access) Act 2009*
6. Guidelines provided or endorsed by the NSW EPA under the CLM Act.
7. *Local Government Act 1993*
8. *Local Government (General) Regulation 2005*
9. Managing Land Contamination Planning Guidelines – SEPP 55 Remediation of Land
10. National Environment Protection (Assessment of Site Contamination) Measure 1999, amended in 2013
11. State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55), 1998
12. [COUNCIL TO INSERT REFERENCES TO RELEVANT LOCAL DOCUMENTS]

7 Review of this Policy

This policy will be reviewed on [COUNCIL TO INSERT REVIEW DATE]. The policy will also be subject to review at an earlier time in response to amendments to legislation, policy or guidelines that may directly affect the intent and application of the Policy.

8 Managing Land Contamination through the Planning Process in the Local Government Area

8.1 Land Use Planning Functions

When carrying out planning functions under the *Environmental Planning and Assessment Act 1979*, Council must consider the possibility that the previous and / or current land uses, and / or a nearby land use, has caused contamination of the site, and the potential risk to human health and the environment from that contamination.

Policy Statement:

1. Council shall not approve a Development Application or support a Planning Proposal unless it is satisfied on the basis of information available to it under this Policy that:
 - Contamination has been considered;
 - If the land is contaminated, that the land is suitable in its contaminated state (or will be suitable following remediation) for all the uses permissible under the approval; or
 - If the land is contaminated, that conditions can be placed in planning instruments or on development consents and approvals under Part IV of the *Environmental Planning and Assessment Act 1979* that will ensure any contaminated land can be remediated to a level appropriate to its intended use, prior to, or during the development stage.

8.2 Information Management

Council has an important role in supplying the community with information regarding land use history, land contamination and remediation activities. Council also has a statutory responsibility to include certain information on certificates issued for the purposes of s149 of the *Environmental Planning and Assessment Act 1979*. The information required is defined in:

- s59 of the *Contaminated Land Management Act 1997* (i.e. information provided to Council by either the NSW EPA or Accredited Auditors).
- Schedule 4 of the *Environmental Planning and Assessment Regulation 2000* (i.e. whether there is a policy adopted by Council or any other public authority that restricts the development of the land, in this case due to actual or potential contamination).

The development and maintenance of a corporate Contaminated Land Information System will assist Council to meet its legislative obligations. Whilst there is no legislative requirement for Council to notify a land owner when their land is included as potentially contaminated in a Contaminated Land Information System, notifying the landowner provides the opportunity for them to establish that the land is not contaminated and should not be notified on a Section 149(2) Planning Certificate, or alternatively, to manage or undertake remediation of the land. Notifying the property owner of a site's inclusion also allows the owner the opportunity to reduce the potential risk of harm to the health of the land's occupants and to the environment.

Information held in the Contaminated Land Information System is also to be provided to the public by access to documents on request in accordance with the requirements of the *Government Information (Public Access) Act 2009*. This includes making publicly available and free of charge land contamination consultants reports filed in the system.

Policy Statements:

2. Council will develop and maintain a Contaminated Land Information System to facilitate compliance with statutory obligations, support its planning functions, and provide relevant and accurate information on contaminated land to the community in accordance with the *NSW Government Information (Public Access) Act 2009*.
3. Where Council has a Contaminated Land Information System in place, and inclusion of a property in the system has the potential to restrict the development of the land, the property owner will be notified of the inclusion.
4. Council will request that all contaminated land reports provided exempt Council from any claim for copyright that may restrict Council's ability to provide information to the public in accordance with the *Government Information (Public Access) Act 2009* and *Contaminated Land Management Act 1997*.

Information to be provided on Section 149(2) Planning Certificates

Information to be disclosed on a Section 149(2) Planning Certificate is specified in the *Environmental Planning and Assessment Regulation 2000* (Schedule 4) and s59(2) of the *Contaminated Land Management Act 1997*. Council therefore has a legal obligation to provide certain information through Section 149(2) Planning Certificates in relation to land contamination.

Policy Statement:

5. Section 149(2) Planning Certificates issued by Council are to:
 - Contain information on matters prescribed under Section 59(2) of the *Contaminated Land Management Act 1997* that are relevant to the property
 - Identify whether or not any adopted policy of Council or any other public authority restricts the development of the land (the subject of the certificate) because of the likelihood of any risk of contamination
 - Provide notations where Council has information relating to a particular parcel of land, subject of a certificate, that the land is contaminated or potentially contaminated, Council will provide relevant notations on the certificate, as per attachment A

Information to be provided on Section 149(5) Planning Certificates

Section 149(5) Planning Certificates are governed by s149(5) of the *Environmental Planning and Assessment Act 1979*, which states that "a council may include advice on such other relevant matters affecting the land of which it may be aware". As such, there is no specific legislative requirement for Council to provide information pertaining to land contamination issues on s149(5) Certificates. However, this needs to be balanced with the fact that the Council owes the applicant a duty to take reasonable care when issuing planning certificates.

Policy Statements:

6. Section 149(5) Planning Certificates issued by Council are to provide information that is provided to Councils by the NSW EPA in accordance with s 58 of the *Contaminated Land Management Act*, that is not already included in a s149(2) Planning Certificate.
7. If Council is aware that a site has been notified to the NSW EPA under S.60 of the *Contaminated Land Management Act*, but is currently in various stages of being reviewed by the NSW EPA to assess if the contamination is significant enough to warrant regulation, it will provide information to this effect on the s149(5) certificate.
8. Where Council has a Contaminated Land Information Management System in place, the following additional information included in the system will be provided on Section 149(5) Planning Certificates:
 - Contamination category
 - Any activities listed in Table 1 of the Planning Guidelines that Council records show have occurred on the land
 - Any information to Council's knowledge, that indicates the property may be affected by emerging contaminants or contaminating activities of concern
 - References to any site investigations included in the register
 - Any notifications of remediation.

8.3 Certification Requirements

Contaminated site assessments are inherently complex and usually present a wide range of issues. Engaging professionals who have the relevant qualifications, competencies and experience is important when investigating and managing contaminated sites. For this purpose, Contaminated Land Consultant certification schemes have been developed to ensure those Consultants dealing with contaminated sites have the necessary competencies to carry out the work. Certification under a recognised scheme should be interpreted as the Consultant meeting at least an acceptable minimum standard of competency. Currently, the certification schemes recognised by NSW EPA and the Council are:

- Site Contamination Practitioners Australia (SCPA) scheme for Certified Practitioner – Site Assessment and Management (CP SAM)
- Environment Institute of Australia and New Zealand's (EIANZ) Contaminated Land Assessment Specialist Certified Environmental Practitioner (CLA Specialist CEnvP) scheme
- Soil Science Australia (SSA) Certified Professional Soil Scientist Contaminated Site Assessment and Management (CPSS CSAM) certification.

Policy Statement:

9. Contaminated land reports are to be prepared, or reviewed and approved by an appropriately qualified and certified Environmental Consultant (for any reports submitted from 1 July 2017 and onwards). Currently, the certification schemes recognised by NSW EPA and the Council are (noting other schemes may become recognised):
 - Site Contamination Practitioners Australia (SCPA) scheme
 - Environment Institute of Australia and New Zealand's (EIANZ) Contaminated Land Assessment Specialist Certified Environmental Practitioner (CLA Specialist CEnvP) scheme
 - Soil Science Australia (SSA) Certified Professional Soil Scientist Contaminated Site Assessment and Management (CPSS CSAM) certification.

8.4 Investigation and Reporting Standards

Given the complexity and technical nature of contaminated land reports, it is essential that Consultants complete investigations and reporting in accordance with the EPA prepared and adopted guidelines. To further assist Council staff when assessing planning applications, an accompanying report synthesis, presenting project background, scope, objectives, key issues, investigation findings and recommendations is to be provided with each report.

Policy Statements:

10. All investigations and accompanying reports provided to Council are to be completed in accordance with NSW EPA prepared and adopted guidelines.
11. All contaminated land reports provided to Council are required to include a summary report synthesising key findings and recommendations.

8.5 Site Investigation, Remediation and Validation

To ensure Councils satisfy their legislative obligations when considering planning applications, an appropriate investigation process based on the following stages is required.

Initial Evaluation

An Initial Evaluation is to be completed by Council. It aims to determine whether contamination needs to be addressed during the assessment of a Planning Application (as required by clauses 6 and 7 of SEPP 55), and to therefore determine whether further information is required for Council to conduct its planning functions in good faith.

Policy Statement:

12. An initial evaluation is to be completed by Council for all land use Planning Applications.

Preliminary Site Investigation

A Preliminary Site Investigation is provided by the Proponent. The main objectives are to identify any past or present potentially contaminating activities, provide a preliminary assessment of any site contamination, and if required, provide a basis for a Detailed Site Investigation.

Policy Statement:

13. A Preliminary Site Investigation is required when an Initial Evaluation identifies that contamination is, or may be present on the site, or if potential or actual contamination on an adjacent area has the potential to migrate to the site.

Detailed Site Investigation

A Detailed Site Investigation is provided by the Proponent. The objectives are to define the nature, extent and degree of contamination, to assess potential risk posed by contaminants to human health and the environment, and to obtain sufficient information to develop a Remedial Action Plan, if required. It should be noted that the Detailed Site Investigation Stage of the process may entail several investigations and reports.

Policy Statement:

14. A Detailed Site Investigation is required:
- Where the Preliminary Site Investigation indicates that the land is, or may be contaminated
 - When the site is, or was, formally used for an activity listed in Table 1 of the Managing Land Contamination Planning Guidelines (refer Attachment B), or other potentially contaminating activities known to Council, and a land use change is proposed that has the potential to increase the risk of exposure to contamination
 - To accompany a remediation proposal or notification.

Remedial Action Plan

A Remedial Action Plan is provided by the Proponent. The objectives are to set remediation objectives and document the process to remediate the site. The proposed remediation is to (as a minimum) reduce the risk from contamination to acceptable levels for the proposed land use scenario. The Remedial Action Plan should be based on the information from previous investigations.

Policy Statements:

15. A Remedial Action Plan is required where the Detailed Site Investigation identifies that remediation or management is needed to render the site suitable for its intended land use.
16. A Remedial Action Plan (and accompanying investigation reports) must accompany the Planning Application where development consent is required for remediation (i.e. Category 1 Remediation Works as defined in Attachment C).
17. A Remedial Action Plan (and accompanying investigation reports) must accompany any notification to Council for proposed Category 2 Remediation work.

Validation and Monitoring

Validation and / or Monitoring Reports are provided by the Proponent. The objective of Validation is to demonstrate whether or not the objectives stated in the Remedial Action Plan and any conditions of development consent have been achieved. At times, this may include monitoring following the completion of remediation. Monitoring undertaken for a limited time is typically incorporated into the Validation Report.

In situations where full clean-up is not feasible or on-site containment of contamination is proposed, the need for an On-going Environmental Management Plan including monitoring, maintenance and management measures should be determined by both the Proponent's Consultant and the Planning Authority.

SEPP 55 requires a Notice of Completion to be provided to Council for all remediation work. The Notice of Completion is to include the Validation Report (with monitoring results if monitoring was undertaken).

Policy Statements:

18. A Validation Report (including monitoring results where applicable) is required to validate the completion and effectiveness of all remediation works for which consent has been provided by Council (i.e. Category 1 Remediation Works).
19. The Notice of Completion provided to Council for any Category 2 remediation works is to include the Validation Report.
20. An On-going Environmental Management Plan is required to be provided to Council and implemented where contamination remains on site, and there is uncertainty as to its potential to migrate; and / or the effectiveness of the management measures implemented to contain the contamination following remediation and validation; and / or monitoring and ongoing management forms part of the remediation strategy.

8.6 Site Audits

A Site Audit is an independent review of any or all stages of the site investigation process, conducted by a Site Auditor accredited by the NSW EPA in accordance with the *Contaminated Land Management Act 1997*. Engaging a Site Auditor can provide greater certainty about the information on which the planning authority bases its decision, particularly where sensitive uses are proposed, and / or where contamination is complex. The outcome of a Site Audit is a Site Audit Statement, stating the purpose and outcome of the Site Audit, and accompanying Site Audit Report providing the information on which the outcome was based.

Policy Statements:

21. Council may require a Site Audit to be carried out where Council:
 - Believes on reasonable grounds that the information provided by the Proponent is incorrect or incomplete;
 - Wishes to verify whether the information provided by the Proponent has adhered to appropriate standards, procedures and guidelines; or
 - Does not have the internal resources to conduct its own technical review.
22. All costs associated with providing a Site Audit are to be borne by the Proponent.

8.7 Control of Remediation Works

Remediation is generally considered beneficial as it improves the quality of the environment, reduces health risks and restores land to productive use. However, in some situations remediation work itself has the potential for environmental impact, and the planning process must ensure that these impacts are adequately identified and mitigated. SEPP 55 provides consistent state wide planning and development controls for the remediation of contaminated land. Remediation work which requires development consent is known as Category 1 Remediation Work. All other remediation work may be carried out without development consent and is known as Category 2 Remediation Work, however Council must be notified prior to commencement and upon completion of Category 2 Remediation Works. The triggers for Category 1 Remediation Works are presented in Attachment C.

Policy Statements:

23. Development consent is required for the following remediation work:
 - Category 1 Remediation Work requiring consent as defined by SEPP 55 Section 9 (refer to Attachment C)
 - Proposed works that are inconsistent with the requirements of this policy (i.e. remediation works that do not comply with the conduct of remediation works specified in Attachment D, and are thereby reclassified as Category 1 Remediation Work).
24. Council must be notified of proposed Category 2 Remediation Works no less than 30 days prior to their scheduled commencement.

8.8 Duty to Report

The duty to report contamination to the NSW EPA is a requirement under the *Contaminated Land Management Act 1997*, with updates provided in the *Contaminated Land Management Amendment Act 2008*.

The following people are required to report contamination as soon as practical after they become aware of any contamination that meets the triggers for the duty to report:

- Anyone whose activities have contaminated land
- An owner of land that has been contaminated.

It should be noted that although the above people have the duty to report contamination, anyone can at any time report suspected contamination to the NSW EPA.

Policy Statement:

25. Where Council considers that contamination on a site triggers the duty to report contamination, and it is not clear if the polluter or site owner has reported the contamination, it will notify the EPA for possible action under the *Contaminated Land Management Act 1997*.

8.9 Preventing Contamination

Proactive measures to prevent possible contamination at its source can help to reduce the need for remedial action in the future. Preventing contamination occurring in the first place can therefore have significant environmental and financial benefits for Council and the Community.

Advisory Note

The primary legislation governing the prevention and management of pollution incidents is the Protection of Environment Operations (POEO) Act 1997. A Regional Compliance Assurance Policy and Guidelines are available from the Hunter Joint Organisation of Councils that:

- *Encourage voluntary compliance*
- *Provide guidance on best practice decision making principles*
- *Assist Councils minimise risks to the environment*
- *Inform the community about Council's management of environmental compliance responsibilities*

These can be accessed at <http://www.hccrems.com.au/product/regional-compliance-assurance-policy-and-guidelines/>

Policy Statements:

26. For potentially polluting activities, Council will apply and enforce conditions of development consent that ensure effective and ongoing control measures are implemented.
27. Council will proactively undertake risk-based compliance inspections of potentially contaminating industries / activities to ensure compliance with consent conditions and environment protection legislation.

Attachment A - Notations for s.149 Certificates

The following notations will be provided on Section 149(2) Planning Certificates

1. Notations advising of matters included under Section 59(2) of the Contaminated Land Management Act

| Where Council records identify: | Notation to be included on Section 149(2) Certificate |
|--|---|
| That the property is declared as significantly contaminated under the CLM Act (as at date certificate issued) | <i>The land to which this certificate relates is within land declared to be significantly contaminated land under Part 3 of the Contaminated Land Management Act 1997 at the date of issue of the certificate</i> |
| That the property is subject to a management order under the CLM Act (as at date certificate issued) | <i>The land to which this certificate relates is subject to a management order within the meaning of the Contaminated Land Management Act 1997 at the date of issue of the certificate</i> |
| That the property is subject to an approved voluntary management proposal | <i>The land to which this certificate relates is the subject of an approved voluntary management proposal within the meaning of the Contaminated Land Management Act 1997 at the date of issue of the certificate</i> |
| That the property in question is subject to an ongoing maintenance order under the CLM Act (as at date certificate issued) | <i>The land to which this certificate relates is subject to an ongoing maintenance order within the meaning of the Contaminated Land Management Act 1997 at the date of issue of the certificate</i> |
| That a site audit statement has been provided to Council <i>at any time</i> | <i>The land to which this certificate relates has been the subject of a site audit statement provided to [INSERT COUNCIL NAME]</i> |

2. Notations advising that Council has adopted a Policy that restricts the development of the land due to potential contamination

Advisory Note

Two potential options for s149(2) notations are provided below. Each Council is required to identify which of these options best suit their local circumstances and capacity and remove the other option from their local policy document.

Option 1. General Policy Notation

| Where Council records identify: | Notation to be included on Section 149(2) Certificate |
|---|--|
| <p>That a potentially contaminating activity may have previously occurred or is currently occurring on the property; however no further information is available.</p> | <p><i>“Council has adopted by resolution a policy on contaminated land which may restrict the development of the land to which this certificate relates. This policy is implemented when zoning or land use changes are proposed on lands which:</i></p> <ul style="list-style-type: none"> • <i>are considered to be contaminated; or</i> • <i>which have previously been used for certain purposes; or</i> • <i>which have previously been used for certain purposes but Council’s records do not have sufficient information about previous use of the land to determine whether the land is contaminated; or</i> • <i>have been remediated for a specific use.</i> <p><i>Consideration of Council’s adopted policy and the application of provisions under relevant State legislation is warranted”.</i></p> |

Option 2. Specific Policy Notations

| Where Council records identify: | Suggested Notation |
|---|---|
| <p>That the property has:</p> <ul style="list-style-type: none"> • A previous land use history which could have involved use of contaminants on the site. For example, land which may have been used for an activity listed in Table 1 of the Planning Guidelines (refer Attachment A), or • The property is known to be contaminated, but has not been remediated | <p><i>Council has adopted by resolution a policy on contaminated land which may restrict the development of the land to which this certificate relates. This policy is implemented when zoning or land use changes are proposed on lands which have previously been used for certain purposes. Consideration of Council’s adopted policy and the application of provisions under relevant State legislation is warranted.</i></p> |

| | |
|--|--|
| <p>That the property is known to contain contaminants, but has been remediated for a particular use or range of uses and some contamination remains on the site, for example, encapsulated.</p> | <p><i>Council has adopted by resolution a policy on contaminated land which may restrict the development of the land. This policy is implemented when zoning or land use changes are proposed on lands which are considered to be contaminated, or on lands which have been remediated for a specific use. Consideration of Council’s adopted policy and the application of provisions under relevant State legislation is warranted.</i></p> |
| <p>That the property does not contain a clear site history without significant gaps in information.</p> <p>As a consequence Council cannot determine whether or not the land is contaminated, and therefore the extent to which Council’s policy should apply. In these circumstances Council may decide to take a cautious approach.</p> | <p><i>Council has adopted by resolution a policy on contaminated land which may restrict the development of the land. This policy is implemented when zoning or land use changes are proposed on lands which have previously been used for certain purposes. Council records do not have sufficient information about previous use of this land to determine whether the land is contaminated. Consideration of Council’s adopted policy and the application of provisions under relevant State legislation is warranted.’</i></p> |
| <p>That the property has been contaminated but has been remediated to an extent that no restriction on land use is necessary.</p> | <p><i>No notation is necessary¹</i></p> |
| <p>That there is a history of non-contaminating activities on the land and there is no contrary evidence to suggest that the land has been used for a purpose listed in Table 1 of the Planning Guidelines (refer Attachment A) or other potentially contaminating activity.</p> | <p><i>No notation is necessary</i></p> |

¹ *While no notation may be necessary in these circumstances on a Section 149(2) Certificate it is recommended that information of this nature be provided on the s149(5) Certificates (refer section 8.2).*

Attachment B - Potentially Contaminating Activities

Source: Managing Land Contamination. Planning Guidelines SEPP 55 – Remediation of Land (1998)

Table 1. Some Activities that may Cause Contamination

- acid/alkali plant and formulation
- agricultural/horticultural activities
- airports
- asbestos production, disposal and demolition
- 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, including lead paint contamination
- 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

Note: It is not sufficient to rely solely on the contents of this Table to determine whether a site is likely to be contaminated or not. This Table is a guide only. A conclusive status can only be determined after a review of the site history and, if necessary, sampling and analysis.

Attachment C - Category 1 Remediation Works

State Environmental Planning Policy No 55—Remediation of Land, Clause 9 defines Category 1 Remediation Work as:

“Category 1 remediation work: work needing consent

For the purposes of this Policy, a category 1 remediation work is a remediation work (not being a work to which clause 14 (b) applies) that is:

- (a) designated development, or*
- (b) carried out or to be carried out on land declared to be a critical habitat, or*
- (c) likely to have a significant effect on a critical habitat or a threatened species, population or ecological community, or*
- (d) development for which another State environmental planning policy or a regional environmental plan requires development consent, or*
- (e) carried out or to be carried out in an area or zone to which any classifications to the following effect apply under an environmental planning instrument:*
 - i. coastal protection,*
 - ii. conservation or heritage conservation,*
 - iii. habitat area, habitat protection area, habitat or wildlife corridor,*
 - iv. environment protection,*
 - v. escarpment, escarpment protection or escarpment preservation,*
 - vi. floodway,*
 - vii. littoral rainforest,*
 - viii. nature reserve,*
 - ix. scenic area or scenic protection,*
 - x. wetland, or*
- (f) carried out or to be carried out on any land in a manner that does not comply with a policy made under the contaminated land planning guidelines by the Council for any local government area in which the land is situated (or if the land is within the unincorporated area, the Western Lands Commissioner).*

Note.

See Section 5A of the Environmental Planning and Assessment Act 1979 for the factors to be taken into account in assessing whether there is likely to be a significant effect as referred to in paragraph (c) above. The terms used in that paragraph are defined in that Act by reference to both the Threatened Species Conservation Act 1995 and the Fisheries Management Act 1994.”

Attachment D - Site Management Requirements Remediation Works

All Category 2 remediation works must be carried out in accordance with the following site management requirements. These have been established to prevent Category 2 work adversely impacting on the environment and public amenity.

Category 2 remediation works that do not comply with these requirements will be classified as Category 1 remediation work and will require development consent.

Advisory Note

The details in this Attachment need to be reviewed and tailored to each Council's specific requirements.

Remediation Work

All remediation work must be carried out in accordance with:

- Managing Land Contamination Planning Guidelines SEPP 55- Remediation of Land
- Any guidelines published by the NSW Environment Protection Authority under the *Contaminated Land Management Act 1997*.

Hours of Operation

All remediation work must be carried out between the following hours:

Monday – Friday [COUNCIL TO INSERT HOURS OF OPERATION]

Saturday [COUNCIL TO INSERT HOURS OF OPERATION]

No work is permitted on Sundays or Public Holidays

Site Signage

A sign displaying the contact details of the remediation contractor and site manager (if different from the remediation contractor) must be displayed on the site adjacent to the site access, including a contact telephone number that is available 24 hours a day, 7 days a week. The sign must be clearly legible from the street and be displayed for the duration of the remediation works.

Notification of Adjacent Owners and Occupiers

The occupiers of all adjacent premises must be notified of the proposed remediation works at least [COUNCIL TO INSERT NOTIFICATION PERIOD] before the works commence.

Site Security

The site must be securely fenced and any other necessary precautions taken, to prevent unauthorised entry to the site for the duration of the remediation works.

Toilet Facilities

Toilet facilities must be provided for workers in accordance with the publication titled *Code of Practice: Amenities for Construction Work* (WorkCover, 1996).

[Note: Toilets for workers must be connected to the sewerage system where practicable. Alternatively, Council approval is required under Section 68 of the *Local Government Act 1993* to install an accredited sewage management facility (e.g. portable chemical closet) on the site.]

Soil and Water Management

All remediation work must be carried out in accordance with a soil and water management plan. A copy of the soil and water management plan must be kept on-site and be made available to Council Officers on request.

Sediment and Erosion Controls

Appropriate sediment and erosion controls must be installed before remediation works are commenced and be maintained in a functional condition until site stabilisation works have been completed.

Prior to the commencement of any remedial work, an erosion and sediment control plan prepared by a suitably qualified person in accordance with *“The Blue Book – Managing Urban Stormwater (MUS): Soils and Construction”* (Landcom) must be submitted to and approved by the certifying authority. Control over discharge of stormwater and containment of run-off and pollutants leaving the site/premises must be undertaken through the installation of erosion control devices including (and not limited to) catch drains, energy dissipaters, level spreaders and sediment control devices such as hay bale barriers, filter fences, filter dams, and sedimentation basins.

Stockpiles

No stockpiles of soil or other materials are to be placed on footpaths or nature strips without the prior written approval of Council.

All stockpiles of soil or other materials must be placed away from drainage lines, gutters, stormwater pits or inlets, trees or native vegetation and be provided with appropriate erosion, sediment and leachate management controls.

All stockpiles of soil or other materials likely to generate dust or odours must be covered (where practical).

All stockpiles of contaminated soil must be stored in a secure area.

Site Access

Vehicular access to the site must be restricted to a stabilised access point.

Protection of Public Roads

Appropriate measures must be taken to prevent the spreading of mud, soil or sediment by vehicles leaving the site. These measures could include the installation of shaker grids or wash-down bays to minimise the transportation of sediment.

Any wastewater from washing the wheels and underbodies of vehicles must be collected and disposed of in a manner that does not pollute waters.

Any mud, soil or sediment tracked or spilled on the roadway must be swept or shoveled up immediately. Hosing of the roadway is not permitted.

Disposal of Water from Excavations

All excavation pump-out water must also be analysed for suspended solids, pH and any contaminants of concern identified during the contamination assessment phase, and comply with relevant EPA and ANZECC water quality criteria prior to discharge to the stormwater system.

Other options for the disposal of excavation pump-out water include disposal to sewer with the prior approval of the relevant water utility, or off-site disposal by a licensed liquid waste transporter at an appropriately licensed liquid waste treatment or processing facility.

Site Stabilisation and Revegetation

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

Bunding

All land farming areas of hydrocarbon contaminated soils must be banded to contain surface water runoff and to prevent the leaching of contaminants into the underlying soils. This will typically require placement on a sealed surface or on durable plastic.

All contaminated water from banded areas must be discharged to sewer with the prior approval of the relevant water authority, or be disposed of off-site by a licensed liquid waste transporter at an appropriately licensed liquid waste treatment or processing facility.

Protection of Trees

Trees on the site must not be removed, lopped or otherwise trimmed without the prior approval of Council.

Trees to be retained on the site must be protected from damage to their foliage and root systems. Suitable measures may include erecting fences or barriers to keep earthmoving equipment and heavy vehicles well clear of trees.

Noise

Noise must be minimised as far as practicable, by the selection of appropriate methods and equipment, and by the use of silencing devices where practicable.

Noise from remediation work must comply with the guidelines for construction site noise specified in the *interim Construction Noise Guideline* (OE&H- EPA 2009).

[INSERT COUNCIL NAME] is the appropriate regulatory authority for noise from non-scheduled construction activities in its area, except as described in Section 6(2) of the *POEO Act 1997*, and thus has discretion in dealing with noise.

Any noise monitoring must be carried out by a suitably qualified Acoustical Consultant if complaints are received, or if directed by Council, and any noise control measures recommended by the Acoustical Consultant must be implemented throughout the remediation work.

Vibration

The use of plant or machinery must not cause vibrations to be felt on any other premises.

Air Quality

Dust Control

Dust emissions must be confined within the site boundaries. The following dust control measures may be employed to comply with this requirement:

- Erection of dust screens around the perimeter of the site
- Use of water sprays across the site to suppress dust
- Keeping excavation surfaces moist
- Covering of all stockpiles of soil and other materials likely to generate dust (where practical)
- Securely covering all loads entering or exiting the site.

Asbestos

Works involving the potential disturbance of asbestos containing materials must be carried out in strict accordance with SafeWork NSW requirements.

Odour Control

Remediation work must not result in the emission of odours that can be detected at any boundary of the site by an Authorised Council Officer. The following measures 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 mitigating agents on hydrocarbon impacted areas or materials
- Maintaining equipment and machinery to minimise exhaust emissions.

If odours are detected, the site is to be inspected by a suitably qualified Environmental Consultant and any recommended control measures are to be implemented throughout the remediation process.

Burning of Materials

No materials are to be burned on site.

Transport

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

- Comply with all road traffic rules
- Minimise noise, vibration and odour to adjacent premises
- Minimise use of local roads.

All transport operators and drivers transporting soil, materials, equipment or machinery to and from the site must:

- Use the designated haulage routes and site access points
- Make all deliveries and pick-ups between the hours specified in Hours of Operation
- Securely cover all loads to prevent any dust or odour emissions during transportation
- Not track soil, mud or sediment onto the road.

Hazardous Wastes

Hazardous wastes arising from the remediation work must be removed, stored and disposed of in accordance with the requirements of the EPA and SafeWork NSW, including the following legislation and guidelines:

- *Work Health & Safety Act 2011*
- *Work Health & Safety Regulation 2011*
- *Protection of the Environment Operations Act 1997*
- *Protection of the Environment Operations (Waste) Regulation 2005*
- Waste Classification Guidelines (NSW EPA, 2014), and associated addenda (available on <http://www.epa.nsw.gov.au/wasteregulation/classify-waste.htm>), resource recovery orders and exemptions (current list available on <http://www.epa.nsw.gov.au/wasteregulation/orders-exemptions.htm>)
- *Environmentally Hazardous Chemicals Act 1997*.

Documentary evidence verifying that all wastes have been classified and disposed of appropriately must be included in the Monitoring and Validation report for the site.

Disposal of Contaminated Soil

Contaminated soil must be disposed of in accordance with the requirements of the *Protection of the Environment Operations Act 1997* and Regulations and any relevant NSW EPA guidelines such as the publication titled Waste Classification Guidelines (NSW EPA, 2014) and associated addenda (available on <http://www.epa.nsw.gov.au/wasteregulation/classify-waste.htm>), and resource recovery orders and exemptions (current list available on <http://www.epa.nsw.gov.au/wasteregulation/orders-exemptions.htm>)

NOTE: 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.

Containment / Capping of Contaminated Material

On-site containment or capping of contaminated soil is not permitted if the concentrations of contaminants are statistically above the soil investigation levels specified in The *National Environment Protection (Assessment of Site Contamination) Measure 1999*, amended in 2013 (ASC NEPM, 2013) for the range of land-uses permitted on the site (unless otherwise agreed with Council or other relevant authority through the endorsement of a Remedial Action Plan and an On-going Environmental Management Plan).

Importation of Fill

Fill material must be validated (at its source if practicable), prior to being imported onto the site. The validation must indicate that the material is free of contaminants (i.e. comprises Virgin Excavated Natural Material (VENM) or Excavated Natural Material (ENM)) or as otherwise approved by the NSW EPA, or the relevant resource

recovery exemptions and orders. Fill imported on to the site should also be compatible with the existing soil characteristic for site drainage purposes.

Fill material may be validated by one or both of the following methods:

- The 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
- The fill should be sampled and analysed in accordance with the relevant EPA Guidelines, to ensure that the material is not contaminated.

Documentary evidence verifying that any fill material has been appropriately validated must be included in the Validation Report for the Site.

Groundwater

An appropriate licence must be obtained from the NSW Office of Water for approval to extract groundwater. Prior to discharge to the stormwater system, site groundwater must be analysed for any contaminants of concern and comply with relevant EPA and ANZECC water quality criteria.

Other options for the disposal of groundwater include disposal to sewer with the prior approval of the appropriate water authority, or off-site disposal by a liquid waste transporter at an appropriately licensed liquid waste treatment or processing facility.

Removal of Underground Storage Tanks

The removal of underground storage tanks (UST) must be undertaken in accordance with the requirements of the *Protection of the Environment Operations (Underground Petroleum Storage Systems) Regulation 2014*, WorkSafe NSW and relevant Australian Standards.

Following the removal of USTs, the tank pits must be remediated and validated in accordance with *Protection of the Environment Operations (Underground Petroleum Storage Systems) Regulation 2014* and relevant guidelines provided under the Regulation.

Excavation and Backfilling Work

All excavation and backfilling work must be carried out by competent persons in accordance with WorkSafe requirements, including the publication titled *Excavation Work Code of Practice: (WorkCover, 2015)*.

If it is necessary to excavate adjacent to an adjoining building or structure, and the excavation work may damage or impair the stability of the building or structure, the person proposing to carry out the work must:

- Take all necessary precautions to protect the building or structure from damage, including any shoring or underpinning where appropriate
- Provide details of the proposed work to the adjoining owner at least seven (7) days before the works commence.

Building and Demolition Work

Development consent may be required from Council for any associated building or demolition work.