



MANLY COUNCIL

Contaminated Lands Policy

Prepared by
Planning & Strategy Group

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CONTENTS

1	INTRODUCTION	1
1.1	Responsibilities	1
1.2	Council's Decision Making Process	2
2	INITIAL EVALUATION	3
3	PROCEDURES FOR THE REZONING OF LAND	4
4	PROCEDURES FOR DEVELOPMENT APPLICATIONS (INCLUDING SUBDIVISIONS)	6
4.1	When Does Council Require a Preliminary Site Contamination Investigation?.....	6
4.2	Carrying Out the Preliminary Site Contamination Investigation.....	7
4.3	When Does Council Require a Detailed Site Contamination Investigation?	10
4.4	When Does Council Require a Remedial Action Plan?	11
4.5	When Does Council Require a Validation and Monitoring Report?	12
5	REMEDICATION REQUIREMENTS	13
5.1	Category 1 Remediation Work.....	13
5.2	Category 2 Remediation Work.....	14
5.3	Site Management - Remedial Works	16
6.	INDEPENDENT AUDITING	17
6.1	Independent Site Audit.....	17
6.2	Site Audit Statements.....	17
6.3	When does Council Require a Site Audit?.....	17
6.4	What Should a Site Audit Cover?	18
7.	COUNCIL RECORDS AND COMMUNITY INFORMATION	20
7.1	How Council's Information is Managed.....	20
7.2	Planning Certificates	21

7.3	Access to Council Information.....	23
7.3.1	Information available to property owners or their agents.....	23
7.3.2	Information available to all enquirers.....	23

Figures

Figure 1:	Council Procedure for Considering Land Contamination Issues for Rezoning Applications.....	6
Figure 2:	Council Procedure for Considering Land Contamination Issues for Subdivision & Development Applications.....	10
Figure 3:	Council Procedure for Considering Site Remediation Proposals.....	16

Appendix

Appendix 1-	Schedule of Potentially Contaminating Activities.....	26
Appendix 2 -	Sources of Site History Information for Preliminary Site Investigations (Stage 1)..	27
Appendix 3 -	Acronyms.....	28
Appendix 4 -	Site Audit Statement Form.....	29
Appendix 5 -	Site Management Plan for Remediation Works.....	31
Appendix 6 -	SEPP 55 Clause 14.....	37
Appendix 7 -	Guidelines for Consultants Reporting on Contaminated Sites (EPA 1997).....	attached

Acknowledgment

This policy was adapted from the Model Policy on Contaminated Land published by the Southern Sydney Regional Organisation of Councils in February 1999, and Ku-ring-gai Council's Contaminated Land Policy published in June 2001.

The attached appendix (7) - *Guidelines for Consultants reporting on Contaminated Sites* was prepared by the Contaminated Sites Section of the NSW Environment Protection Authority in 1997.

1 INTRODUCTION

This Policy describes how Manly Council will manage land contamination issues. The Policy is intended to incorporate salient provisions of *State Environmental Planning Policy No. 55 - Remediation of Land (SEPP 55)* and *Managing Land Contamination: Planning Guidelines (August 1998)* in order to implement a contaminated land management framework within Manly. It applies to all lands in the Manly Local Government Area.

This Policy aims to:

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

1.1 Responsibilities

NSW Environment Protection Authority (EPA)

The NSW EPA intervene in the management of contaminated sites when land contamination poses significant risk of harm to public health or the environment (s. 7 *CLM Act 1997*).

Manly Council

Generally, sites not posing a significant risk of harm will be dealt with by Manly Council under the provisions of *the Environmental Planning & Assessment Act 1979 (EPA & A Act)* and SEPP 55.

Councils who act substantially in accordance with the *Managing Land Contamination: Planning Guidelines* when carrying out specified planning functions are taken to have acted in good faith and receive statutory protection (s.145B and s.145C of the *EP & A Act 1979*).

Proponents/Developers

Proponents should be aware of their requirements to report potential significant risk of harm (*EP&A Act 1979* and *CLM Act 1997*). Proponents are responsible for assessing and managing contamination in accordance with NSW EPA requirements, and proponents should be aware that delays may arise if appropriate information is not submitted in a timely manner.

Owners

The duty to inform the NSW EPA of land that is known to be causing a significant risk of harm applies to an owner who becomes aware of contamination. The *Guidelines on Significant Risk of Harm from Contaminated Land and the Duty to Report (EPA 1999)* state that:

To assess whether the contamination of a site presents a significant risk of harm, one (owner) would normally start with a site history review and a site inspection to look for indicators of contamination or indicators of harm. There may also be a need for further more detailed investigation.

1.2 Council's Decision Making Process

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

2 INITIAL EVALUATION

When Council receives a rezoning application or an application to carry out development (including the subdivision of land) it will conduct an initial evaluation to determine whether contamination is likely to be an issue, and whether adequate information is available for Council to carry out its planning functions in good faith.

The initial evaluation will be based on readily available factual information provided by the applicant and information available to Council such as previous investigations about contamination on the land, previous zoning and uses of the subject land, and restrictions relating to possible contamination such as notices issued by the NSW EPA. Council may also conduct a site inspection of the subject land.

If there are indications that contamination is, or may be, present and Council has insufficient information on which to make a planning decision, then the proponent will be asked to provide additional information as outlined in the following sections of this policy.

Checklist for Initial evaluation

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

- Is Council aware of any previous investigations about contamination on the land? What were the results, including any previous initial evaluations?
- Do existing records held by Council show that an activity listed in Appendix 1 has ever been approved on the subject land?
- Was the subject land at any time zoned for industrial, agricultural or defence purposes?
- Is the subject land currently used for an activity listed in Appendix 1?
- To Council's knowledge was, or is, the subject land regulated through licensing or other mechanisms in relation to any activity listed in Appendix 1?
- Is there any land use restrictions on the subject land relating to possible contamination, such as notices issued by the NSW EPA or other regulatory authority?
- Does a site inspection suggest the site may have been associated with the activity listed in Appendix 1?
- Is Council aware of information concerning contamination impacts on adjacent and neighbouring sites?
- Is there significant use of fill material?

3 PROCEDURES FOR THE REZONING OF LAND

Council is required by SEPP 55 to consider contamination issues when rezoning land (including when Council is the proponent of the rezoning). A preliminary site contamination investigation is not necessary at the rezoning stage if there is no reason to suspect contamination. Council *will* require a preliminary site contamination investigation to be submitted with zoning and rezoning applications in accordance with Clause 6(4) of SEPP 55 when;

6(4) The land concerned is:

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

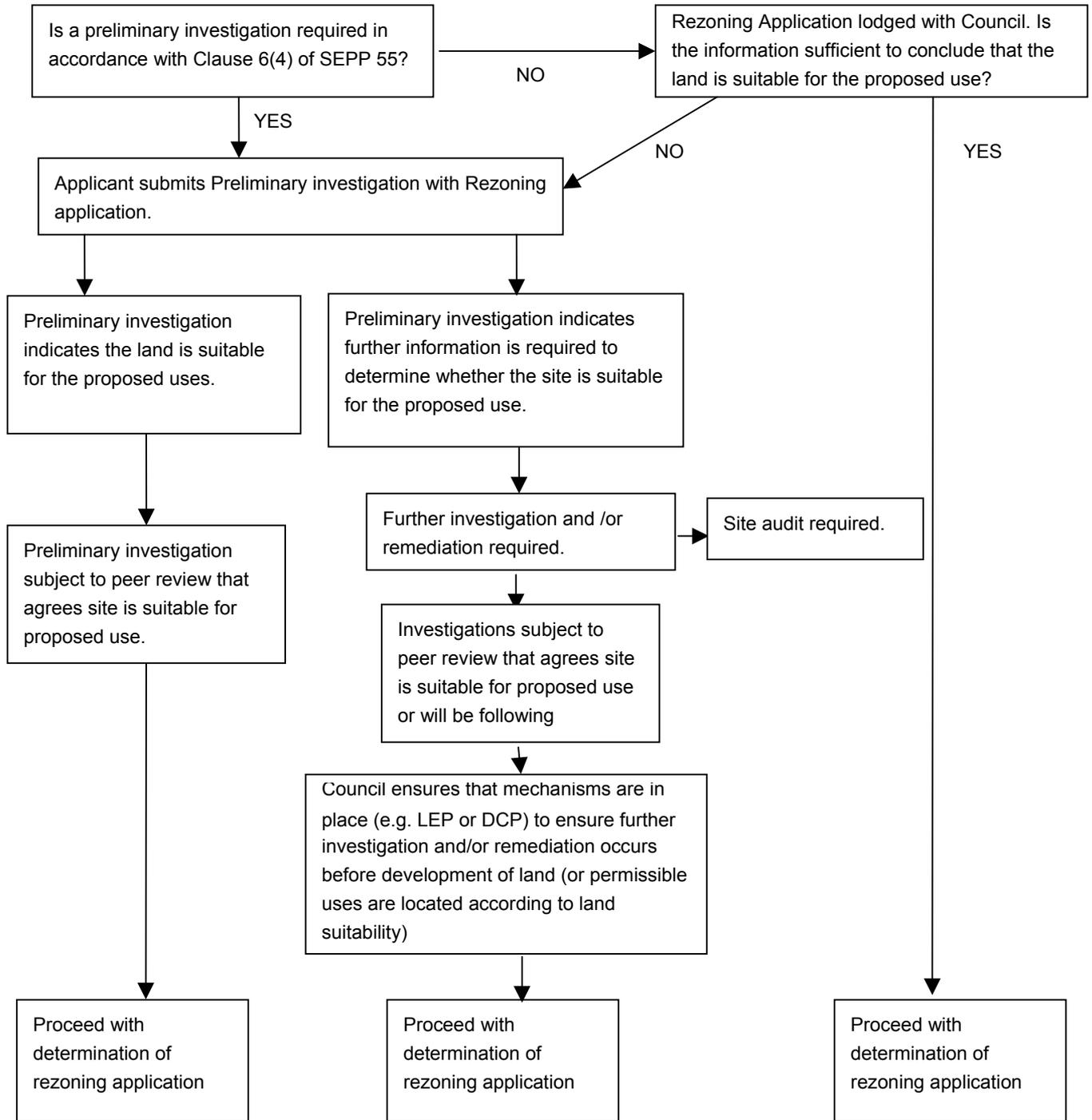
The preliminary site investigation is to be conducted in accordance with NSW EPA Guidelines (1997) (*See Appendix 7*).

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

Where land contamination remains a concern following the preliminary site investigation, Council:

- (i) may not proceed with the rezoning unless the land was proven suitable for that development or it could be demonstrated that the land can, and will be, remediated to make the land suitable.
- (ii) may, where the rezoning covers a large area, include provisions to require further investigation prior to any subsequent development.

Figure 1: Council Procedure for Considering Land Contamination Issues for Rezoning Applications



4 PROCEDURES FOR DEVELOPMENT APPLICATIONS (INCLUDING SUBDIVISIONS)

Council is required by SEPP 55 to consider contamination issues when processing development applications (including subdivisions).

Council's procedure for considering land contamination issues for subdivision and development applications is shown in Figure 2.

4.1 When Does Council Require a Preliminary Site Contamination Investigation?

(i) When the land concerned is:

(a) land that is within an investigation area,

(b) land on which development for a purpose referred to in Appendix 1 is being, or is known to have been, carried out,

(c) to the extent to which it is proposed to carry out development on it for residential, educational, recreational or child care purposes, or for the purposes of a hospital land:

(i) in relation to which there is no knowledge (or incomplete knowledge) as to whether development for a purpose referred to in Appendix 1 has been carried out, and

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

[*State Environmental Planning Policy 55 clause 7(4)*]

(ii) Council has reasonable grounds to believe the land is contaminated because of the land's history, condition, or other information known to Council.

(iii) The site has been investigated and/or remediated but there is insufficient information available about the nature and extent of contamination and/or remediation, or the circumstances *may* have changed.

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

(v) Council records have demonstrated that the site is associated with pollution incidents or illegal dumping of wastes.

(vi) The site is adjoining land or nearby to land that has been associated with activities that may cause contamination listed in Appendix 1 and it is likely that this may have contaminated the subject premises.

The preliminary investigation typically contains:

- A detailed appraisal of the site history, and
- A report based on visual site inspection and assessment.
- Where information on site contamination is limited, some soil sampling may be warranted.

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

4.2 Carrying Out the Preliminary Site Contamination Investigation

The preliminary site contamination investigation shall be carried out in accordance with the requirements of the relevant NSW EPA guidelines, including *Guidelines for Consultants Reporting on Contaminated Sites (EPA 1997) - (Appendix 7)*.

- The proponent is responsible for engaging a suitably qualified consultant to undertake the preliminary site contamination investigation. The report is to be furnished to Council prior to determination by Council of the DA.
- The proponent is responsible for all costs borne in engaging the consultant and site auditor, if requested by Council (see chapter 5 - Independent Auditing).

If Council is satisfied the preliminary site contamination investigation concludes the site is suitable for the proposed use, then further investigations will not be required.

If Council is not satisfied with the preliminary site contamination investigation, independent validation may be required including the resubmitting of reports, a peer review or an accredited audit.

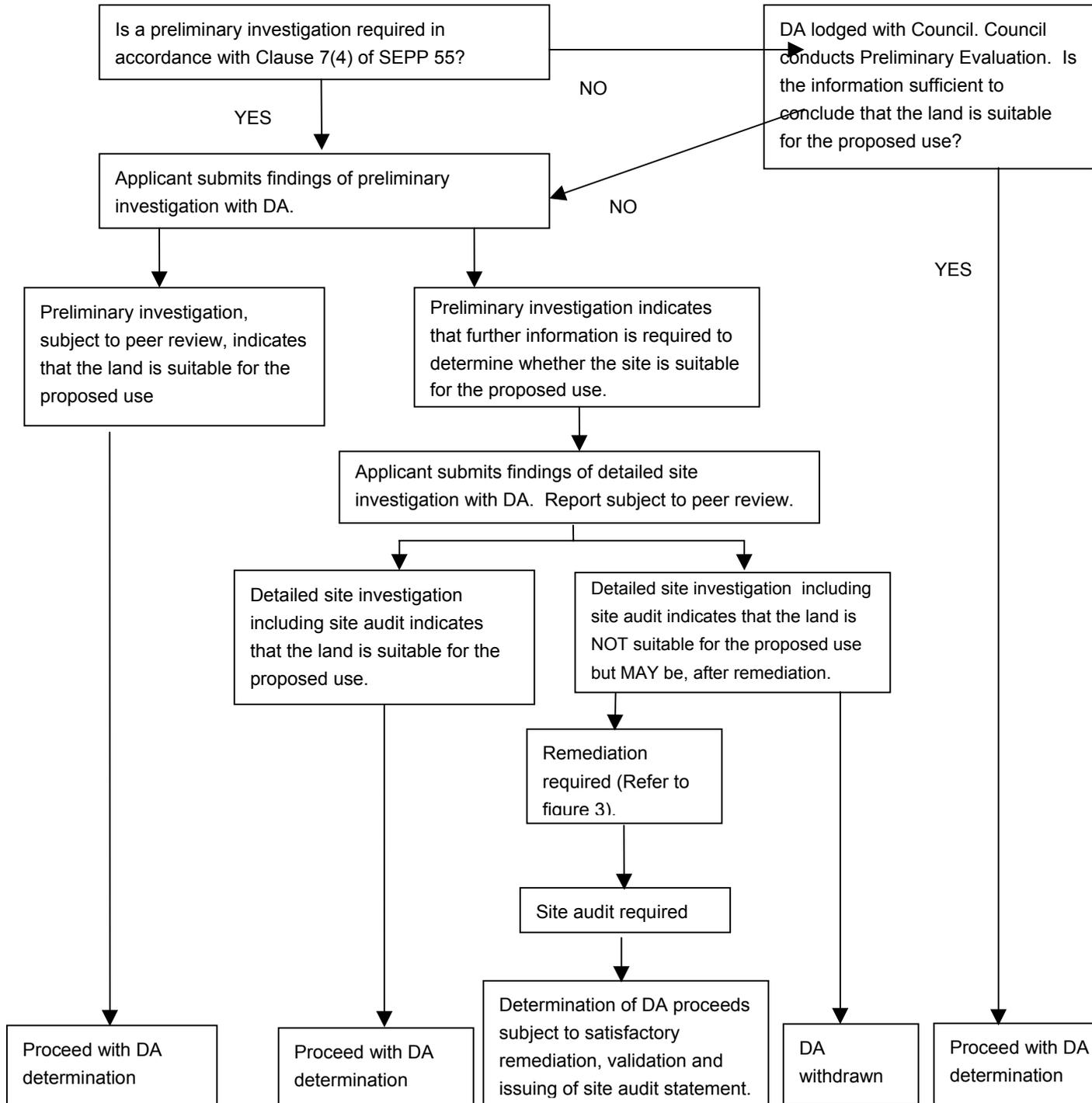
Issues to Consider when a Preliminary Site Contamination Investigation Report is Received.

- Is the information about the history of activities on the site adequate:
- Are the descriptions of activities on the site detailed enough to identify a use listed in Appendix 1?
- Are there any big gaps in the history that might hide a use listed in Appendix 1?
- Are the sources reliable?
- Is the information verifiable? [*Guidelines for Consultants Reporting on Contaminated Sites (EPA 1997)* requires an integrity assessment to be included in the site history.]
- Does the information conform to the relevant NSW EPA guidelines?
- If contamination or a contaminating activity, whether previous or existing, is confirmed should the proponent conduct a detailed investigation to further define the extent and

degree of contamination?

- If the site history suggests that the site is unlikely to be contaminated but there are gaps in the history and appendix 1 uses were permissible under the zoning during those periods, is limited site sampling needed to confirm the site is not contaminated? Consult a site auditor if necessary.
- Does this site pose a significant threat to human health or the environment? If so, refer to the *CLM Act 1997* in relation to duty to notify the NSW EPA.
- Is a site audit of the preliminary investigation necessary?
- Refer to checklist in *Guidelines for Consultants Reporting on Contaminated Sites (EPA 1997)* - Appendix 7.

Figure 2: Council Procedure for Considering Land Contamination Issues for Subdivision & Development Applications



4.3 When Does Council Require a Detailed Site Contamination Investigation?

Council will require a detailed contamination investigation to be undertaken when the results of the preliminary investigation demonstrate the potential for, or existence of, contamination that may not be suitable for the proposed use of the land.

The objectives of a detailed site investigation are to:

- Define the extent and degree of contamination;
- Assess the potential risk posed by contaminants to human health and the environment; and
- Obtain sufficient information for the development of a remedial action plan (if necessary).

The detailed site contamination investigation should be conducted in accordance with relevant NSW EPA guidelines, including *Guidelines for Consultants reporting on Contaminated Sites (EPA 1997) - (Appendix 7)*, and should include:

- A clear statement that the consultant considers the subject site to be suitable for the proposed landuse or if remediation is necessary to make it suitable for that use.
- If remediation is required, the report should also list the feasible remediation options available to remediate the site.
- A site audit (carried out by a NSW EPA accredited auditor).

In some cases the preliminary site contamination investigation and detailed site contamination investigation may be combined where the land is known to contain or have contained a potentially contaminating activity.

Issues to Consider when a Detailed Investigation Report is Received

- Is the sampling program that has been undertaken by the consultant adequate to identify hot spots of contamination on the site? Does it conform to the relevant NSW EPA guidelines? Check the sampling program against the NSW EPA's guidelines or consult a site auditor if necessary.
- Have appropriate thresholds and criteria been used for the assessment? Compare with appropriate criteria or consult a site auditor if necessary.
- Do the levels of contamination on the site need to be reduced in order for the site to be suitable for the proposed use?
- Does this site pose a significant threat to human health or the environment? If so, refer to the *CLM Act 1997* in relation to duty to notify the NSW EPA.
- Is the site audit of the detailed investigation included?

4.4 When Does Council Require a Remedial Action Plan?

If the detailed investigation concludes that the land is not suitable for the proposed use in its present state then Council will require a remedial action plan (RAP) to be submitted. The RAP should be developed in accordance with NSW EPA guidelines, including *Guidelines for Consultants reporting on Contaminated Sites (EPA 1997) - (Appendix 7)*.

The objectives of a RAP are to:

- Set remediation objectives;
- Determine the most appropriate remedial strategy;
- Identify necessary approvals that need to be obtained from regulatory authorities.

The RAP should:

- Document the remedial works to be undertaken at the site, and
- Contain an environmental management plan and occupational health and safety plan for the remedial works.
- Include a site audit (carried out by a NSW EPA accredited auditor).

The NSW EPA has prepared guidelines for specific types of land use remediation that may assist with the development of the RAP, for example, service station guidelines and gas works guidelines.

Prior to determining the subdivision or development application, Council must be satisfied that remedial measures have been, or will be undertaken in accordance with the submitted RAP, to make the site suitable for the proposed use.

Issues to consider when a RAP is Received

- Can the site be appropriately remediated? Consider the RAP and any statement by the proponent's consultant certifying remediation is practical. If necessary, consult a site auditor.
- Are the proposed clean-up criteria appropriate for the future of the site, considering possible human health and environmental impacts? Consult a site auditor if necessary, or check NSW EPA guidelines.
- Are the proposed plans for remediation work acceptable? For example do they include an occupational health and safety plan, site environmental management plan, community relations plan contingency plan?
- Is the site audit of the RAP included?

4.5 When Does Council Require a Validation and Monitoring Report?

Council will require a validation and monitoring report to be submitted after remediation works have been completed, and prior to the commencement of building construction works.

This will normally be achieved by Council placing a condition on any consent granted requiring the submission of a validation and monitoring report prior to the issuing of a construction certificate.

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

The objectives of a validation and monitoring report are to:

- Confirm statistically that the remediated site complies with the cleanup criteria set for the site.
- Demonstrate that the objectives stated in the RAP have been achieved, and
- Ensure that any conditions of development consent have been complied with.

Ideally, the same consultant that conducted the site investigation and remediation process should conduct validation.

The validation and monitoring report will require a site audit (carried out by a NSW EPA accredited auditor).

Issues to Consider when a Validation Report is Received.

- Is the validation/monitoring program proposed adequate? Does it conform to the relevant NSW EPA guidelines?
- Has the proponent or the consultant provided a clear statement on the suitability of the proposed site use?
- Are there ongoing site management requirements?
- Are there any uncertainties?
- Is the site audit of the validation included?

5 REMEDIATION REQUIREMENTS

SEPP 55 specifies when consent is and is not required for remediation work. This section defines category 1 and category 2 remediation work, and outlines the site management provisions for category 2 remediation work.

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

5.1 Category 1 Remediation Work

SEPP 55 defines Category 1 remediation work as work needing consent, and states that for the purposes of this Policy (i.e. SEPP55), a category 1 remediation work is a remediation work [not being a work to which clause 14 (b) applies (see Appendix 6)] 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

Category 1 remediation requires consent and is advertised development unless the remediation work is designated development or State significant development.

All category 1 remediation work must be advertised for 30 days pursuant to s. 29A of the EP & A Act, 1979.

If remedial works constitute category 1 remediation work, the applicant may:

- Amend their current application to include a remediation proposal, or
- Lodge a new and separate development application for the remediation works.

5.2 Category 2 Remediation Work

Category 2 remediation work is all remediation work that is not category 1 remediation work.

Council requires notice of category 2 remediation work to be submitted at least 30 days before commencement of works.

Council will require the information outlined in clause 16(2) of SEPP 55 to be submitted at least 14 days prior to the commencement of category 2 remediation works.

16. Prior notice of Category 2 remediation work

1) A person who proposes to carry out a Category 2 remediation work on any land must give notice of the proposed work to the council for the local government area in which the land is situated

2) The notice must be given:

(a) at least 30 days before the commencement of the work, except in the case of a work referred to in clause 14 (b), and

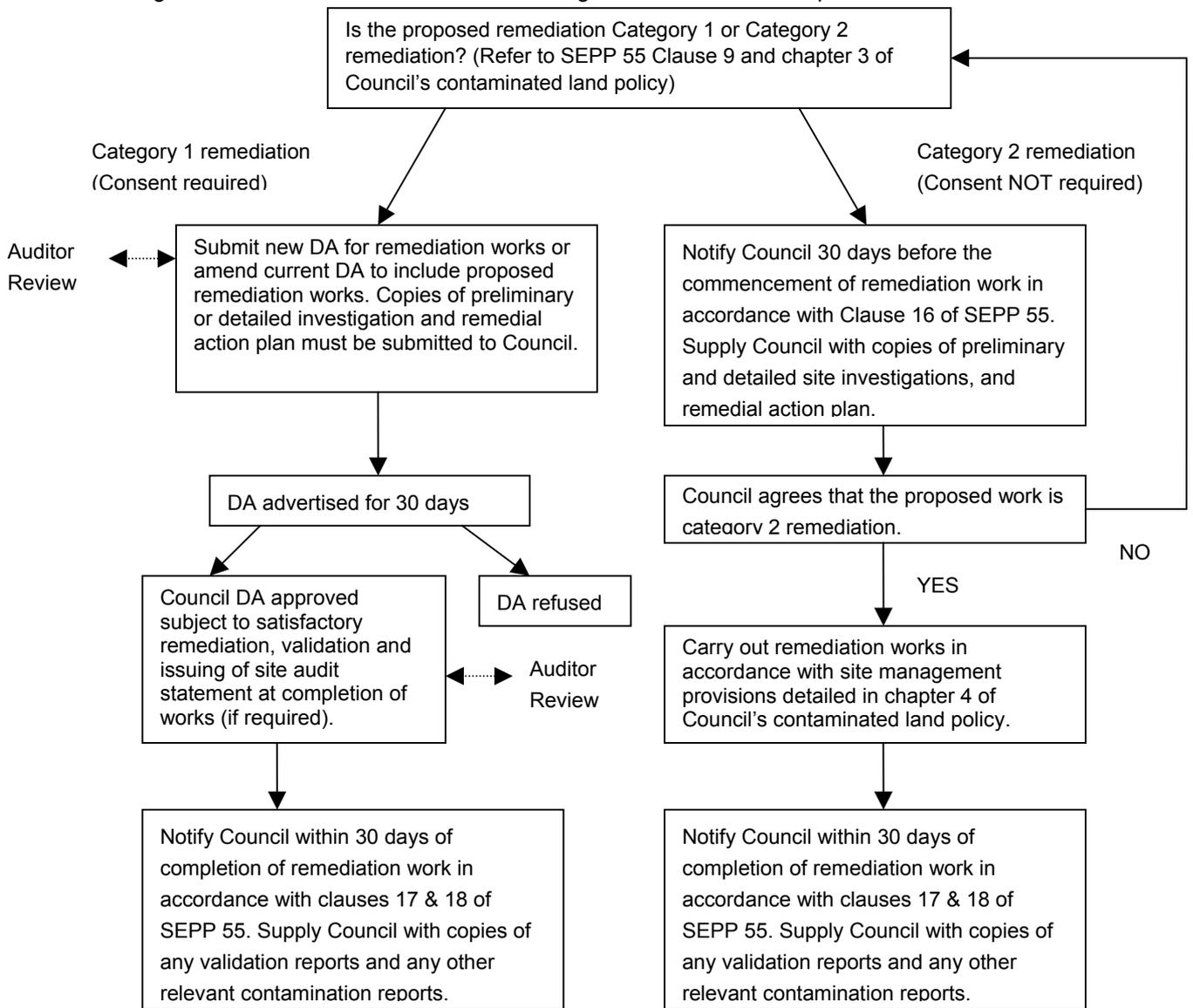
(b) in the case of a work referred to in clause 14 (b) no later than the day before the commencement of the work.

In addition Council will require:

- Copies of any preliminary investigation, detailed investigation and remedial action plan for the subject site.
- Contact details for the remediation contractor and party responsible for ensuring compliance of remediation work with relevant regulatory requirements (if different to remediation contractor).

Although consent is not required for category 2 remediation work, Council will need to be satisfied that the site is suitable for the proposed use when considering any subsequent development applications for the subject site. It is recommended that comprehensive records are maintained during remediation and validation works for all sites.

Figure 3: Council Procedure for Considering Site Remediation Proposals



5.3 Site Management - Remedial Works

It is the responsibility of those remediating a site to ensure compliance with all relevant environmental legislation and regulations.

Appendix 5 provides some general guidelines that may be of assistance. Complying with these guidelines does not imply that all relevant environmental legislation and regulations have been complied with. Non-compliance with relevant environmental legislation and regulations may incur on-the-spot fines of up to \$1500 for minor offences, or fines up to \$1 million and 7 years imprisonment for more serious offences (or as amended by legislation).

6. INDEPENDENT AUDITING

6.1 Independent Site Audit

A site audit is an independent review of site investigation and management documents and an assessment of compliance with current regulations, standards and guidelines, including guidelines made or approved by the NSW EPA. An audit is carried out on a contaminated site to verify:

1. The nature and extent of any contamination of the land,
2. The nature and extent of the investigation or remediation,
3. What investigation or remediation remains necessary before the land is suitable for any specified use or range of uses,
4. The suitability and appropriateness of a plan of remediation, a long-term management plan, a voluntary investigation proposal or a remediation proposal.

6.2 Site Audit Statements

A site audit statement must be prepared on a prescribed form (*Appendix 4 - Contaminated Land Management (Site Auditor) Regulations 1998*). When an accredited auditor for contaminated land is requested to conduct a site audit, they must also prepare a summary site audit report.

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

6.3 When does Council Require a Site Audit?

Council will require a site audit to be undertaken at the following stages:

- Detailed Site Investigation
- Remediation Action Plan
- Validation and Monitoring

Council may require a site audit to be undertaken at the preliminary site investigation stage.

Council, in accordance with the *Managing Land Contamination Planning Guidelines*, will require a site audit prepared by a NSW EPA accredited auditor for contaminated land if Council:

- "Believes on reasonable grounds that the information provided by the applicant is incorrect or incomplete;

- Wishes to verify whether information provided by the proponent has adhered to appropriate standards, procedures and guidelines;
- Or does not have the internal resources to control its own technical review."

Council will inform the proponent if a site audit is required after Council has conducted a review of the contamination reports and associated documents submitted to Council.

The proponent is responsible for engaging a NSW EPA accredited auditor for contaminated land to perform a site audit. In addition, the proponent is responsible for all costs borne in engaging a NSW EPA accredited auditor for contaminated land.

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

6.4 What Should a Site Audit Cover?

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

When Council requests a site audit, Council will also specify any issues that shall be included within the scope of the site audit. As well as requiring a site audit to address any issues raised in s. 47(1)(b) of the *CLM Act 1997*, the following are examples of issues that Council may request a NSW EPA accredited auditor for contaminated land to address when conducting a site audit:

- Has the contaminated land consultant complied with all appropriate standards, procedures and relevant NSW EPA guidelines?
- What further investigations or remediation is required before the land is suitable for any specified use or range of uses?
- Whether the auditor considers that the proposed remediation is adequate, and if undertaken, will render the site to be suitable for the proposed use?
- Whether it can be concluded that there is no unacceptable off-site migration of contaminants, particularly via ground water?
- Whether the contamination conditions at the site are suitable for in-ground absorption of stormwater?

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

Before issuing a site audit statement, the site auditor must prepare and finalise a summary site audit report. The NSW EPA *Guidelines for the NSW Site Auditor Scheme* (1998) outlines what must be included in a site audit report:

The report should document the information reviewed and give the basis and rationale for the conclusions contained in the site audit statement.

The site audit report must include the following information:

- *site location details*
- *site history*
- *potential contaminants of concern*
- *soil stratigraphy and hydrogeology*
- *evaluation of quality assurance and quality control plans*
- *analytical results and evaluation*
- *environmental quality criteria used for the site*
- *assessment of risk*
- *evaluation of remediation for the proposed land use*
- *compliance with regulatory guidelines and directions*
- *any evidence of, or potential for, migration of contaminants from the site*
- *conclusions and recommendations*
- *any other information relevant to the site audit*

The summary site audit report does not need to be submitted to the EPA initially, but site auditors must provide the report, together with any other relevant information, within 14 days if requested by the EPA. A planning authority might request a copy of the site audit report in order to determine the factual information that needs to be recorded on a s. 149 (5) certificate under the Environmental Planning and Assessment Act 1979.

7. COUNCIL RECORDS AND COMMUNITY INFORMATION

Council has an important role in supplying the community with information regarding land use history, land contamination and remediation. Council also has a statutory responsibility under s. 59 of the *CLM Act 1997* to include information to Council by either the NSW EPA or accredited site auditors on certificates issued for the purposes of s. 149 *EP & A Act 1979*.

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

Council's property information system has been prepared in good faith in the interests of responsible planning and is used as a first point of reference by staff. However in terms of information on contamination it is not necessarily comprehensive or definitive and should be viewed as evolving. A notation in relation to contamination against a property on the information system does not necessarily imply the actual existence of contamination on the property. This can only be determined as a result of a sampling and analysis program.

7.1 How Council's Information is Managed

Council's records regarding contamination issues will change over time as land is investigated, remediated and validated. Standards for remediation may also change over time to accommodate changing community or statutory values. For these reasons Council does not hold a register of contaminated sites.

To assist Council in the management of land contamination issues the following information is recorded for individual parcels of land:

- Site contamination reports submitted to Council (i.e. preliminary investigation, detailed investigation, remedial action plans, validation and monitoring reports).
- Site Audit Statements received by Council.
- NSW EPA declarations and orders issued under the CLM Act (including voluntary investigation & remediation proposals agreed by the NSW EPA).
- Prior notification of category 2 remediation works.
- Notification of completion of category 1 and category 2 remediation work
- Information regarding previous or current land uses which may have resulted in soil contamination.

7.2 Planning Certificates

Under s. 149 of the *EP & A Act 1979*, a person may request from Council a certificate containing advice on planning matters related to individual parcels of land. One such prescribed matter is the existence of a council policy to restrict the use of land.

Although Planning Certificates will advise of the existence of this policy and other restrictions, they will *not* contain specific details of the site contamination or potential site contamination for individual parcels of land, for the following reasons:

- Council records may not disclose land uses that may have resulted in land contamination and which were established illegally and/or have existing use rights.
- Council's records regarding contamination issues will change over time as land is investigated, remediated and validated.

7.2.1 Notations for Planning (Section 149) Certificates

The following italicised notations (as appropriate) will appear on a Planning Certificate for a property. The normal text provides guidance as to which notation should be used.

Is the property affected by one of the site contamination notices outlined in Section 59(2) of the Contaminated Land Management Act 1997?

Section 59(2) of the *CLM Act, 1997* provides that specific notations relating to contaminated land issues must be included on s. 149 certificates where:

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

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

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

(d) The land to which the certificate relates is the subject of a site audit statement - if a copy of such a statement has been provided at any time to the local authority issuing the certificate."

Is the land affected by a policy adopted by Council, or any other public authority and notified to Council for the express purpose of its adoption by that authority being referred to in planning certificates issued by Council, that restricts the development of the property due to the likelihood of landslip, bushfires, flooding, tidal inundation subsidence, acid sulphate soils or any other risk?

The option (1-4 below) included on a particular Planning Certificate depends on the information available to Council in relation to the state of contamination (or potential contamination) of the site the subject of the Certificate.

1. Where Council's contaminated land policy restricts the use of land which:

- has 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 Appendix 1; or
- is known to be contaminated, but
- **has not been** remediated. The following notation should be used:

Council has adopted by resolution a Contaminated Land Policy which may restrict the development of the land. This policy is implemented when zoning or land use changes are proposed on lands which may have previously been used for certain purposes.

2. Where Council's contaminated land policy restricts the use of land which:

- is known to contain contaminants, but
- has been remediated for a particular use or range of uses and some contamination remains on the site. An appropriate notation might be:

Council has adopted by resolution a Contaminated Land Policy which may restrict the development of 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.

3. Where Council records **do not contain a clear site history without significant gaps in information** and council cannot determine whether or not the land is contaminated, and therefore the extent to which council's policy should apply, council may decide to take a cautious approach. In such cases an appropriate notation might be:

Council has adopted by resolution a Contaminated Land Policy 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.

4. **No** notation would be necessary under this question on a Section 149(2) of the EP&A Act where Council's Policy **does not restrict** the use of land and is unlikely to result in a restriction once the land has been further investigated. This would include:

- land which has been used for a purpose listed in Appendix 1 but which has been remediated to an extent that no restriction on land use is necessary; or
- there is a history of non-contaminating activities on the land and there is no evidence to suggest that the land has been used for a purpose listed in Appendix 1.

Section 149(5) of the EP&A Act provides that Planning Certificates can contain information other than that prescribed by relevant legislation. These Planning Certificates attract an additional fee. This information may include notations from the property file, such as:

- relevant site history in relation to potential contamination from Council's property file records;

- the nature of any potential contamination from the Council's property information system;
- whether Council has any records of investigation or remediation undertaken.

7.3 Access to Council Information

7.3.1 Information available to property owners or their agents

Property owners, or persons authorised by them in writing, may be provided with information (if any) from the Council's property information system in relation to their own property.

7.3.2 Information available to all enquirers

Details of sites that are subject to legal notices by the NSW EPA can be provided to any inquirer by the EPA (phone 131555) and are a matter of public record. All other inquiries in relation to potentially contaminated land are made as follows:

Type of Information	How to Obtain Information
Current and past development, building, subdivision and rezoning applications.	Written request to the General Manager in accordance with Council's schedule of fees and charges.
Information on reports held by Council in relation to site contamination issues.	Written request to General Manager in accordance with Council's schedule of fees and charges. The written request shall specify what information is requested, who is requesting the information and what is the intended use of the information.
Information on any restrictions placed on the land	Planning Certificate in accordance with Council's schedule of fees and charges.
Information on whether any declarations or orders made or voluntary proposals agreed to under <i>CLM Act</i> have been provided to Council by the EPA or whether Council has received any Site Audit Statements	Planning Certificate in accordance with Council's schedule of fees and charges.
Copies of any Site Audit Statements	Written request to General Manager in accordance with Council's schedule of fees and charges.
Any other information held by Council (other than stated above) in relation to site contamination issues	Written request to General Manager in accordance with Council's schedule of fees and charges. The written request shall specify what information is requested, who is

	requesting the information and what is the intended use of the information.
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In some circumstances Council may not be able to provide full access to its records held on land contamination issues. These circumstances may include:

- when the information held by Council is subject to legal privilege,
- when the release of the information is contrary to the provisions of an Act, or
- when the information requested might be published without prior permission of Council, the current site owner or author of the contamination reports.

Appendix 1- Schedule of Potentially Contaminating Activities

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

Acid/alkali plant and formulation
Agricultural/horticultural activities
Airports
Asbestos production and disposal
Chemicals manufacture and formulation
Defence works
Drum reconditioning works
Dry cleaning establishments
Electrical manufacturing (transformers)
Electroplating and heat treatment premises
Engine works
Explosive industry
Gas works
Iron and steel works
Landfill sites
Metal treatment
Mining and extractive industries
Oil production and storage
Paint formulation and manufacture
Pesticide manufacture and formulation
Power stations
Railway yards
Scrap yards
Service stations
Sheep and cattle dips
Smelting and refining
Tanning and associated trades
Waste storage and treatment
Wood preservation

Note:

- (i) Not all sites with listed former landuses will be contaminated by the former landuse
- (ii) Contamination of sites can occur through other landuses.

Appendix 2 - Sources of Site History Information for Preliminary Site Investigations (Stage 1)

- Past aerial photographs
- Council records - town planning, development and building applications, complaints, pollution incident reports
- Local historical publications
- Current and previous site owners
- Current and previous site workers
- Long-term residents
- Past and present telephone books
- Noxious Trades Act register of noxious trades
- Sand's Sydney and New South Wales Directory 1858 - 1932/3
- NSW Environment Protection Authority Section 35 notices, past and present scheduled premises, unhealthy building land
- Sydney Water Corporation trade waste agreements
- WorkCover Authority Dangerous Goods branch
- Pacific Power sites containing present and past electrical substations

Appendix 3- Acronyms

CLM Act	Contaminated Lands Management Act 1997
DA	Development Application
DCP	Development Control Plan
DLWC	Department of Land and Water Conservation
EPA	NSW Environment Protection Authority
EP&A Act	Environmental Planning and Assessment Act 1979
LEP	Local Environment Plan
LGA	Local Government Area
POEO Act	Protection of the Environment and Operations Act 1997
RAP	Remedial Action Plan
SEPP 55	State Environmental Planning Policy No. 55 - Remediation of Land

Appendix 4 - Site Audit Statement Form

CONTAMINATED LAND MANAGEMENT REGULATION 1998 - SCHEDULE 1

As Published by the NSW EPA in *Guidelines for the NSW Site Auditor Scheme* (1998), prepared by the Contaminated Sites Section of the NSW EPA.

NSW Environment Protection Authority Site Audit Statement

Site Audit Statement No:

Site Auditor (accredited under Contaminated Land Management Act 1997):

Name: Company:.....

Address:.....

..... Postcode:

Phone: Fax:.....

Site details

Address:

..... Postcode:

Lot and DP number:.....

Local government area:.....

Site audit requested by:

Name: Company:.....

Address:

..... Postcode:

Phone: Fax:.....

Name of Contact Person (if different from above):.....

Consultancy (ies) who conducted the site investigation(s) and/or remediation:

.....

.....

Title(s) of report(s) reviewed:

.....

.....

.....

Other information reviewed:

.....

.....

Summary Site Audit Report title: **Date:**

I have completed a site audit (as defined in the Contaminated Land Management Act 1997) and reviewed the reports and information referred to above with due regard to relevant laws and guidelines. I certify that the site (tick **all** appropriate boxes):

(a) is suitable for the following use(s):

- residential, including substantial vegetable garden and poultry;
- residential, including substantial vegetable garden excluding poultry;
- residential with accessible soil, including garden (minimal home-grown produce contributing less than 10% fruit and vegetable intake) excluding poultry;
- residential with minimal opportunity for soil access, including units;
- daycare centre, preschool, primary school;
- secondary school;
- park, recreational open space, playing field;
- commercial/industrial use;
- other (please specify):.....

subject to

condition(s) (please specify):.....

(b) is not suitable for any beneficial use due to risk of harm from contamination.

(comments):.....

I am accredited by the NSW Environment Protection Authority under the Contaminated Land Management Act 1997 as a site auditor (Accreditation Number:.....).

I certify that:

- (a) I have personally examined and am familiar with the information contained in this statement, including the reports and information referred to in this statement, and
- (b) this statement is, to the best of my knowledge, true, accurate and complete, and
- (c) on the basis of my inquiries made to those individuals immediately responsible for making the reports, and obtaining the information, referred to in this statement, those reports and that information are, to the best of my knowledge, true, accurate and complete.

I am aware that there are penalties for wilfully submitting false, inaccurate or incomplete information.

Signed: Date:.....

Appendix 5 - Site Management Plan for Remediation Works

Unless there are exceptional circumstances, the following conditions should be adhered to.

Hours of Operation

All remediation work shall be conducted within the following hours:

Monday - Friday:	7am – 5.30 pm
Saturday:	8am – 12.00 noon
Sundays and Public Holidays:	No work is permitted.

Soil and Water Management

A copy of the Soil and Water Management Plan or the Erosion and Sediment Control Plan (which may be incorporated into the RAP) shall be kept on-site and made available to Council officers on request. All erosion and sediment measures must be in place **prior** to commencement of works and **maintained** in a functional condition throughout the remediation works.

Site Drainage

Where practicable, clean runoff (as defined by the POEO Act) should be diverted around the remediation site to minimise the volume of water requiring management. Ongoing monitoring and analysis should be undertaken to ensure that water leaving the site via the stormwater system or runoff is within relevant EPA and ANZECC standards for water quality. It is an offence under the *Protection of the Environment Operations Act 1997* to cause water pollution. Where water has been contaminated, all runoff and leachate from within the site must be captured in sediment basins and removed by a liquid waste transporter for treatment/disposal to an appropriate waste treatment/processing facility according to the *EPA Environmental Guidelines: Assessment, Classification and Management of Liquid or Non-Liquid Wastes*.

Stockpiles

- Any site materials cleared that are not contaminated, such as topsoil, native vegetation and rock, should be stockpiled for re-use on-site or recycled.
- No stockpiles of soil or other materials shall be placed on footpaths or nature strips unless prior Council approval has been obtained.
- Silt and sediment controls (e.g. sediment fences) shall be put in place before or immediately after the material is placed.
- All stockpiles of soil or other materials shall be placed away from drainage lines, gutters or stormwater pits or inlets and tree protection zones.
- All stockpiles of soil or other materials likely to generate dust or odours shall be covered or kept moist.
- All stockpiles of contaminated soil shall be stored in a secure area and be covered and bunded if remaining more than 24 hours and earlier during wet or windy weather or if located on steep slopes.

Site Access

Soil, earth, mud or similar materials must be removed from the roadway by sweeping, shovelling, or a means other than washing, on a daily basis or as required. Other measures for

vehicles upon leaving the site may include rumble boards; use of 50 – 75mm aggregate that is at least 200 mm in depth; or a vehicle wash-down area. Soil washings from a designated wash-down area shall be collected and disposed of in a manner that will not pollute land, waters or enter the stormwater system.

Groundwater

If any groundwater is to be extracted, an approval and licence will need to be obtained from the Department of Land and Water Conservation. Groundwater shall be analysed for pH and any contaminants of concern identified during the preliminary or detailed site investigation, prior to discharge to the stormwater system. The analytical results must comply with relevant EPA and ANZECC standards for water quality. Other options for the disposal of groundwater include disposal to sewer with prior approval from Sydney Water, or off-site disposal by a liquid waste transporter for treatment/disposal to an appropriate waste treatment/processing facility.

Landscaping/Rehabilitation

A landscape plan should be submitted to Council as part of the Remedial Action Plan. The plan should include specifications including, but not limited to: final soil levels; fill; contours; topsoil; and planting. The drainage and topography of the site should not be significantly affected by remediation.

Council has in force a Tree Preservation Order, which requires Council's consent for the removal, lopping or damage of any tree covered by the Order. The landscape plan should include a plan (scale 1:200) showing the accurate location of all trees greater than five (5) metres in height on-site and on adjoining boundaries and nature strips. The plan should include the following:

- Location of trees in relation to proposed excavation
- Species name
- Trunk diameter 1.5 metres above existing ground level
- Soil level at base of trunk
- Height and spread of canopy
- Identify those trees to be removed for remediation works

Regular tree inspections by a qualified arborist before, during and after any site works will ensure the survival of the existing trees. Council requires notification of any excavation works within three to five metres of the trunk of protected trees. Protective tree fencing such as 1800 mm star pickets using four strands of wire as well as chain mesh should be erected around the dripline of all trees remaining on the site and be inspected prior to the commencement of any works. No activities, storage or disposal of material should take place beneath the canopy of any tree in the tree protection zones. All exposed areas shall be progressively stabilised and revegetated as soon as possible after the completion of remediation works.

Importation of Fill

All fill imported on to a site must comply with relevant EPA requirements. Fill imported on to the site shall also be compatible with the existing soil characteristics for site drainage purposes. Validation is required to ensure the imported fill is suitable for the proposed land use from a contamination perspective. The following information on imported fill should be provided in the Validation and Monitoring Report:

- all reports that may have been used to validate and/or verify contamination status of any imported material;
- the address of the site that the imported material originated from;
- the names of all persons/companies involved with the importation of fill;
- tonnage/cubic metres of imported material;
- the date and time of arrival of the material on site; and
- the registration number of the vehicle delivering the material.

Bioremediation

Bioremediation, or landfarming, is the removal of contaminants from soil using natural biological processes (similar to composting). All bioremediation areas for hydrocarbon contaminated soils shall be placed in an impermeable bunded area to contain surface water runoff from the landfarm areas and to prevent the leaching of hydrocarbons into the subsurface. All surface water discharges from the bunded areas to Council's stormwater system shall not contain detectable levels of Total Petroleum Hydrocarbons (TPH) or BTEX. It is the proponent's responsibility to have this analysed prior to discharge; non-compliance may lead to fines under the *Protection of the Environment Operations Act 1997*.

Containment/Capping of Contaminated Soil

No contaminated soil shall be encapsulated or capped on the site if it contains concentrations of contaminants that are above the soil investigation levels for urban development sites in NSW for the range of landuses permissible on the subject site. The soil investigation levels for urban redevelopment in NSW are contained in the EPA's '*Guidelines for the NSW Site Auditor Scheme*'.

Air Quality

Noise

Remediation work shall comply with the Environment Protection Authority Environmental Noise Manual for the control of construction site noise which specifies that:

- For a cumulative period of exposure to construction activity noise of up to four weeks, the LA10 (15 minutes) emitted by the works to specific residences should not exceed the LA 90 background level by more than 20 dBA.
- For a cumulative construction noise exposure period of between four to 26 weeks, the emitted LA10 noise level should not exceed the LA90 level by more than 10 dBA.
- For a cumulative construction noise exposure period greater than 26 weeks, the emitted LA10 noise level should not exceed the LA90 level by more than 5 dBA.
- All equipment and machinery shall be operated in an efficient manner to minimise the emission of noise.

Vibration

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

Dust Control

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

- erection of 40% porous, open-weaved barrier fence around the perimeter of the site;
- securely covering all loads entering or exiting the site;
- covering of all stockpiles of contaminated soil remaining more than 24 hours;
- keeping excavation surfaces moist, use of water sprays across the site may assist;
- limiting traffic movement; and
- the use of protective groundcovers such as mulches, hydroseeding etc immediately following completion of earthworks.

Odour Control

No offensive odours (as defined in the POEO Act) shall be detected at any boundary of the site during remediation works by an authorised Council Officer (under the POEO Act). The following procedures may be employed to comply with this requirement:

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

Volatile or semi-volatile compounds that could generate odours include monocyclic aromatic hydrocarbons (styrene, benzene, toluene, xylene, ethyl benzene, butyl benzene), polycyclic aromatic hydrocarbons (PAHs), hydrogen sulphide, hydrogen cyanide, pesticides, polychlorinated biphenyls (PCBs), and herbicides. Records of volatile emissions and odours shall be logged, kept on-site and made available to Council Officers on request. Discharges from soil vapour extraction systems shall be regularly monitored in order to determine the mass of hydrocarbons that are being discharged to the atmosphere. Contingency measures for the collection and treatment of hydrocarbon off gas shall be put in place prior to the commissioning of the soil vapour extraction systems. All discharge vents from soil vapour extraction systems shall be located a minimum of 50 metres from any residential property boundary, road or recreational area. No material shall be burnt on-site.

Transport

A licence may be required from the NSW Environment Protection Authority for transport of contaminated waste under the *Protection of the Environment Operations Act 1997*. Relevant requirements under the NSW EPA *Environmental Guidelines: Assessment, Classification and Management of Non-Liquid Wastes* (1997) should be adhered to. All haulage routes for trucks transporting soil, materials, wastewater, equipment or machinery to and from the site shall be selected to meet the following objectives:

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

Remediation work shall ensure that all site vehicles:

- conduct deliveries of soil, materials, equipment or machinery during the hours of remediation work in Appendix 6.
- securely cover all loads to prevent any dust or odour emissions during transportation;
- exit the site in a forward direction; and

Control of all traffic and related issues (i.e. numbers, tonnage/cubic metres of waste exported from the site, routes, hours, truck types, spillage on roads, cleaning etc) would be logically and conveniently contained in a “Transport Management Plan” to be provided to Council prior to commencement of the earthworks.

Transport and related matters are likely to be some of the most publicly visible aspects of the proposed works. Accordingly, having this coordinated plan/strategy will be invaluable to base the community consultation upon, and to be a source document in the event of complaints, Councillor questions, etc during the process. Council may require a bond for road damage if there is a significant risk that road damage will occur as a result of remedial action measures.

Waste Management

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

- *Occupational Health and Safety Act 2000 (New South Wales);*
- *Occupational Health and Safety Regulation 2001;*
- *Contaminated Land Management Act and Regulations; and*
- *Environmentally Hazardous Chemicals Act and Regulations.*

Under the *Protection of the Environment Operations Act 1997* the transportation of Schedule 1 Hazardous Waste is a scheduled activity and must be carried out by a transporter licensed by the NSW Environment Protection Authority. The disposal of contaminated soil shall have regard to the provision of both the *Protection of the Environment Operations Act 1997* and Regulations and any relevant EPA guidelines such as the NSW EPA *Environmental Guidelines: Assessment, Classification and Management of Non-Liquid Wastes (1997)*. Any queries associated with the off-site disposal of waste from a contaminated site should be referred to the EPA’s Hazardous Materials Advice Unit. If contaminated soil or other waste is transported to a site unlawfully, the owner of the site, waste and the transporter are both guilty of an offence.

Communication Plan

The Council requires every effort to be made to communicate in a simple and non-alarmist way with the community. A communication plan, appropriate to the level of works proposed, should be prepared which includes:

- A fact sheet – simple explanation of the situation including the nature and extent of the contamination and the remediation work to be done, commonly asked questions, a timetable for the work and a 1800 contact number for further information.
- Signage – clear, simple signage displaying contact details of the remediation contractor situated adjacent to the site access. This sign shall be displayed throughout the duration of the remediation works.

- Publicity -- Media releases to journalists promoting positive and responsible handling of the issue.
- Leaflet drops in the surrounding area, consistent with Council's Notification Policy, with the fact sheet and a letter from the responsible party.

Category 1 remediation works will involve advertisement and community submissions through the development application process. Council shall be notified 30 days prior to commencement of Category 2 remediation work. Owners and occupiers of premises adjoining, and across the road, from the site shall be notified at least 7 days prior to the commencement of Category 2 remediation works.

Site Security

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

Removal of Underground Storage Tanks

The removal of underground storage tanks shall be undertaken in accordance with NSW WorkCover requirements which includes writing to the Chief Inspector of Dangerous Goods and complying with any conditions imposed. Consideration should also be given to the Australian Institute of Petroleum's Code of Practice *'The Removal and Disposal of Underground Petroleum Storage Tanks'* (AIP CP22-1994).

Occupational Health & Safety

All site remediation works shall comply with all Occupational Health and Safety and Construction Safety Regulations of the NSW WorkCover Authority.

Appendix 6 - SEPP 55 Clause 14

Category 2 remediation work: work not needing consent.

For the purposes of this Policy (SEPP 55), a category 2 remediation work is:

- (a) a remediation work that is not a work of a kind described in clause 9 (a) (f), or
- (b) a remediation work (whether or not it is a work of a kind described in clause 9 (a) (f)) that:
 - (i) by the terms of a remediation order, is required to be commenced before the expiry of the usual period under the Contaminated Land Management Act 1997 for lodgment of an appeal against the order, or Note. The usual period for lodgment of an appeal is 21 days or a period prescribed instead by regulations made under the Contaminated Land Management Act 1997.
 - (ii) may be carried out without consent under another State environmental planning policy or a regional environmental plan (as referred to in clause 19 (4) and (5)), or
 - (iii) is carried out or to be carried out by or on behalf of the Director-General of the Department of Agriculture on land contaminated by the use of a cattle dip under a program implemented in accordance with the recommendations or advice of the Board of Tick Control under Part 2 of the Stock Diseases Act 1923, or
 - (iv) is carried out or to be carried out under the Public Land Remediation Program administered by the Broken Hill Environmental Lead Centre.