

Managing Contaminated or Potentially Contaminated Land.

2019



NOVEMBER 26 2019

Moss Environmental Pty Ltd
Authored by: Shonelle Gleeson-Willey



Table of Contents

Key Terms and Definitions	1
Objectives.....	6
Policy Application	6
Policy Statement	6
Legislative Framework	8
Council Responsibility	8
Rezoning Land.....	9
Development.....	10
Duty to report contamination	10
Preventing Contamination	10
Information Management	11
Maintaining a record of remediation work.....	12
Database of Contaminated or Potentially Contaminated Land	12
Section 10.7 Planning Certificates.....	12
Information under section 59(2) Contaminated Land Management Act 1997.....	13
Limitations on information in section 10.7 Planning Certificates	15
Appendix A - Potentially Contaminating Activities	16
Appendix B: Category 1 Remediation Works.....	17
Appendix C: Category 2 Remediation Works.....	18
Appendix D: Information held in the Contaminated or Potentially Contaminated Land Database	25

Key Terms and Definitions

Abatement	A barrier over affected areas to reduce exposure pathways, and may include a barrier over lead affected areas which contains the contamination on the land
Approved Voluntary Management Proposal	A voluntary management proposal that has been approved by the EPA under section 17 of the <i>Contaminated Land Management Contaminated Land Management Act (1997)</i> as modified by any conditions imposed by the EPA under that section.
Assessment of site contamination	A set of formal methods for determining the nature, extent and levels of existing contamination and the actual or potential risk to human health or the environment on or off-site resulting from that contamination.
Category 1 Remediation	Remediation works requiring Development Consent under SEPP 55
Category 2 Remediation	Remediation works that do not require Development Consent under SEPP 55, but must be notified to Council
CLM Act	<i>Contaminated Land Management Act 1997 (NSW)</i>
Competent and qualified contamination consultant	Two contaminated land consultation certified schemes have recently merged: Council recognises this merged scheme now operating under CEnvP Site Contamination and continues to recognise the Soil Science Australia (SSA) Certified Professional Soil Scientist Contaminated Site Assessment and Management (CPSS CSAM) certification.
Conditions of Consent	Requirements imposed by Council on a development approval to ensure the development complies with required standards. Conditions may apply to both the immediate construction stages of the development and occasionally beyond
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 levels and represents, or potentially represents, an adverse health or environmental impact
Contaminated Land	Land in, on or under which any substance is present at a concentration above that naturally present in, on or under the land and that poses, or is likely to pose, an immediate or long-term risk to human health or the environment.

Contaminated Land Process

The process includes several stages of investigations and actions. The level ultimately required is determined by the circumstances and outcomes from the previous stage. The potential stages of the Contaminated Land Process are:

- Preliminary Site Investigation (PSI)
- Detailed Site Investigation (DSI): Several reports, such as additional investigations, contamination delineation, monitoring, and/or Site-Specific Risk Assessments may be included in this stage)
- Remedial Action Plan (RAP)
- Remediation
- Validation (including Monitoring if applicable)
- Ongoing Environmental Management Plan (OEMP) and Monitoring

Council

This is to be taken to mean all Councils within the Joint Organisation of Councils, including when use in the singular.

Data Quality Indicators (DQI)

Pre-determined indicators used to assess if the data is considered fit for its intended uses in operations, decision making and planning. The typical parameters adopted are Precision, Accuracy, Representativeness, Completeness and Comparability (PARCC)

Detailed Site Investigation (DSI)

An investigation with the objective to define the nature, extent and degree of contamination; to assess potential risk posed by contaminants to health and the environment; and to obtain enough 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 *Environmental Planning & Assessment Act 1979*

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 *Environmental Planning & Assessment Act 1979*

Development Control Plan

Provides guidance to the development of land under the applicable Council DCP.

Duty to Report

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

	<i>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
Harm	In relation to the contamination of land, harm to human health or some other aspect of the environment (including any direct or indirect alteration of the environment that has the effect of degrading the environment), whether in, on or under the land or elsewhere.
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
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”
Lead Abatement Strategy (LAS)	A Strategy approved by the EPA which provides for a cap and cover approach to lead in soil to minimise human contact with the lead contaminant.
LEP	Local Environmental Plan. The 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
Management Order	An order under section 14 (1) under the <i>Contaminated Land Management Act 1997</i> .
National Environment Protection (Assessment of Site Contamination) Measure 1999 (April 2013 ASC NEPM)	A measure made under section 14(1) of the Commonwealth Act and the equivalent provisions of the corresponding Acts of participating States and Territories.
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)

Potentially contaminated land	Land that may be contaminated with a concentration of substances above that naturally present that may pose or is likely to pose a potential or actual risk to human health of the environment such as uncontrolled and unidentified fill on land.
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
Control Process	A process used to assess the reliability of field work and analytical results for an investigation
Remedial Action Plan (RAP)	A plan that sets objectives, and documents the process, for remediating a contaminated site
NamoiROC	Namoi Regional Organisation of Councils
Sampling and Analysis Quality Plan (SAQP)	A document outlining the details for a sampling program, such as the objective(s) and the intended process
Section 10.7 Planning Certificate	A planning certificate issued under the <i>EP&A Act 1997</i> that provides information to owners and prospective purchasers as to any restrictions on the land.
SEPP 55	State Environmental Planning Policy No 55 – Remediation of Land
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
Validation	The objective of the validation stage of the contaminated land process is to demonstrate whether the objectives stated in the Remedial Action Plan have been achieved
Voluntary Management Proposal	Section 17 (1) of the <i>Contaminated Land Management Act</i> .

Legislation, Regulations, Policies and 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>
<i>Duty to Report Guidelines</i>	Details the circumstances that can trigger the requirement to notify the EPA about contamination under Section 60 of the <i>Contaminated Land Management Act 1997</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>
<i>National Environment Protection (Assessment of Site Contamination) Measure 1999 (as amended 2013)</i>	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. Measure made under section 14(1) of the Commonwealth Act
<i>NSW Managing Land Contamination Planning Guidelines – SEPP 55 Remediation of Land (1998)</i>	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
<i>State Environmental Planning Policy No 55 – Remediation of Land</i>	Ensures planning decisions consider possible land contamination, and promotes remediation to reduce risk of harm
Government Information (Public Access) Act 2009	Access to NSW Government information is governed by the Government Information (Public Access) Act (2009) (GIPA Act).

Objectives

The Regional Organisation of Councils under Namoi Unlimited is committed to ensuring that the use of contaminated land, or suspected contaminated land, occurs in a way that minimises risk to the community and the environment. This will be done by ensuring compliance with the requirements of the *Contaminated Land Management Act (1997)*, the *Environmental Planning and Assessment Act 1979 (EP & A Act)*, *State Environmental Planning Policy (SEPP) 55 – Remediation of Land (SEPP55)* and the associated *Managing Land Contamination: Planning Guidelines (SEPP55 Guidelines)*; *The National Environment Protection (Assessment of Site Contamination) Measure 1999 (April 2013)*, *ASC NEPM*, and all relevant Council policies, procedures, and processes.

The objective of this Policy is to provide a framework to assist Council, residents and proponents of development to respond proactively to contaminated land-based hazards and risks.

Policy 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 Areas of Walcha Council, Gwydir Shire Council, Tamworth Regional Council, Gunnedah Shire Council, Liverpool Plains Shire Council.

This Policy will be applied by;

- Providing a framework to ensure that changes in regional 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 Councils exercise their 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 known past contamination or known/suspected contaminating activities;
- Provide information to support decision making, and to inform the community of potential restrictions on property arising from contaminated land matters.
- Reporting contamination to the NSW EPA
- Preventing or minimising the potential for contamination.

Policy Statement

Contaminated Lands is a complicated and technical area where specialist assistance is required to ensure it does not impact on the environment or the health of a community. Historically, investigations were

undertaken by the NSW Environment Protection Authority (NSWEPA) with information gained from investigations being made publicly available through their website. This however only identified significantly contaminated areas. Local Councils require applicants, through the Council Development Approvals process to identify areas of contamination as part of the due process in the application. To this effect, it is then up to Councils to accept the information supplied by the applicant or undertake further investigations in order to meet the NSW legislation for identifying, evaluating and managing any contaminated lands. This process is complex.

This project has been identified to assist Councils in identifying, assessing, recording and managing contaminated lands within their shire boundary. Future applications for development approvals will allow the Council to consider each application regarding contaminated lands more accurately and if required, to advise in remediation, monitoring and managing identified sites in accordance with NSW legislation and standards.

This project has been developed in consultation with the Namoi Regional Organisation of Councils (ROC) – comprising of Tamworth Regional Council, Gunnedah Council, Liverpool Plains Council, Gwydir Council and Walcha Council, also called Namoi Unlimited. These Councils are active participants in the Regional Contaminated Land Capacity Building Program.

To respond responsibly and proactively to contamination hazards and risks, through the land use planning framework, and to facilitate economic development of contaminated or potentially contaminated land. Proactive measures to present possible contamination can have significant environmental and financial benefits for the ROC and the Community.

To achieve this, Councils will;

1. Maintain individual Council specific data bases of contaminated or potentially contaminated land, managed jointly where/when feasible, and record any relevant information on remediation, abatement, or site audits of work undertaken in the ROC areas;
2. Ensure that information provided by the NSW Environment Protection Authority (EPA) in respect of the EPA Register of significantly Contaminated Land (and other information as appropriate), or information held in Council's Contaminated or Potentially Contaminated Land Database (CPCL Database) is noted on any relevant section 10.7 (2) Planning Certificate, including advice that further information is available from Council.
3. Ensure that appropriate consideration of contamination issues are made during the rezoning and development assessment process, including;
 - Identification of the presence of, or the potential for, contamination on the land;
 - Consideration of the outcomes of any land contamination study;
 - Consideration of any remediation or abatement that has occurred on the land; and
 - The application of requirements set out in the *Contaminated Land Management Act, SEPP55, SEPP55 Guidelines, and any applicable Local Environment Plans, Development Control Plans, policies or guidelines.*

Develop and implement educational material and a formal Communications Strategy to translate the Policy into operational guidelines for Council officers and the community.

Legislative Framework

Currently contaminated lands are shared between the EPA, NSW Department of Planning, Industry and Environment (DPIE), and Council through two processes;

1. Sites that are considered to have significant contamination are regulated by the NSW EPA under the *Contaminated Land Management Act 1997 and associated Regulations*;
2. Other sites are managed by Councils via the land use planning instruments under the *Environmental Planning and Assessment Act 1979 and Associated Regulations*. In these cases, the planning and development process determines what remediation is needed to make the land suitable for a different use.

In addition to these Acts, the NSW Planning Guidelines – SEPP 55 Remediation of Land 1998 also 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 SEPP Remediation of Land Guidelines and either adopt or be based in them, with variations based on local conditions and procedure.*”

SEPP 55 also states 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 plan. However, it is advisable to have a formal “stand alone” policy document.*”

Therefore, this Policy is designed to satisfy these legislative conditions, via a framework developed by the ROC to manage contaminated or potentially contaminated land within the Region in accordance with the EP&A Act and SEPP55. The Policy Managing Contaminated or Potentially Contaminated Land within the Regional Organisation of Councils (this Policy) should be reviewed every 4 years.

NOTE – Schedule 6 of the EP& A Act provides that, planning authorities that act substantially in accordance with SEPP55 and related guidelines, are taken to have acted in good faith when carrying out planning functions.

Council Responsibility

When carrying out planning functions under the *EP& A Act*, all Councils must consider the possibility that a previous land use, or any adjoining or nearby land use, has caused contamination to the site; as well as the potential risk to health or the environment.

The general principle of contamination management under SEPP55, and its related guidelines, is that a precautionary approach be taken, and that the identification of any potential land contamination issues occurs at an early stage in the planning process. This shall allow for any orders to prevent harm to be issued and thus reduce delays and costs to a development.

To support the precautionary approach, the requirements of SEPP 55 (s7) states:

“A consent authority must not consent to the carrying out of any development on land unless: a) It has considered whether the land is contaminated, and b) If the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable after remediation) for the purpose of which the development is proposed to be carried out, and c) If the land requires remediation to be made suitable for the

purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose”.

The *National Environment Protection (Assessment of Site Contamination) Measure* (ASC NEPM, 2013), volume 1, Section 5 (Planning and Development) also supports this approach by stating:

“Authorities of participating jurisdictions (at local and State government level) that consent to developments, or changes in land use, should ensure a site that is being considered for development or a change in land use, and that the authorities ought reasonably know if it has a history of use that is indicative of potential contamination, is suitable for its intended use.”

Generally, Councils should not approve a Development Application or support a Planning Proposal unless it is satisfied based on available information under this Policy that:

- Land 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 acceptable 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 4 or 5.1 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.

If Councils receive an LEP amendment request or a Development Application, relevant staff must undertake a review of the amendment / application to determine if the land necessitates further investigation in relation to potential contamination. If this review identifies evidence of potential or actual contamination, further assessment of contamination will be required.

Prior to undertaking any land use planning functions, Council must also consider the possibility that the previous and/or current land uses, and/or a nearby land use, may have caused contamination of the site, and the potential risk to human health and the environment from that contamination needs to be assessed.

Councils personnel having responsibilities in the management of contaminated lands must abide by these requirements and ensure they are considered during the approval phases and the remediation of any known sites. Specific roles and responsibilities for each of the ROC members will be contained within the Council specific procedure.

Where Council has reasons to believe contamination may be present on a site and could pose a risk to human health and/or the environment in the proposed land use scenario, the Contaminated Land Process is therefore triggered.

Rezoning Land

SEPP55 requires consideration of contamination issues when rezoning land. Council must determine, at an early stage in the development process, if a rezoning could allow a change of use that may increase the risk to health or the environment from contamination. Council must be satisfied that the land is suitable for the proposed use or can be remediated to ensure its suitability. This includes considering the history of land that is adjacent to the land being considered for rezoning. A Stage 1 Preliminary Investigation (PSI) will be required at the rezoning stage to assess if the land is potentially contaminated land.

Assessments of rezoning applications on contaminated land will be conducted in accordance with the relevant Councils Contaminated Lands procedures and any information Guides developed.

Development

SEPP55 and Section 4.15 of the EP&A Act require Council to consider the suitability of the site for the proposed development. In most cases the relevant DCP provides development guidelines as to what processes are required when land has been identified as being contaminated. Council does not currently have a Contaminated Land Management DCP, therefore Council's Procedure – **Management and Assessment of Contaminated or Potentially Contaminated Land** is to be used.

Council and the EPA may apply conditions of consent that may limit or restrict the use of the land to ensure the delivery of appropriate outcomes on the land are not detrimental to the user's health and that of the environment.

Where land known to be contaminated with PFAS from the local airport, a streamlined approach for the assessment of soil contamination may be acceptable.

Assessment of Development Applications on contaminated land will be conducted in accordance with each Council's Procedure – **Management and Assessment of Contaminated or Potentially Contaminated Land**.

Duty to report contamination

The duty to report contamination to the EPA is a requirement under the Contaminated Land Management Act. The following parties 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; and
- An owner of land that has been contaminated.

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

Where Council considers that contamination on a site triggers the Duty to Report under the *Contaminated Land Management Act*, and it is not clear if the polluter or site owner has reported the contamination, Council will notify the EPA for further action. Guidelines on reporting contamination under section 60 of the *Contaminated Land Management Act* can be found on the EPA website.

Preventing Contamination

The primary legislation governing the prevention and management of pollution incidents is the Protection of the Environment Operations (POEO) Act 1997. The POEO Act enables the Government to set out explicit protection of the environment policies (PEPs) and adopt more innovative approaches to reducing pollution. PEPs provide environmental standards, goals, protocols and guidelines.

Information Management

Council has a statutory responsibility to include specific information on certificates issued for the purposes of s10.7 of the *Environmental Planning and Assessment Act 1979*.

The information required to proponents 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 Planning Certificates 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).

Schedule 4 states:

The following matters are prescribed by section 59 (2) of the Contaminated Land Management Act 1997 as additional matters to be specified in a planning certificate:

- a) that the land to which the certificate relates is significantly contaminated land within the meaning of that Act—if the land (or part of the land) is significantly contaminated land at the date when the certificate is issued,
- b) that the land to which the certificate relates is subject to a management order within the meaning of that Act—if it is subject to such an order at the date when the certificate is issued,
- c) that the land to which the certificate relates is the subject of an approved voluntary management proposal within the meaning of that Act—if it is the subject of such an approved proposal at the date when the certificate is issued,
- d) that the land to which the certificate relates is subject to an ongoing maintenance order within the meaning of that Act—if it is subject to such an order at the date when the certificate is issued,

Under Schedule 6 of the EP&A Act *A planning authority does not incur any liability in respect of anything done or omitted to be done in good faith by the authority in duly exercising any planning function of the authority to which this clause applies in so far as it relates to contaminated land (including the likelihood of land being contaminated land) or to the nature or extent of contamination of land.*

Whilst there is no direct legislative requirement for a Council to notify a land owner when their land is included as potentially contaminated in a Contaminated Land Information System, Council should notify the landowner, thus providing them the opportunity to establish and acknowledge that the land is not contaminated and should not be notified on a Section 10.7(2) Planning Certificate, or alternatively, to manage or undertake remediation of the land.

Notifying the property owner of a site's inclusion that contamination exists, 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 made available to the public by way of 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, any land contamination consultants reports filed in the council system.

Given council, as the regulatory authority, is unable to provide consent for a development until it is satisfied that the site is, or can be made, suitable (during the development stage with the implementation of remediation and/or management) for the proposed land use, by forwarding information to proponents on contamination issues with their development application will save cost and time for both parties.

UPSS

It must also be noted here, that recent changes in UPSS regulations now require local councils to be the regulatory authority with responsibility falling to councils in September 2019 where previously it remained with the NSW EPA. While largely consistent with the Contaminated Land Process, there are specific guidelines and technical notes outlining the process required for sites containing Underground Petroleum Storage Systems (UPSS). These are included in the UPSS Regulation (2014) and must be considered when considering development applications involving UPSS. All Operators of UPSS are required to have systems in place to help prevent, report and remediate leaks.

Maintaining a record of remediation work

SEPP55 requires the relevant consent authority to be notified prior to, and at the completion of, remediation work. This notification is required regardless of whether consent is required. This information will be recorded in the Contaminated or Potentially Contaminated Land (CPCL Database) described further below. The database will record details of what work was done, such as any remediation or abatement, any validation and monitoring reports, any site audit statements and any other relevant information.

Database of Contaminated or Potentially Contaminated Land

Each Council within the ROC will maintain a Contaminated or Potentially Contaminated Land Database (CPCL Database) for land within the local government area.

The CPCL Database will identify properties known to the Council, which have a history of contamination, or that have been associated with uses that may have resulted in contamination. Council may not be aware of all properties that have a history of contamination, Council lead or private enquiries or investigations into whether land is contaminated, or potentially contaminated should be considered. The CPCL Database will record details of any site remediation or abatement that has been undertaken, validation records, and audits of remediation work as required by the SEPP55 Guidelines. Information regarding individual properties will be recorded in the CPCL Database as outlined in Appendix D. Any enquiries associated with a property should be checked against information contained within the CPCL Database and associated GIS layers.

Section 10.7 Planning Certificates

The responsibility for investigating the potential for contamination during the sale of land rests with the vendor and purchaser, however Council will make available any relevant information held on potential contamination.

Section 10.7(2) planning certificates

Information to be disclosed on a Section 10.7(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 has a legal obligation to provide certain information through Section 10.7(2) Planning Certificates in relation to land contamination.

Section 10.7(5) Planning Certificates

Section 10.7(5) Planning Certificates are governed by s10.7(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 s10.7(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.

Information under section 59(2) Contaminated Land Management Act 1997

Section 59(2) of the *Contaminated Land Management Act* prescribes specific matters to be provided in a section 10.7(2) planning certificate.

- a) That the land to which the certificate relates is significantly contaminated land – if the land (or part of the land) is significantly contaminated land at the date when the certificate is issued;
- b) That the land to which the certificate relates is subject to a management order – if it is subject to such an order at the date when the certificate is issued;
- c) That the land to which the certificate relates is the subject of an approved voluntary management proposal – if it is the subject of such an approved proposal at the date when the certificate is issued;
- d) That the land to which the certificate relates is subject to an ongoing maintenance order – if it is subject to such an order at the date when the certificate is issued;
- e) That 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.

In addition to this, Council is also required to nominate whether the land is affected by a Policy that restricts the development of the land because of a hazard.

Notations will be applied as a component of section 10.7(2) Planning Certificates at Question 7(e) (Council and other public authority policies on hazard risk restrictions) in the following cases;

Notation 1

Contaminated Land:

Where land is known to have contaminants above the contaminated land investigation threshold levels for residential land uses, and no remediation or abatement activity has occurred, the following notation will apply:

Council has adopted a policy that may restrict development of Contaminated or Potentially Contaminated Land. This policy is implemented when zoning, development, or land use changes are proposed. Consideration of Council’s adopted Policy and applicable LEP, and the application of provisions under relevant State legislation is recommended. Some form of contamination has been confirmed on this site. Council can provide additional information from its records for this site on request.

N.B. This notation applies where **contamination has been confirmed** on site, in the form of a contamination report, and remediation and/or abatement has not occurred.

Notation 2

Potentially contaminated land:

Where land has a previous site history which could have involved contaminants, or where the land is in the vicinity of a current or historic contamination source, and no chemical sampling of soil has occurred, the following notation applies:

Council has adopted a policy that may restrict development of Contaminated or Potentially Contaminated land. This policy is implemented when zoning, development, or land use changes are proposed. Consideration of Council's adopted Policy and applicable ELP, and the application of provisions under relevant State legislation is recommended. Further investigation may be required for this site.

N.B. This notation applies to properties that are in the vicinity of a known contaminating source, and/or where contamination is reasonably considered to have occurred on-site, but where **no formal soil contamination sampling has occurred**. Appendix A taken from the SEPP55 Guidelines, provides a list of potentially contaminating industries that may be considered for this notation.

Notation 3

Remediated and above the contaminated land investigation threshold levels:

Where contaminated land that has undergone some form of remediation or abatement, and contaminants on site are above the contaminated land investigation threshold levels, the following notation applies:

Council has adopted a policy that may restrict development of Contaminated or Potentially Contaminated land. This policy is implemented when zoning, development, or land use changes are proposed. Consideration of Council's adopted Policy and applicable LEP, and the application of provisions under relevant State legislation is recommended. Some form of contamination has been confirmed on this site. Council can provide additional information from its records for this site on request, including details of any remediation works that have occurred.

N.B. This notation applies where information is provided to Council, being a site audit statement, site audit report, Stage 4 validation report or Lead Abatement Strategy (LAS) report that confirms lead or other contaminants are **above contaminated land investigation threshold levels** as identified in the NEPM – Contaminated Land for residential land uses.

Notation 4

Remediated and below the contaminated land investigation threshold levels:

Where land that was previously contaminated has undergone some form of remediation or abatement in anticipation of a particular use, or range of uses, and contaminant levels on site are below the contaminated land investigation threshold levels, the following notation applies:

Council has adopted a policy that may restrict development of Contaminated or Potentially Contaminated land. This policy is implemented when zoning, development, or land use changes are proposed. Consideration of Council's adopted Policy and applicable LEP, and the application of provisions under relevant State legislation is recommended. Some form of contamination was confirmed on this site in the past. Council can provide additional information from its records for this site on request, including details of any remediation works that have occurred. Information from a site audit statement, site audit report, or a Stage 4 validation report indicate that contaminants are now below the contaminated land investigation threshold levels.

N.B. This notation applies where information is provided to Council, being a site audit statement, site audit report, or Stage 4 validation report that confirms lead or other contaminants are **below the contaminated land investigation threshold level** as identified in the NEPM- Contaminated Land for residential land uses.

Notation 5

Below contaminated land investigation threshold levels:

Where land has a previous site history which could have involved contaminants, or is in the vicinity of a contamination source, and the land has undergone some form of testing and found to be below the contaminated land investigation threshold level, the following notation applies:

Council has adopted a policy that may restrict the development of Contaminated or Potentially Contaminated land. This policy is implemented when zoning, development, or land use changes are proposed. Consideration of Council's adopted Policy and applicable LEP, and the application of provisions under relevant State legislation is recommended. Council can supply additional information from its records for this site on request, including tests that indicate that the level of certain contaminants are below the land investigation threshold level on the site.

N.B. This notation applies to properties that are in the vicinity of a known contaminating source and formal soil contamination sampling has occurred using the NEPM – Contaminated Land for residential land uses and found that certain contaminants are below **the contaminated land investigation threshold level**.

Notation 6

No clear site history:

Where Council records do not contain a clear site history for the land or there is inadequate knowledge of uses that have occurred on the land, the following notation applies:

Council has adopted a policy that may restrict the development of Contaminated or Potentially Contaminated Land. This policy is implemented when zoning, development, or land use changes are proposed. Council does not hold sufficient information about previous use of the land to determine whether the land is contaminated. Consideration of Council's adopted Policy and applicable LEP, and the application of provisions under relevant State legislation is recommended.

N.B. This Notation applies to all land in the city where Council records do not contain a clear site history, or where there are gaps in that information, so there is not enough information to have any certainty.

Limitations on information in section 10.7 Planning Certificates

Council will specify in a planning certificate any limitations on the information regarding contamination contained in that certificate. Limitations may arise as a result of the purpose for which the information was collected by Council or provided to Council, or the reliability of the source of the information.

Appendix A - Potentially Contaminating Activities

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

Some activities that may cause land contamination and likelihood of occurrence.

Activity / Contaminant	Likelihood
Acid/alkali plant and formulation	Low
Agricultural/horticultural activities	High
Airports	High (Tamworth and Quirindi Airports are identified by NSW EPA as being investigated)
Asbestos production, disposal and demolition	High
Chemicals manufacture and formulation	Low
Defence works	Low
Drum re-conditioning works	Medium
Dry cleaning establishments	Medium
Electrical manufacturing (transformers)	Medium
Electroplating and heat treatment premises	Low
Engine works	High
Explosive industry	Medium
Gas works	Medium
Iron and steel works	Low
Landfill sites	High
Metal treatment	High
Mining and extractive industries	High
Oil production and storage	High
Paint formulation and manufacture, including lead paint contamination	High
Pesticide manufacture and formulation	Medium
Power stations	Low
Railway yards	High
Scrap yards	High
Service stations	High
Sheep and cattle dips	High
Smelting and refining	Low
Tanning and associated trades	Medium
Waste storage and treatment	High
Wood preservation	Medium

Note: This listing is a guide only, it is not enough to solely rely on the contents provided in the table for whether a site is likely to be contaminated or not. A conclusive state can only be determined after a review of the site history and if necessary, sampling and analysis

Appendix B: 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 considered 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.”

Appendix C: Category 2 Remediation Works

State Environmental Planning Policy No 55—Remediation of Land, Clause 14 defines Category 2 Remediation Work as:

“Category 2 remediation work: work not needing consent

For the purposes of this Policy, 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)), 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.

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.

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” (Land com) 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 shovelled 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 bunded 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 bunded 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 using 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/ordersexemptions.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 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.

Appendix D: Information held in the Contaminated or Potentially Contaminated Land Database

Information to be made available under section 10.7(5) Planning Certificates, or when an enquiry is made about land identified in the Contaminated or Potentially Contaminated Land Database, if Council holds the information.

- Previous property descriptions, for cross-referencing purposes;
- Chronological land use history;
- Complaints about contamination or potentially contaminating activities and whether these were substantiated;
- Information from any initial evaluations;
- Information from any site investigations;
- Notifications of remediation or abatement;
- Any site audit statements;
- Previous zones and permissible uses, particularly uses listed in the applicable LEP;
- Approved Development Applications (DAs) and Building Applications (BAs) for uses listed within the applicable LEP or uses where contamination was an issue;
- Refused DAs and BAs where they have been refused based on contamination-related issues;
- Rezoning requests approved and refused based on contamination-related issues;
- EPA declarations and orders under the *Contaminated Land Management Act* including Voluntary Management Proposals and resulting action.

Copies of relevant documents such as remedial action plans may also be useful on the files in Council's Electronic Document Management System. The sources of information and the purpose for which it was collected should also be recorded. This includes the date of the information and the date on which it was recorded.