



SECTION 14 CONTAMINATION AND HAZARDOUS BUILDING MATERIALS

14.1 INTRODUCTION

This Section forms the basis for the management of land contamination and hazardous building materials within the LGA. In addition, it comprises Council's policy for dealing with land contamination under the Department of Planning's (DoP) [Managing Land Contamination: Planning Guidelines](#) and Chapter 4 – *Remediation of Land* to [SEPP \(Resilience and Hazards\) 2021](#).

14.1.1 General Objectives

The general objectives of this Section of the DCP are to:

- O1 Provide a framework for the integration of land contamination management into the planning and development process with the specific aim to:
 - (a) provide for the appropriate investigation and remediation of contaminated land;
 - (b) ensure that changes of land use will not increase the risk to health or the environment;
 - (c) avoid inappropriate restrictions on land use; and
 - (d) provide information to support decision making and to inform the community about land contamination.
- O2 Provide a framework for the investigation, reporting and removal of hazardous building materials from a site to ensure that risk to the health of the community or environment is not adversely affected.

14.1.2 When does this section of the DCP apply?

This Section of the DCP applies to all development applications involving land which is known or has potential to be contaminated or affects buildings or works constructed and or improved with hazardous building materials.

14.1.3 Relationships to Other Sections

Where relevant, this Section of the DCP should be read in conjunction with the following Sections of the DCP:

- (a) Part A: Section 3 – Submitting an Application;
- (b) Part B: Section 1 – Residential development;
- (c) Part B: Section 2 – Commercial and Mixed Use Development;
- (d) Part B: Section 3 – Non-residential Development in Residential Zones; and
- (e) Part B: Section 5 – Child Care Facilities.

14.1.4 Relationship to other Documents

Where relevant, this section of the DCP should be read in conjunction with the following:

- (a) [Environmental Planning and Assessment Act 1979](#) (EP&A Act 1979);
- (b) [Environmental Planning and Assessment Regulation 2021](#) (EP&A Regulation 2021);
- (c) [Contaminated Land Management Act 1997](#) (CLM Act 1997);
- (d) [Contaminated Land Management Regulation 2022](#);



- (e) Chapter 4 – Remediation of Land to [SEPP \(Resilience and Hazards\) 2021](#);
- (f) DoP's [Managing Land Contamination - Planning Guidelines](#) (to be used in association with Chapter 4 – Remediation of Land to [SEPP \(Resilience and Hazards\) 2021](#));
- (g) DoP's Draft Contaminated Land Planning Guidelines; and
- (h) NSW EPA's [Guidelines for the Assessment and Management of Sites Impacted by Hazardous Ground Gases](#).

This package of legislation and guidelines is cross-referenced and the documents work in conjunction with each other. If, when using the DCP, clarification of any matter is required, refer to the above primary legislative documentation.

14.2 CONTAMINATED LAND

14.2.1 Decision Making Process

In determining all Planning Proposals and development applications, Council will consider the possibility of land contamination and the implications it has for any proposed or permissible future uses of the land. A precautionary approach will be adopted to ensure that any land contamination or hazardous materials issues are identified and dealt with early in the planning process.

Council is required to assess and determine all Planning Proposals in accordance with Ministerial Direction 4.4 – Remediation of land under s.9.1 of the EP&A Act and development applications in accordance with the relevant provisions contained within [SEPP \(Resilience and Hazards\) 2021](#).

Initial Evaluation

As part of every Planning Proposal and development application, Council will conduct an initial evaluation to determine whether contamination is an issue, and whether sufficient information is available for Council to appropriately carry out its planning functions. The initial evaluation checklist is to be addressed on the basis of readily available information held by the Council or provided by the applicant (Also refer to section 3.2.1 of *Managing Land Contamination: Planning Guidelines*).

Initial Evaluation checklist –

- (a) Is the Council aware of any previous investigations about contamination on the land? What were the results, including any previous initial evaluations?
- (b) Do existing Council records show that an activity listed in Appendix 2 has ever been approved on the land? (The use of records held by other authorities or libraries is not required for an initial evaluation.)
- (c) Was the subject land at any time zoned for industrial, agricultural, or defence purposes?
- (d) Is the land currently used for an activity listed in Appendix 2?
- (e) To the Council's knowledge, has the land ever been regulated through licensing or other mechanisms in relation to any activity listed in Appendix 2?
- (f) Are there any land use restrictions on the land relating to possible contamination, such as notices issued by the NSW Environment Protection Authority or other regulatory authority?
- (g) Does a site inspection conducted by the Council (optional) suggest that the site may have been associated with any activities listed in Appendix 2?
- (h) Is the Council aware of information concerning contamination impacts on land immediately adjacent to the subject land which could affect the subject land?

If none of the answers suggest that the land might be contaminated or that further enquiry is warranted, the planning process should proceed in the normal way. Further reference to

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this Section of the DCP will only be necessary if contamination is identified on site during development.

If the initial evaluation indicates that contamination is or may be present, or the Council has insufficient information on which to make a planning decision, then the applicant will be required to engage a suitably qualified consultant to undertake further investigations, as indicated below. The appropriate level of investigation will depend on the circumstances and may involve one or more of the following stages:

- Stage 1 - Preliminary Investigation
- Stage 2 - Detailed Investigation
- Stage 3 - Remedial Action Plan
- Stage 4 - Validation and Monitoring

These four stages are described in further detail in the following subsection of the DCP.

Procedures for Planning Proposals

Council must consider contamination issues in accordance with Ministerial Direction 4.4 – Remediation of land under s.9.1 of the EP&A Act when determining a Planning Proposal.

In addition to these requirements, if Council has reasonable grounds to suspect that the land may be contaminated because of the land’s history, condition or other information known to Council, Council will require the submission of:

- (a) a *Preliminary Investigation*; or
- (b) a combined *Preliminary Investigation* and *Detailed Investigation* for a site specific Planning Proposal.

Where a Planning Proposal involves the rezoning of land that covers a large area (e.g. precinct or LGA based) Council may include provisions in an LEP or DCP to ensure that the potential for contamination and the suitability of the land for any proposed use is further addressed prior to the redevelopment of the land.

Subsection 14.2.2 to this Part of the DCP outlines when and what information Council will require relating to site contamination issues to be submitted with a Planning Proposal.

Procedures for Development Applications

Council must consider contamination issues in accordance with cl.4.6 to [SEPP \(Resilience and Hazards\) 2021](#) when determining a development application.

Contamination issues may be addressed by refusing consent, or by issuing consent subject to conditions. In appropriate cases, deferred commencement consent might be issued, requiring remediation and validation to be undertaken prior to other work commencing. Modifications of development applications will be considered under this DCP in the same way as new development applications.

All land affected by a planning decision will be considered under this Section of the DCP. For example, where a development application proposes to dedicate land for open space, the suitability of that land for open space will be considered under this DCP. The Council may require a *Preliminary Investigation* or *Detailed Investigation* and a deed of indemnity in these cases.

Subsection 14.2.2 to this Part of the DCP outlines when and what information Council will require relating to site contamination issues to be submitted with a development application.

14.2.2 Contamination Investigation and Reporting

Due to the technical nature, specialised issues and potential risks to life from contamination, the investigation and reporting requirements set out in the following four stages must be undertaken by a suitably qualified consultant and all associated costs must be borne by the applicant. EPA accredited auditors will be accepted as being suitably qualified consultants.



Stage 1 - Preliminary Investigation

Stage 1 involves identifying past or present potentially contaminating activities. The purpose of the investigation is to determine whether further detailed investigation is warranted due to the likelihood or evidence of contamination.

Note: Information sources that may be useful in understanding the history of a site include the following:

- Past aerial photographs
- Council records - town planning, scheme maps, development and building applications, complaints, pollution incident reports
- Local Historical Publications - documents particularly relevant to North Sydney are listed in a Council document "SEPP Research Documents" (1 June 1999.)
- Current and previous site owners and occupiers
- Current and previous site workers
- Long-term residents
- Past and Present Telephone Books
- Noxious Trades register formerly kept pursuant to the Noxious Trades Act 1902 (repealed 18 November 1991)
- Sands Sydney and New South Wales Directory 1858-1932/3
- NSW Environment Protection Authority Section 35 Notices, past and present scheduled premises.
- Sydney Water Corporation Trade Waste Agreements
- Work Cover Authority Dangerous Goods Branch
- Power sites containing present and past electrical substations

The level of investigation must be appropriate to the potential risk from contamination. An investigation is not necessary at the rezoning stage if there is no reason to suspect contamination.

P1 A Preliminary Investigation is required to be submitted to Council in accordance with Ministerial Direction 4.4 – Remediation of land under s.9.1 of the EP&A Act, cl.4.6 to [SEPP \(Resilience and Hazards\) 2021](#), and the DoP's [Managing Land Contamination: Planning Guidelines](#).

- P2 Council may also require a Preliminary Investigation to be submitted when:
- (a) Council has reasonable grounds to believe the land is contaminated because of the land history, condition, or other information known to Council;
 - (b) The site has been investigated or remediated but there is insufficient information available about the nature and extent of contamination or remediation, or the circumstances have changed;
 - (c) 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;
 - (d) Council records indicate that the site is or may be associated with pollution incidents or dumping of wastes;
 - (e) The site adjoins land that has been associated with activities that may cause contamination listed in Appendix 2 and it is possible that contamination may have migrated to the subject site;
 - (f) A spot rezoning is proposed to allow a specific development or land use. In these cases a preliminary and detailed investigation may be required to prove the land is suitable for the development or can and will be made suitable; or
 - (g) The site history is unclear and the site is proposed to be used for residential, educational, recreational, medical or child care uses.

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P3 *Preliminary Investigations* and *Detailed Investigations* may be combined into a single report where land is known to contain or have contained a potentially contaminating activity.

If the results of the preliminary investigation conclusively demonstrate that there is no potential for, or existence of, contamination that makes the land unsuitable for the proposed use, then Council will not require any further investigations to be conducted.

Stage 2 – Detailed Investigation

The purpose of Stage 2 is to determine the nature, extent and degree of contamination existing on a site and to assess the risk posed by contaminants to human health and the environment. This information is then used to prepare a *Remedial Action Plan*, if necessary.

- P1 A *Detailed Investigation* is required to be undertaken when the results of the *Preliminary Investigation* demonstrate the potential for or existence of contamination that may affect the proposed use of the land.
- P2 The *Detailed Investigation* must be undertaken and reported in accordance with the DoP’s [Managing Land Contamination: Planning Guidelines](#).
- P3 The *Detailed Investigation* must include a statement outlining whether the site is suitable for the proposed use in its current state, or if remediation is necessary to make the site suitable for the proposed use. If remediation is required, the report should also list the feasible remediation options available to remediate the site (refer to section 14.2.5 - Site Audit).

Stage 3 – Remedial Action Plan

The purpose of Stage 3 is to identify and establish remediation objectives, clean up criteria and a strategy for remediation. The *Remedial Action Plan* is also to identify any approvals that need to be obtained from regulatory authorities (refer to the provisions of Chapter 4 – Remediation of Land to [SEPP \(Resilience and Hazards\) 2021](#)).

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

Remedial works may require separate development consent (refer to section 14.2.3 - Control of remediation work). If development consent is required for remediation of contaminated land, a *Remedial Action Plan* must be submitted with the development application for approval.

- P1 A *Remedial Action Plan* must:
 - (a) be submitted to Council in accordance with the DoP’s [Managing Land Contamination: Planning Guidelines](#) if the detailed investigation concludes that the land is not suitable for the proposed use in its present state;
 - (b) demonstrate how the applicant or their consultant proposes to reduce risks to acceptable levels and achieve the clean up objectives for the site;
 - (c) document remedial works to be undertaken at the site and address the matters covered in subsection 14.2.4.
- P2 A *Remedial Action Plan* should include an *Environmental Management Plan*.
- P3 Council may require site auditor comment on the proposed remediation objectives, and clean up criteria, prior to the *Remedial Action Plan* being finalised (refer to subsection 14.2.5 - Site Audit).

Depending upon the level of information available at the time of assessing a Development Application, the requirement for a *Remedial Action Plan* may be imposed as a condition of consent.



Stage 4 –Validation and Monitoring Report

The purpose of Stage 4 is to confirm that the objectives stated in the *Remedial Action Plan* have been achieved and that any relevant conditions of development consent have been complied with.

- P1 A *Validation and Monitoring Report* is required to be submitted to Council in accordance with the DoP's *Managing Land Contamination: Planning Guidelines* after remediation works have been completed, and prior to the commencement of new building construction works approved in an associated development consent.
- P2 Applicants are encouraged to use the same consultant who conducted the Preliminary Investigation, Detail Investigation and remediation works to prepare the Validation and Monitoring Report.
- P3 Council will need to be satisfied that the site is suitable for the proposed use when considering any subsequent development applications for the subject site. Hence it is recommended that comprehensive records are maintained during the remediation and validation works for all sites (See subsection 14.2.5 - Site audit.).

Usually Council will place a condition on any development consent granted requiring the submission of a *Validation and Monitoring Report* prior to the issuing of a Construction Certificate. Alternatively, Council may issue a deferred commencement consent for the proposed use, requiring that remediation and validation is undertaken prior to other work commencing.

14.2.3 Control of Remediation Work

Remediation comprises work carried out for the purpose of removing, dispersing, destroying, reducing, mitigating or containing the contamination of any land, or eliminating or reducing any hazard arising from the contamination of the land (including by preventing the entry of persons or animals on the land).

Remediation work is regulated by Chapter 4 – Remediation of Land to [SEPP \(Resilience and Hazards\) 2021](#) (refer to clauses 4.7-4.15 of the SEPP) and the DoP's [Managing Land Contamination: Planning Guidelines](#).

Remediation work typically falls into either Category 1 or Category 2 works. Development consent is required to undertake Category 1 remediation works, but not for Category 2 works. Broadly speaking, Category 2 remediation work is all remediation work that is not Category 1. The full definition of Category 1 remediation work is contained with clauses 4.8 and 4.10 to [SEPP \(Resilience and Hazards\) 2021](#).

- P1 Remediation work must be undertaken in accordance with the relevant provisions of Chapter 4 – Remediation of Land to [SEPP \(Resilience and Hazards\) 2021](#) and the DoP's [Managing Land Contamination: Planning Guidelines](#).
- P2 In addition to P1, Category 2 remediation must comply with the site management requirements set out in subsection 14.2.4 of this Part of the DCP. Category 2 remediation work that does not comply with Subsection 14.2.4 of this Part of the DCP will be classified as Category 1 remediation work and will require development consent.
- P3 Comprehensive records should be maintained during the undertaking of remediation and validation works for all sites to demonstrate that the site will be suitable for the proposed use.

14.2.4 Site Management Requirements

All Category 2 remediation work must be carried out in accordance with the following site management requirements. These requirements apply to the whole of the North Sydney LGA and have been formulated to ensure that Category 2 remediation work does not adversely impact upon the environment and public amenity.

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

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Development applications lodged for Category 1 remediation work should identify any departures from these requirements and any alternative site management measures to be implemented.

Note: Refer to parts 4.4-4.6 of the [Managing Land Contamination: Planning Guidelines](#) in regard to assessment of development applications.

Remediation Work

- P1 All remediation work must be carried out in accordance with:
- (a) the [Managing Land Contamination: Planning Guidelines](#); and
 - (b) the standards contained within the NSW Environment Protection Authority guidelines made under the [CLM Act 1997](#).

Notification

- P2 Notice of proposed work must be given to the Council in accordance with Chapter 4 – Remediation of Land to [SEPP \(Resilience and Hazards\) 2021](#), clause 4.13.

Note: Clause 4.13 SEPP (Resilience and Hazards) 2021 requires that the notice to Council must:

- (a) be in writing, and
- (b) provide the name, address and telephone number of the person who has the duty of ensuring that the notice is given, and
- (c) briefly describe the remediation work, and
- (d) show why the person considers that the work is category 2 remediation work by reference to clauses 4.8, 4.11 and (if it applies) 4.12(1) to [SEPP \(Resilience and Hazards\) 2021](#), and
- (e) specify, by reference to its property description and street address (if any), the land on which the work is to be carried out, and
- (f) provide a map of the location of the land, and
- (g) provide estimates of the dates for the commencement and completion of the work.

At least 30 days notice is also required, except in the case of work required to be carried out immediately under the terms of a remediation order (in which case, at least 1 day's notice is required).

- P3 The following additional information must be submitted with the notice to the Council:
- (a) copies of any Preliminary Investigation, Detailed Investigation and Remedial Action Plan for the site, and
 - (b) contact details for the remediation contractor and any other party responsible for ensuring compliance of remediation work with regulatory requirements.

Hours of Operation

- P4 All remediation work shall be conducted within the following hours (unless consent conditions provide otherwise):

Monday – Friday: 7am - 5pm
 Saturday: 8am - 1pm
 Sundays or Public Holidays: No work is permitted

Health and safety

- P5 The work must satisfy applicable occupational health and safety and construction safety regulations, including any Work Cover Authority requirements to prepare a health and safety plan. Site fencing must be installed to exclude the public from the site. Safety signs must be erected that warn the public to keep out of the site, and a contact telephone number provided for enquiries.

Noise

- P6 Noise emissions must comply with relevant standards under the [Protection of the Environment Operations Act 1997](#). Vibration from the works must not be felt on any adjoining property.



Air quality

- P7 Materials must not be burnt on the site.
- P8 Vehicles entering and leaving the site with soil or fill material must be covered.
- P9 Dust suppression measures must be carried out to minimise wind-borne emissions in accordance with the NSW Department of Housing's 1998 guidelines *Managing Urban Stormwater: Soils and Construction*. Odour suppression measures must be carried out to avoid effects on adjoining properties.

Water quality

- P10 Runoff must be drained to an adequately bunded central collection sump and treated, if necessary, to meet NSW Environment Protection Authority discharge criteria.

Erosion and sediment control

- P11 Erosion and sediment control techniques are to be in accordance with North Sydney Council guidelines on Erosion and Sediment Control. All remediation works shall be conducted in accordance with an erosion and sediment control plan that follows the brochure *Preparing an Erosion and Sediment Control Plan* published by the Department of Conservation & Land Management. The plan must be kept on-site and made available to Council officers on request (See also Council's leaflet *Erosion and sediment control for urban development*).
- P12 Erosion and sediment control measures must be established prior to commencement of work. All erosion and sediment measures must be maintained throughout the remediation works.
- P13 Temporary stockpiles of contaminated materials must be kept in a secure area. Facilities must be installed for cleaning vehicles prior to leaving the site. Detailed designs for any pollution control system, including leachate collection and disposal, must be provided to the Council with notice of proposed work required pursuant to cl.4.13 to [SEPP \(Resilience and Hazards\) 2021](#).

Waste

- P14 Any removal of contaminated solids from the site must comply with relevant laws for the transportation, treatment and disposal of waste materials. Waste materials must not be disposed of on land without:
 - (a) permission of the land owner; and
 - (b) development consent from the relevant local council (if required); and
 - (c) an environment protection licence from the NSW Environment Protection Authority.

Landscaping and rehabilitation

- P15 Disturbed areas must be progressively stabilised and revegetated in accordance with a landscape plan.

Remedial Action Plan

- P16 The remediation work must be carried out in accordance with a Remedial Action Plan prepared in accordance with Chapter 4 – Remediation of Land to [SEPP \(Resilience and Hazards\) 2021](#), the DoP's *Managing Land Contamination: Planning Guidelines*, this DCP and any relevant guidelines issued under the [CLM Act 1997](#).

Validation

- P17 A validation and site monitoring report prepared in accordance with relevant guidelines issued under the [CLM Act 1997](#) must be submitted to the Council within one month from completion of the remediation work.
- P18 All validation and site monitoring reports must be completed by a suitably qualified environmental consultant.

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P19 A detailed survey of all sites used for landfill disposal must be prepared within one month from completion of the remediation work, and submitted to Council. The plan must identify the extent and depth of all fill material in relation to existing roadways and buildings. The survey must also include a detailed survey of all sites used as landfill disposal pits, identifying boundaries and depth of disposal pits in relation to existing roadways and buildings.

Community information

P20 Reasonable measures must be undertaken by the applicant to keep nearby residents informed about the proposed work, such as signs, leaflets, public meetings, and telephone contact numbers.

Compliance with legislation

P21 Compliance with relevant environmental legislation and planning guidelines is required in addition to the provisions in this section.

Post remediation works

P22 Following validation of the site, notice of completion must be submitted to Council in accordance with clauses 4.14 and 4.15 to [SEPP \(Resilience and Hazards\) 2021](#) and within 30 days of completion of the work.

P23 A copy of the validation report must also be submitted to Council with the notice of completion.

14.2.5 Site Audit

A site audit comprises an investigation to determine one or more of the following:

- (a) the nature and extent of contamination of land
- (b) the nature and extent of the investigation or remediation
- (c) what investigation or remediation is necessary before land is suitable for any specified use or range of uses

Council may request a site audit to be undertaken at any or all stages in the site investigation or remediation process. In accordance with the *Managing Land Contamination Planning Guidelines*, Council will require a site audit prepared by an Environment Protection Authority accredited auditor for contaminated land if Council:

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

A site audit will be required in most cases, as the Council will usually want to verify whether the information provided by the applicant has followed appropriate standards, procedures and guidelines. The Council will not usually have the internal resources to conduct its own technical review. The applicant is responsible for engaging an accredited auditor to perform a site audit and to pay the costs involved.

When Council requests a site audit, it will also specify any issues to be included in the audit, as well as requiring a site audit to address any issues raised in s.47(1)(b) [CLM Act 1997](#).

Requirements

P1 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:

- (a) Has the contaminated land consultant complied with all appropriate standards, procedures and relevant NSW EPA guidelines?
- (b) What further investigation or remediation is required before the land is suitable for any specified use or range of uses?



- (c) Whether the auditor considers that the proposed remediation is adequate, and if undertaken, will render the site to be suitable for the proposed use?
 - (d) Whether it can be concluded that there is no unacceptable off-site migration of contaminants?
 - (e) Whether the contamination conditions at the site are suitable for in-ground absorption of stormwater?
- P2 Either the applicant or the appointed auditor 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.
- P3 For sites that raise complex issues, the site auditor should be engaged during the investigation processes and planning of remedial action, liaising with the consultant and the Council to streamline these processes. The following steps (P4 to P6) may then be undertaken.
- P4 The auditor may provide a statement to Council indicating that remediation of the site is feasible and environmentally justifiable, and that following remediation, the site is likely to be suitable for its intended use.
- P5 The auditor can review the remedial action plan prepared by the consultant and be satisfied that issues relating to remediation policy, scheduled waste management and off site disposal consents are properly addressed.
- P6 The auditor can review the validation report prepared by the consultant and decide if the site is suitable for its intended purpose and that issues such as groundwater contamination, and contaminant migration have been adequately addressed.

Site Audit Statements

The NSW Environment Protection Authority Guidelines for the NSW Site Auditor Scheme indicate the content and format of site audit statements (see also s.47 of the [CLM Act 1997](#), and Schedule 1 of the [CLM Regulation 2013](#)).

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

14.2.6 Council records and community information

Council has an important role in supplying the community with information regarding land use history, land contamination and remediation. Council also has a statutory responsibility under s.59 of the [CLM Act 1997](#) to include information provided to Council by either the EPA or accredited auditors on Certificates issued under s.10.7 of the [EP&A Act 1979](#).

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

Information Management

The Council does not hold comprehensive information about land contamination. In the past, little information was kept about contaminated land. The information that Council does have on record relating to contamination generally relates to only a very small number of sites. Council is aware of some land where potentially contaminating land uses have taken place. It is possible that some of these sites are contaminated and that others are not, but can not be determined until further detailed investigations have been undertaken. It is also possible that there are some parcels of land which are contaminated in the local government area that is not known to the Council.

Land contamination is dynamic and no information system can record the nature of all contamination within the local government area at any one time. Council records will change over time as information comes to light. Specifically, the following information will be added to the record for individual parcels of land from time to time:

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- Information contained in development applications, indicating use for a potentially contaminating activity listed in Appendix 2.
- Reports submitted to Council, including preliminary investigation, detailed investigation, remedial action plans, validation and monitoring reports, and site audit statements.
- NSW Environment Protection Authority declarations and orders issued under the [CLM Act 1997](#) (including voluntary investigation and remediation proposals agreed by the NSW Environment Protection Authority).
- Prior notification of Category 2 remediation works.
- Notification of completion of Category 1 and Category 2 remediation work.

Information about land contamination held within the Council's records will be supplied to the public by the following means (subject to payment of any prescribed fees):

- By issuing Planning Certificates (s.10.7 Certificates) on application to Council.
- By providing access to documents in accordance with the [Government Information \(Public Access\) Act 2009](#) and other legislation.

Information relating to land contamination or the likelihood of land contamination is gathered, kept and disseminated, so as to:

- Provide a basis for informed planning decisions that consider land use history
- Provide reliable information to the community
- Minimise risk to health and the environment
- Avoid unnecessary restrictions on development
- Acknowledge any limitations on information, such as its degree of uncertainty or accuracy, and the purpose and time it was collected

Planning Certificates

All Planning Certificates issued under s.10.7(2) of the [EP&A Act 1979](#) will state that Council has adopted this development control plan, as well as the information required under s.59(2) of the [CLM Act 1997](#), where the land is:

- significantly contaminated land;
- subject to a management order;
- subject of an approved voluntary management proposal;
- subject to an ongoing maintenance order; or
- subject of a site audit statement.

In addition, a Planning Certificate issued under s.10.7(2) will indicate, pursuant to Clause 7 of Part 3 of the [EP&A Regulation 2021](#), whether the land has been identified by Council as having the potential to be contaminated due to previous activities carried out on the site.

When a Planning Certificate is requested under s.10.7(5) of the [EP&A Act 1979](#), Council will provide additional information known to Council about site contamination issues, including that the site may be contaminated because of past zonings or uses, the existence of reports on past site investigations, notifications of remediation, site audit statements, and the like.

14.3 HAZARDOUS BUILDING MATERIALS

There are some instances where buildings have been constructed with or fitted with hazardous building materials. These materials are often inert when left in situ, however can become hazardous to a person's health when disturbed. The following subsection sets out the investigations, reporting requirements and removal and disposal methods required to be provided or carried out.



14.3.1 Initial Investigation

Council will conduct an initial evaluation as part of every development assessment to determine whether hazardous building materials are an issue, and whether sufficient information is available for Council to appropriately carry out its planning functions. The initial evaluation checklist is to be addressed on the basis of readily available information held by the Council or provided by the applicant. In completing the checklist, the following questions are to be considered:

- (a) Is the Council aware of any previous investigations about hazardous building materials on the land? What were the results, including any previous initial evaluations?
- (b) Was the subject land at any time used for commercial premises, industrial premises, telecommunication facilities, transport facilities, electrical facilities, water supply facilities, sewerage facilities, agricultural purposes or defence purposes?
- (c) Was the affected building(s) constructed prior to 1970?

If none of the answers suggest that the land might contain hazardous building materials or that further enquiry is warranted, the planning process should proceed in the normal way. However, if the initial evaluation indicates that hazardous building materials may be present, or the Council has insufficient information on which to make a planning decision, then the applicant will be required to undertake further investigations. In particular, the applicant will be required to submit a Hazardous Building Materials Survey Report.

14.3.2 Hazardous Building Materials Survey Report

P1 A Hazardous Building Material Survey Report is required to be submitted with the lodgement of all Development Applications involving demolition of the following:

- (a) Commercial, industrial and retail buildings with a gross floor area of greater than 500m²;
- (b) Transport, telecommunications, electrical, water or sewerage facilities or structures; or
- (c) Any building on a site, where it is proposed to be used for child care purposes.

Based on its initial assessment of a Development Application, Council may impose a condition on a development consent for other types of development requiring the submission of a Hazardous Building Material Survey Report to Council prior to the issue of a Construction Certificate.

P2 The associated investigations are required to be carried out in accordance with the requirements of the relevant NSW Environment Protection Authority guidelines.

P3 The associated investigations and report must be completed by a suitably qualified consultant to undertake the preliminary investigation and to pay all the costs involved (EPA accredited auditors will be accepted as being suitably qualified consultants).

P4 The investigations should involve at least a visual inspection of accessible and representative construction materials and the collection and analysis of materials suspected of containing hazardous materials.

P5 The inspection should identify the presence of any of the following materials:

- (a) **Asbestos:** The assessment must be carried out in accordance with the guidelines documented in the Asbestos Code of Practice for the Management and control of Asbestos in Workplaces [NOHSC:2018 (2005)] and the [Protection of the Environment Operations \(Waste\) Regulation 2014](#).
- (b) **Synthetic Mineral Fibres (SMF):** Investigations should be made of electrical insulation, plumbing materials, heat insulation, acoustic insulation and fire insulation. The materials should be broken down into their main groupings consisting of:

Contamination and Hazardous Building Materials

- (i) Continuous Glass Filaments;
 - (ii) Fibreglass, glass fibre or glasswool;
 - (iii) Rockwool; and
 - (iv) Ceramic Fibres
- (c) **Polychlorinated Biphenyls (PCBs):** All light fittings should be inspected for the presence of PCB containing capacitors. The capacitors are to be cross referenced with the ANZECC Identification of PCB Containing capacitors database -1997.
- (d) **Lead-containing Paint:** Representative painted surfaces are to be tested. Investigations should be focused on areas where lead based paint would have been traditionally used, such as exterior gloss paints, window and door architraves, skirting boards.
- (e) **Ozone depleting substances:** Inspection of refrigerant gas labels on representative refrigeration and or air conditioning plants are to be noted and documented. Where there are no labels, assessment is to be based on the age and condition of the plant.
- P6 The Report is also to provide general recommendations for the removal, of the hazardous materials, including the preparation of detailed document such as a Management Plan, Technical Scope of Works, SafeWork, Method Statements and Risk Assessments to appropriately address health and safety issues associated with the specific work and site conditions. The recommended conditions contained in any of the above reports may be included as conditions to a development consent.

14.3.3 Removal of Hazardous Building Materials

The removing, dispersing, destroying, reducing, mitigating or containing of hazardous building materials on any land, or eliminating or reducing any hazard arising from its removal must be undertaken in accordance with the following documents or legislation:

- [Work Health and Safety Act 2011,](#)
- [Work Health and Safety Regulation 2017,](#)
- The NSW WorkCover Code of Practice for the Safe Use of Synthetic Mineral Fibres,
- National Occupational Health and Safety Commission's National Code of Practice for the Safe Use of Synthetic Mineral Fibres,
- Code of Practice for the Safe Removal of Asbestos [NOHSC: 2002 (1988)].

Council may impose a condition on a development consent requiring the applicant to comply with these documents and legislation.



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