Policy

Contaminated Land

Responsible Manager (Title)	Manager, Environment and Regulatory Services		
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Community Plan Linkage	**4.3 Environment - Promotion of sustainable development that integrates with the environment**		

1 Purpose

The purpose of the policy is to provide an integrated approach for the management of contaminated land and land suspected of being contaminated through past or present land use or fill. It applies to all lands within the Clarence Valley Local Government Area and is based on guidelines prepared by the Department of Urban Affairs and Planning (DUAP) and the NSW Environmental Protection Agency (EPA), titled Managing Land Contamination- Planning Guidelines SEPP 55 – Remediation of Land 1998 (SEPP 55 Guidelines).

2 Definitions

Contaminated Land is defined under Schedule 6(1) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) as:

Contaminated land *means land in, on or under which any substance is present at a concentration above the concentration at which the substance is normally present in, on or under (respectively) land in the same locality, being a presence that presents a risk of harm to human health or any other aspect of the environment.*

Investigation Area *is defined as:*
Land declared to be an investigation area by a declaration in force under Division 2 of Part 3 of the Contaminated Land Management Act 1997.

Note: *A range of relevant definitions are contained in legislation as well as publications listed in Attachment 1. Refer to those items for more details.*

3 Background/legislative requirements

Council is required to always consider whether land is contaminated, the implications it has for any proposed or permissible future uses of the land and whether remediation of the land is required -

1. *Under Chapter 4 Remediation of Land of the State Environmental Planning Policy (Resilience and Hazards) 2021*, the EP& A ACT and the *Environmental Planning and Assessment Regulation 2021* (EP&A Reg) any Development Application must consider land contamination as part of the assessment process
2. Under Ministerial Direction 4.4 Remediation of Contaminated Lands, prepared under section 9.1(2) of the EP& A Act any zoning or rezoning application (Planning Proposal) must consider land contamination as part of the assessment process

In addition, Council is required to provide certain information on Section 10.7 Planning Certificates as specified in the EP&A Reg and *Contaminated Land Management Act 1997* (CLM ACT).
That is:

1. Section 290 and Schedule 2 of the EP&A Reg requires that the certificate identify whether or not the land is affected by any policy (adopted by Council or by a public authority for the express purpose of its adoption being referred to in S10.7 Planning Certificates issued by Council) that restricts the development of land because of the likelihood of any risk (including contaminated land)
2. Section 59 of the CLM Act requires that the Planning Certificate address the specific matters relating to the management of contaminated land set out in that section.

Note: Further information regarding notification of Council's Contaminated Land Policy in Section 10.7 Planning Certificates is included in section 5.6.2 of this Policy

Other key legislation and policies for the administrative framework for the management of contaminated land include:

- *Managing Land Contamination - Planning Guidelines SEPP 55 – Remediation of* Land (DUAP and EPA, 1998) (SEPP 55 Guidelines);
- *Protection of the Environment Operations (Underground Petroleum Storage Systems) Regulation 2019*.

The EPA will intervene in a situation where contaminated land poses a significant risk of harm to public health or the environment (refer to Section 7 *Contaminated Land Management Act 1997*). Council will deal with sites not posing a significant risk of harm under the provisions of the EP&A Act, in accordance with the Managing Land Contamination - Planning Guidelines SEPP 55 – Remediation of Land 1998 (Guidelines) and this policy.

The EPA may declare land to be an investigation area if it has reasonable grounds to believe that the land is contaminated with a substance in such a way as to present a significant risk of harm (*Contaminated Lands Management Act 1997).*

Council's who act substantially in accordance with these Guidelines when carrying out specified planning functions are taken to have acted in good faith and receive statutory protection under Schedule 6, clause 2 and 3 of the EP&A Act.

This policy is prepared substantially in accordance with these Guidelines and aims to take a precautionary approach and will allow land contamination issues to be identified and dealt with at an early stage of the planning and development process in order to prevent harm and reduce delays and costs.

A list of other publications and guidelines that are useful in contaminated land assessment, management and remediation is included at Attachment 1.

4 Policy statement

Council has the responsibility to manage the development of land, particularly when a change in land use, remediation in or certain circumstances is proposed, to a more sensitive land use. In making these decisions Council must not expose the community or environment to an increased risk from land contamination.

In consideration of development applications or rezoning, Council will require a level of assessment necessary to demonstrate that the site is suitable for the intended use and will not expose future occupants, or the environment, to unacceptable risk from land contamination. The onus to demonstrate the suitability of the land for the proposed land use is with the applicant.

An assessment of past land use history, and if necessary, more detailed investigations utilising duly qualified persons experienced in assessing contaminated sites, is fundamental to this process.

The objectives of the policy are:

- To define Council's role in land contamination issues.
- To ensure that the likelihood of land contamination is considered as early as possible in the planning and development process by Council, consultants, developers etc.
- To ensure that changes in land use will not increase the risk to health or the environment
- Avoid inappropriate restrictions on land use arising from contamination
- To advise owners or applicants of Council's requirements when dealing with contaminated or potentially contaminated land.
- To provide guidance on the standard of information and reports required by the Council in an assessment report.
- To ensure the appropriate management of contaminated sites and their remediation if practicable and encourage best use of land.
- To ensure the protection of the environment, public health and amenity of an area.

5 Implementation

5.1 Causes of Land Contamination

Land contamination can be caused by using contaminated fill, past practices of on-site waste disposal, application of chemicals (pesticides, herbicides, timber preservatives, or fertilisers) associated with agricultural, industrial or other land use activity, leaking underground fuel tanks, spills or accidents with

certain chemicals or materials. Contaminants may move from one site to another due to natural or human induced processes.

Attachment 2 has a list of activities from the SEPP 55 Guidelines that may have caused land contamination. This list is only a guide and should not be relied upon solely to determine if a site is contaminated or not.

5.1.1 Cattle Tick Dip Sites

Development on Lots Containing a Dip Site or Located near a Dip Site

There are numerous unused cattle tick dip sites located within the Clarence Valley Council. When assessing development on or around dip sites a risk assessment specific to each site will need to be undertaken. Particular considerations should include a site history, site geology and hydrogeology. Council records and those of Biosecurity NSW, NSW Trade and Investment at the Wollongbar Agriculture Institute should also be consulted. The flow chart in Figure 2 at section 5.5 should be consulted when considering a development near a dip site.

5.1.2 Service Stations and Sites with Underground Petroleum Storage Systems (UPSS)

Leaking underground petroleum storage systems (UPSS) have been identified as a common and significant source of soil and groundwater contamination. There are numerous sites with UPSS within the Clarence Valley Council area.

To reduce the environmental risk and harm from leaking UPSS, a number of laws and policies govern the decommissioning, abandonment and removal of these systems. These include the *Work Health and Safety Regulation 2017*, *Protection of the Environment Operations (Underground Petroleum Storage Systems) Regulation 2019* (the 'UPSS Regulation') and State Environmental Planning Policy (Resilience and Hazards) 2021. Industry best practice described in a number of Australian Standards must also be followed when decommissioning UPSS (NSW EPA).

The EPA has developed guidance material and fact sheets to assist in the management and operation of sites with UPSS. This information can be found on the EPA's website https://www.epa.nsw.gov.au/your-environment/contaminated-land/upss/resources-for-implementing-upss. Council's Environmental Services team can also assist with information regarding UPSS.

5.1.3 Asbestos

Safe Work NSW and other agencies have developed Code of Practice and guidance material to achieve compliance with the Work Health and Safety Act and Regulation to provide general direction on the assessment and management of asbestos in soil. Managing asbestos in soil has implications for the current and future occupants of the land and any workers employed on the site. The guidance applies principally to the legacy of poor historical on-site management of asbestos materials and not to the illegal disposal or landfilling of waste generated off-site. However, sites that contain asbestos materials may be deemed to be contaminated.

This information is available from Safe Work NSW and can be accessed via the link: www.safework.nsw.gov.au/hazards-a-z/asbestos

Clarence Valley Council has an Asbestos Policy which should also be consulted for further information. More details can be found con Council's website https://www.clarence.nsw.gov.au/Council/Governance-and-transparency/Policies.

5.1.4 Agricultural Land

The chemicals most likely to cause contamination problems in agricultural land are arsenic and organochlorines, followed by organophosphates, and sometimes mercurial and lead pesticides (NSW EPA2015).

To identify potentially contaminated agricultural land the processes outlined in this policy are to be followed.

Note: On a large rural holding it may be appropriate to assess only the area proposed for residential land use (i.e., the building envelope and curtilage). In these cases, the area to be used for residential uses should be determined and an assessment of at least 2000m2 should be undertaken using the minimum sampling densities specified in Table A of *EPA (1995) Contaminated Sites: Sampling Design Guidelines*, and other relevant guidance made or approved by the EPA.

On small parcels of ≤2000m2 the sampling strategy should address the total site area as the site would be dominated by a land use).

The NSW EPA has information regarding Contaminated Agricultural Land on their website at: http://www.epa.nsw.gov.au/mao/contaminatedagriland.htm.

5.1.5 Demolitions / Under Concrete Slab Organochlorine Pesticides

To provide a chemical barrier to termites, organochlorine pesticides were used extensively within the Clarence Valley beneath structures such as dwellings (predominantly beneath concrete slabs) from pre 1960s until the use of such pesticides was banned around July 1995.

Organochlorine pesticides are known to persist in the environment and may remain in the soil material beneath these structures. Exposure to high levels of organochlorine pesticides may lead to serious health concerns in humans and may pose an issue when considering applications for the demolition of structures.

Where removal of these structures is proposed, Council must consider the requirements *of State Environmental Planning Policy (Resilience and Hazards) 2021* – and Council's Pre-Demolition Testing Guideline (See Attachment 3).

Applicants must submit a sub slab pre-demolition testing report prepared in accordance with Council's Pre-Demolition Testing Guideline (Attachment 3). The testing and report shall be undertaken and prepared by a suitably qualified environmental consultant with experience in the assessment of contaminated land.

Where removal of a slab on ground footing system has occurred and testing was not conducted at the time, you must engage a suitably qualified environmental consultant with experience in the assessment of contaminated land to undertake a preliminary site investigation including site sampling in accordance with relevant NSW EPA contaminated land guidelines to the satisfaction of Council verifying that the land is not contaminated and is suitable for its proposed use.

5.2 Council Decision Making Process

In determining all rezoning and development applications, Council must consider the possibility of land contamination and the implications it has for any proposed or permissible future uses of the land.

5.2.1 Initial Evaluation

Council will conduct an initial evaluation as part of the development assessment process to determine whether contamination is an issue, and whether sufficient information is available for Council to carry out its planning functions in good faith.

The initial evaluation will be based on readily available factual information provided by the applicant and information available on Council's records and the Contaminated Land Information System when developed.

Council may also conduct a site inspection of the subject land.

5.2.2 Details the Applicant Must Provide

- Present land use.
- Past uses/site history in accordance with SEPP 55 Guidelines.
- Details of any uses (past or present) that may involve potentially contaminating activities i.e. location, time, type of chemicals, any remediation works undertaken of which the applicant is aware. These will include uses identified in Attachment 2.
- Details of chemicals, pesticides, insecticides, and fertilisers known to have been used on the site.
- Where demolition of structures older than 1995 is proposed, than the requirements on section 5.1.5 and Attachment 3 must also be met

5.3 Procedures for Planning Proposals / Local Environmental Plan amendments

The zoning or rezoning of land is controlled by Part 3 Division 3.4 of the EP&A Act requiring that a planning proposal be prepared by the planning proposal authority and submitted to the Minister for planning via a Gateway determination for review to determine whether the planning proposal should precede and whether further studies and consultation are required to ensure the suitability of the land for all permitted uses of the proposed land zone.

Section 3.33 of the *EP&A Act* provides that a planning proposal is to include justification for the proposed provisions of the new local environmental plan, including whether the proposed plan will comply with the requirements of any directions given by the Minister for Planning under s9.1 of the EPA Act.

S9.2 Ministerial Direction 4.4 Remediation of Contaminated Lands requires that consideration of contamination is undertaken when zoning or rezoning land. It applies when a planning proposal authority prepares a planning proposal that applies to:

a) *land that is within an investigation area within the meaning of the Contaminated Land Management Act 1997,*

b) *land on which development for a purpose referred to in Table 1 to the contaminated land planning guidelines (Guidelines) is being, or is known to have been, carried out,*

   i. *the extent to which it is proposed to carry out development on it for residential, educational, recreational, or childcare purposes or for the purpose of hospital - land:*

ii. *in relation to which there is no knowledge (or incomplete knowledge) as to whether development for a purpose referred to in Table 1 to the contaminated land planning guidelines has been carried out, and*

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

In addition, Council must not include in a zone (within the meaning of the local environmental plan) any land in that zone that would permit a change of use of the land from the existing use unless:

a) *Council has considered if the land is contaminated (initial evaluation)*

b) *If the land is contaminated, Council is satisfied that the land is suitable in its contaminated state (or will be suitable after remediation) for all the purposes for which the land in the zone concerned is permitted to be used, and*

c) *If the land requires remediation to be made suitable for any purpose for which land in that zone is permitted to be used, Council is satisfied the land will be remediated before the land is used for that purpose i.e., satisfied by provisions of LEP or DCP that contamination issues will be suitably addressed at DA stage.*

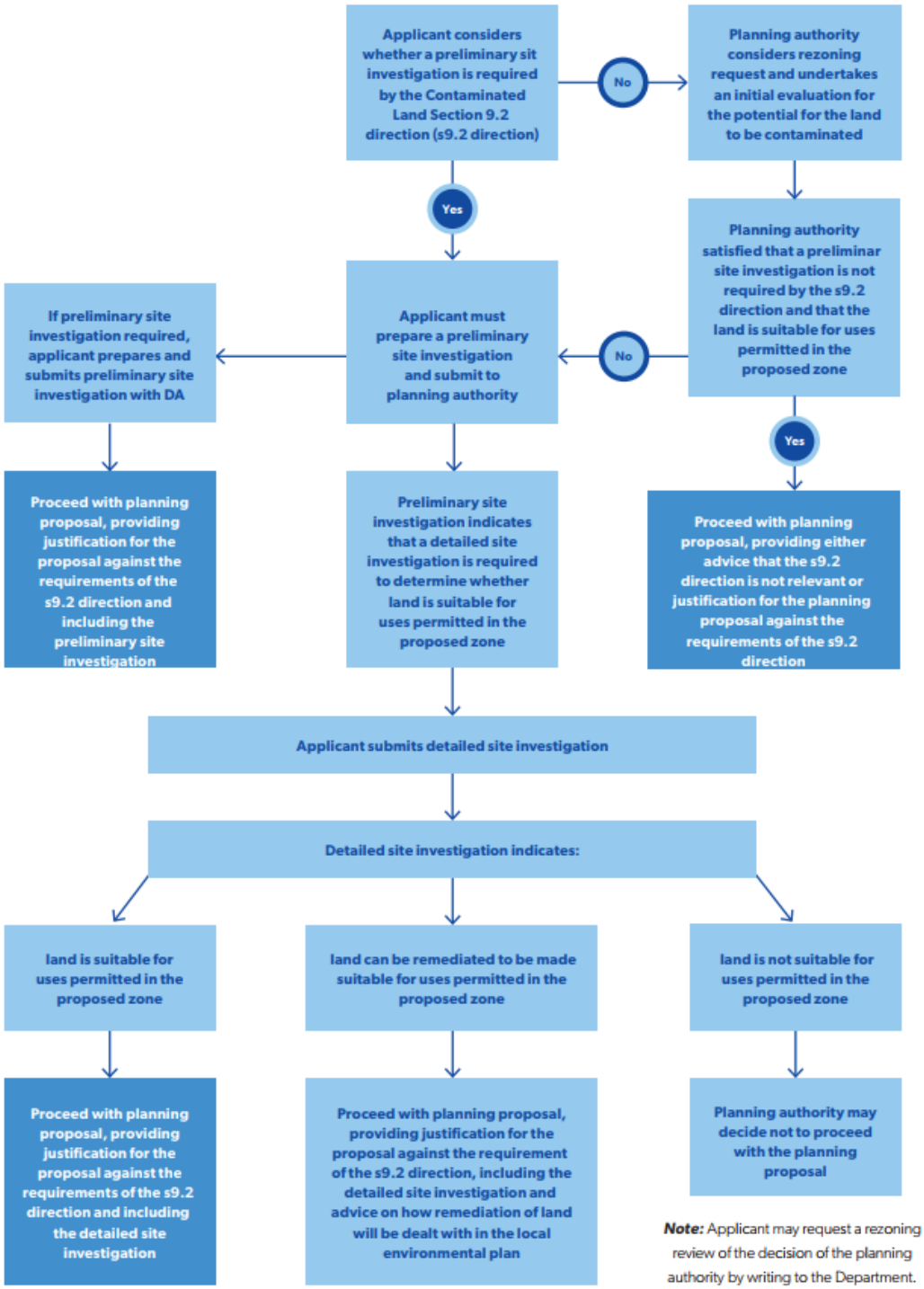
In order to satisfy itself as to paragraph (c), Council may need to include certain provisions in the local environmental plan.

Before including any land to which this direction applies in a particular zone, Council is to obtain and have regard to a report specifying the findings of a preliminary investigation of the land carried out in accordance with the SEPP 55 Guidelines.

Council may include provisions in the LEP or DCP to ensure that the potential for contamination and the suitability of land for any proposed use is further addressed prior to the redevelopment of the land. In some cases, a more detailed investigation may be required.

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

Figure 1: Considering contamination issues in the planning proposal and rezoning process



Source: adapted from the NSW Government's draft Contaminated Land Planning Guidelines (p22), prepared by the Department of Planning and Environment and EPA.

5.4 Procedures for Development Applications

Clause 4.6 of SEPP (Resilience and Hazards) 2021 requires Council to not give consent to any development on land unless:

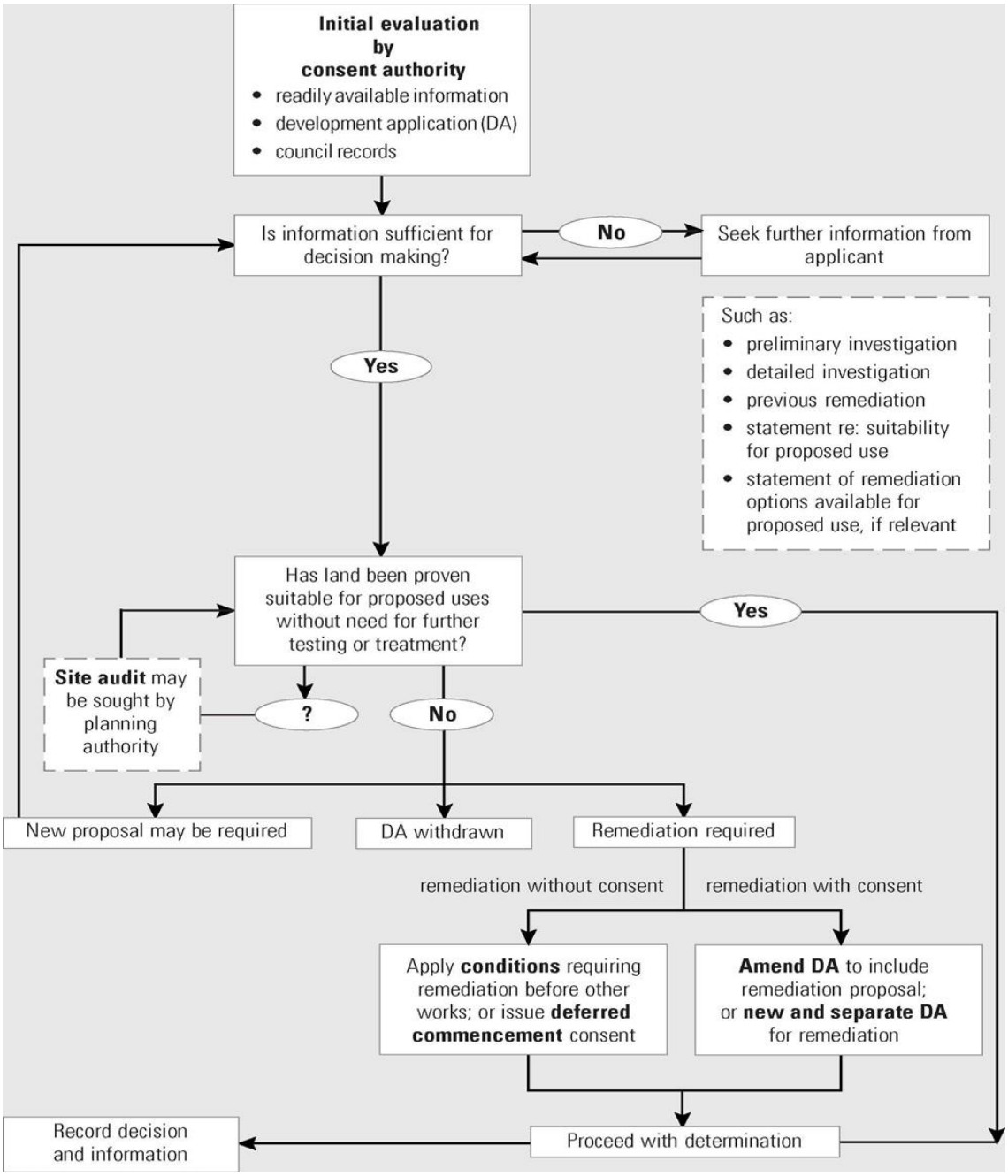
a) *it has considered whether the land is contaminated, and*

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 for which the development is proposed to be carried out, and*

c) *if the land requires remediation to be made suitable for any 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 following outlines what information Council requires for development applications in relation to site contamination. Council procedures for considering land contamination issues for development applications are shown in Figure 2.

Figure 2: Options available in the development application process



Source: SEPP 55 Guidelines p.27.

5.5 Information Council requires in the Decision Making Process

Clarence Valley Council requires all contaminated land reports, services and advice to comply with the requirements of the *Contaminated Land Management Act 1997* (CLM Act) to be prepared, or reviewed and approved, by a consultant certified under the Environment Institute of Australia and New Zealand's Certified Environmental Practitioner (Site Contamination) scheme (CEnvP(SC)), the Soil Science Australia Certified Professional Soil Scientist Contaminated Site Assessment and Management (CPSS CSAM) scheme or any other EPA supported accreditation scheme. Further information on certified consultants can be found on the NSW EPA website https://www.epa.nsw.gov.au/your-environment/contaminated-land/managing-contaminated-land/engaging-consultant

This requirement includes reports associated with a:

- Detailed Site Investigation (DSI) report
- Remediation Action Plan (RAP)
- Validation report

The quality information section of a report submitted to Clarence Valley Council is to include the details of the consultant's certification, which should include a personalised electronic seal for either the CEnvP(SC) scheme or CPSS CSAM scheme.

Note: A Suitably Qualified Contaminated Land Consultant can prepare a Preliminary Site Investigation (PSI) report and will not be required to be reviewed or approved, by a consultant certified by an EPA supported accreditation scheme.

There are four stages that contaminated, or potentially contaminated land can be investigated. At each stage it is the applicant's responsibility to provide the necessary documentation to Council and to fund the works to prepare the documents. The stages are as follows:

Stage 1 - The Preliminary Investigation

The objectives of a preliminary investigation are to identify any past or present potentially contaminating activities and to provide a preliminary assessment of site contamination. It involves a detailed appraisal of the site's history using information from historical records of land use, aerial photos, consultation with previous occupants and relevant authorities and a site inspection. Where contaminating activities are suspected to have had an impact on the land or there is limited information, sampling and analysis will most likely be required to confirm and support any conclusion reached from the site history appraisal (SEPP 55 Guidelines).

Where the preliminary investigation shows a history of non contaminating activities at a site and, in the absence of other contrary evidence, there will be no need for further investigation (SEPP 55 Guidelines). Section 5.1.5 of this Policy must also be considered for proposed demolition of structures.

Where the results of a preliminary investigation show the potential for or existence of contamination, a detailed investigation must be undertaken.

In accordance with SEPP (Resilience and Hazards) 2021 Council will require a preliminary investigation to be submitted with a subdivision or DA where the land is:

1. *land that is within an investigation area*

2. *land on which development for a purpose referred to in Appendix 1 is being, or is known to have been, carried out*
3. *to the extent which it is proposed to carry out development on it for residential, educational, recreational, or childcare purposes or for the purpose of hospital land:*
    i. *in relation to which there is no knowledge (or incomplete knowledge) as to whether development for a purpose referred to in table 1 to the contaminated land planning guidelines has been carried out, and*
    ii. *on which it would have been unlawful to carry out such development during any period in respect of which there is no knowledge (or incomplete knowledge).*

Council may also require a preliminary investigation if:

- Council has reasonable grounds to consider the land is contaminated
- There is insufficient information to determine if contamination is an issue
- Records indicate the site was linked to a pollution incident
- An adjoining site associated with contaminating activities may have caused the site to become contaminated i.e. through leaching, wind or soil erosion, groundwater movement or other contaminant land transport processes.

The preliminary site investigation shall be carried out in accordance with the requirements of the relevant NSW EPA Guidelines and undertaken by a suitably qualified consultant.

If Council is satisfied the preliminary site investigation concludes that the site is suitable for the proposed use then Council will not require any further investigations to be conducted.

Stage 2 – Detailed Site Investigation

The objectives of a detailed site investigation are to:

- Define the extent and degree of contamination
- Assess the potential risk posed by the contamination to human health and the environment
- Obtain enough information to develop a remedial action plan (if required)

It must also:

- State if the site is suitable for the proposed use or if remediation is required
- If remediation is necessary, it should list the feasible options available to remediate the site.

A detailed site investigation will be undertaken when the results of a preliminary site investigation demonstrate the existence or potential for contamination, which may render the land unsuitable for the proposed use. In some cases, the investigation process can proceed directly to Stage 2 - detailed site investigation where the land is known to contain a potentially contaminating activity.

The investigation shall be carried out in accordance with the relevant EPA Guidelines.

The applicant is required to engage a consultant certified by an EPA supported accreditation scheme to prepare or review and approve the detailed site investigation.

Stage 3 – Site Remedial Action Plan

Council will require a Remedial Action Plan (RAP) if the detailed investigation concludes that the land is not suitable for the proposed use in its present state.

The RAP should demonstrate how the levels of contaminants will be reduced to acceptable levels. The RAP shall be prepared or reviewed and approved by a consultant certified by an EPA supported accreditation scheme in accordance with the relevant EPA Guidelines.

Stage 4 - Validation and Monitoring

The aim of validation is to confirm if the objectives in the RAP have been met and if any further remediation is required. Council will require a validation report to be submitted after remediation works have been completed that demonstrates that the site is suitable for its proposed or ongoing use.

The validation report shall be prepared or reviewed and approved by a consultant certified by an EPA supported accreditation scheme in accordance with the relevant EPA Guidelines.

5.5.1 Consent for Remediation

Clause 4.8 of SEPP (Resilience and Hazards) 2021 determines when consent is or is not required for remediation works. Category 1 and Category 2 works are outlined below.

Category 1 – Council development consent is required as referred to in clause 4.8 of SEPP (Resilience and Hazards) 2021 if the work requires consent. These works are generally on land that is critical habitat or environmentally sensitive or works which are listed as a designated development under the EP & A Act. All Category one remediation work must be advertised for 28 days as required under s9A, Division 2, Schedule 1 of the EP&A Act.

A RAP is a compulsory requirement for all Category 1 remediation work.

If remediation works constitute Category 1 works, as defined by Clause 4.8 of SEPP (Resilience and Hazards) 2021, the applicant can amend their application to include a remediation proposal or lodge a new or separate development application. However, if work is to be carried out in a manner which is inconsistent with Council's policies on contaminated lands, then the works become Category 1, as described above.

Category 2 - All other remediation work is Category 2 and does not require development consent. The works may be undertaken as part of the DA or independent of this process. If it is found during investigations relevant to a DA application that Category 2 remediation is required before development can proceed then Council may:

- Impose conditions on the consent requiring remediation to be undertaken and validated before work commences, or occupation, or
- Issue a deferred commencement for the use and require remediation to be undertaken and validated before works commence.

Where Category 2 works are undertaken, they must be done so in accordance with EPA requirements, SEPP 55 Guidelines, the CLM Act and in accordance with SEPP (Resilience and Hazards) 2021 and all other relevant legislation.

Conditions of Consent for all Category 1 and 2 Works

There are conditions of Consent for Remediation Work in the SEPP 55 Guidelines. These are reproduced in Attachment 4 and address issues such as Health and Safety, water quality, air quality, erosion etc. Whenever Category 1 or 2 works are undertaken, they are required to comply with these conditions. However, Category 1 works require consent and may have further conditions imposed.

SEPP (Resilience and Hazards) 2021 also requires the Council to be notified 30 days prior to Category 2 works being undertaken to allow Council to verify that the works are actually Category 2. Also a notice of completion must be issued to the Council after all remediation work for both Category 1 and 2.

5.5.2 Ancillary Development

The SEPP 55 Guidelines state that:

'Remediation is often carried out in conjunction with other development, to make the land suitable for that development. The SEPP contains the following rules for remediation as ancillary development.'

- *Remediation may be considered as Category 2 instead of Category 1 if the only reason it is Category 1 is that it is ancillary to designated development.*
- *Remediation work that meets the criteria for Category 1 work may not be treated as Category 2 just because it is ancillary to development without consent.*
- *If Category 1 remediation is carried out ancillary to development without consent, this does not result in a requirement for consent for that development.*
- *If remediation work is designated development under Schedule 3 of the EP&A Reg or the provisions of a planning instrument, this does not mean that any associated development is also designated.*

5.5.3 Site Auditors scheme

Site auditors are experts accredited by the EPA who can provide an independent review of a consultant's work for all types of contamination sites. Only an accredited auditor may undertake an independent review or site audit. A list of accredited auditors is on the EPA's website at www.epa.nsw.gov.au.

Council may request a site audit at any or all stages in the site investigation process if Council:

- believes on reasonable grounds the information provided by the applicant is incorrect or incomplete.
- wishes to verify if the information provided by the proponent is being adhered to and appropriate standards are being complied with.
- does not have the internal resources to conduct its own technical review.

Council will decide if a site auditor is required after reviewing contamination reports and other associated documents. The proponent is responsible for engaging an EPA accredited site auditor and all costs borne in engaging the auditor.

There are EPA Guidelines which determine exactly what is to be included in a site audit. These are titled Guidelines for the NSW Site Auditors Scheme.

5.6 Council records

5.6.1 Contaminated Land register

Council has an important role to provide information to the public regarding land use history and contamination issues. There is also a statutory responsibility under Section 59 of the Contaminated Land Management Act to include information provided to Council by the EPA or accredited auditors on Planning Certificates.

Council currently does not have a contaminated land register. Preparation of such a register to identify known or potentially contaminated land on both private and public (including CVC-owned/managed) land within the Clarence Valley Local Government Area would provide a range of benefits. These benefits include an awareness of sites or land that pose a risk of environmental or human health impacts, both short and longer term, due to presence of chemical contaminants. This awareness would assist assessment of the risk of land contamination impacting management of Council and private works (including new development proposals), occupation and use of land, WHS and the environment. The SEPP 55 Guidelines (1995) contain a methodology for compiling a contaminated land register. Council can choose to modify the methodology, or specific information sources, according to availability of information held by Council. The NSW Guidelines are currently under review. Council will plan to prepare a contaminated land register for private and public land using an appropriate methodology, such as contained in the SEPP 55 Guidelines or other reputable guide during the term of this Policy.

5.6.2 Section 10.7 Planning Certificates

Under Section 10.7 of the *Environmental Planning and Assessment Act 1997*, a person may request from Council a planning certificate regarding advice on matters about land that are described in the Regulation.

One such prescribed matter within the EP&A Reg requires that the Section 10.7 Planning Certificate to identify whether or not the land is affected by any policy (adopted by Council or by a public authority for the express purpose of its adoption being referred to in S10.7 Planning Certificates issued by Council) that restricts the development and or use of land because of the likelihood of any hazard risk (including contaminated land)

Notification of certain matters under the Contaminated Land Management Act 1997

Planning certificates are required to contain advice as to whether the land to which the certificate relates is the subject of certain determinations under the *Contaminated Land Management Act 1997* (CLM Act) at the date when the certificate is issued. These matters listed in section 59(2) of the CLM Act include whether the land is significantly contaminated land, subject to a management order, subject of an approved voluntary management proposal, subject to an ongoing maintenance order, subject of a site audit statement. Council will not provide copies of these determinations with Section 10.7 Planning Certificates.

Note: Where the relevant legislation is amended to vary from the content of this Policy then the legislation will prevail.

Notification of Council's Contaminated Land Policy on Section 10.7 Planning Certificates

All Section 10.7 Planning Certificates issued by Council will contain the following notations about the existence of a Council Policy to restrict the use of the land.

> ***Any Other Risk – Contaminated Land***
> *Council has adopted a policy on contaminated land. This policy will restrict development of land which is affected by contamination, which has been used for certain purposes, in respect of which there is not sufficient information about contamination, which is proposed to be under for certain purposes, or in other circumstances outlined in the policy.*

Notification of land occupied by a cattle tick dip site

Where land is recorded as having been occupied by a cattle tick dip site Council's notation on a Section 10.7 Planning Certificate will be –

> *A cattle tick dip site is known to have occupied the subject land according to information provided to Council by the NSW Government. Use of chemicals associated with the cattle tick dip has the potential to have contaminated the site. For more information regarding the status of the site, and any possible remediation or soil testing that may have been carried out, persons should contact Biosecurity NSW, NSW Trade and Investment at the Wollongbar Agriculture Institute.*

Attachments

Attachment 1 - Contaminated Land Publications and Guidelines

- *Australian Drinking Water Guidelines*, NHMRC & Natural Resource Management Ministerial Council of Australia and New Zealand, 2011
- *Australian and New Zealand Guidelines for the Assessment and Management of Contaminated Sites,* published by Australian and New Zealand Environment and Conservation Council (ANZECC) and the National Health and Medical Research Council (NHMRC), January 1992.
- *Australian and New Zealand Guidelines for Fresh and Marine Water Quality,* Australian and New Zealand Governments and Australian State and Territory Governments, Canberra ACT, Australia.
- *Australian and New Zealand Guidelines for fresh and Marine Water Quality, Volume 3, Primary Industries* – Rational and Background Information, Australian and New Zealand Environment and Conservation Council (ANZECC) Agriculture and Resource Management Council of Australia and New Zealand (ARMCANZ), October 2000
- *Contaminated Land Guidelines: Assessment and management of hazardous ground gases*, NSW Environmental Protection Agency (2020)
- *Contaminated Land Guidelines: Consultants reporting on contaminated land,* NSW Environmental Protection Agency (2020)
- *Contaminated Land Guidelines: Sampling design part 1 – application,* NSW Environmental Protection Agency (2022)
- *Contaminated Land Guidelines: Sampling design part 2 – interpretation,* NSW Environmental Protection Agency (2022)
- *Guidelines on the Duty to Report Contamination under the Contaminated Land Management Act 1997,* NSW Environmental Protection Authority (2015)
- *Guidelines for implementing the POEO (Underground Petroleum Storage Systems) Regulation 2019*
- *Contaminated Sites: Guidelines for the vertical mixing of soil on former broad-acre agricultural land*, January 1995.
- *Contaminated Sites: Guidelines for the Assessment and Management of Groundwater Contamination,* NSW Department of Environment and Conservation March 2007
- *Contaminated Sites: Guidelines for Assessing Banana Plantation Sites*, October 1997.
- *Contaminated Sites: Guidelines for the NSW Site Auditor Scheme (3rd edition),* October 2017.
- *Contaminated Sites: Guidelines for Assessing Former Orchards and Market Gardens, June 2005.*
- *Guidelines for the assessment and cleanup of cattle tick dip sites for residential purposes,* NSW Agriculture and CMPS&F Environmental (1996)
- *Composite Sampling*, by Lock, W. H., National Environmental Health Forum Monographs, Soil Series No.3, 1996, SA Health Commission, Adelaide.

- *Environmental Health Risk Assessment: Guidelines for assessing human health risks from environmental hazards*, Department of Health and Ageing and EnHealth Council, Commonwealth of Australia, June 2012.
- *Regulatory Policy,* NSW Environmental Protection Authority 2021;
- *Regulatory Strategy 2021-24,* NSW Environmental Protection Authority 2021;
- *National Environment Protection (Assessment of Site Contamination) Measure 1999* (as amended 2013), NEPC 2013, Canberra.

The goal of the National Environment Protection (Assessment of Site Contamination) Measure 1999 (as amended 2013) is to establish a nationally consistent approach to the assessment of site contamination to ensure sound environmental management practices by the community which includes regulators, site assessors, environmental auditors, landowners, developers and industry. The measure consists of a policy framework for the assessment of site contamination Schedule A (*Recommended General Process for the Assessment of Site Contamination**)*** refer Appendix 3 and Schedule B (*General guidelines for the assessment of site contamination*). Schedule B guidelines include:

- Schedule B1—Guideline on Investigation Levels for Soil and Groundwater
- Schedule B2—Guideline on Site Characterisation
- Schedule B3—Guideline on Laboratory Analysis of Potentially Contaminated Soils
- Schedule B4—Guideline on Site-Specific Health Risk Assessment Methodology
- Schedule B5a—Guideline on Ecological Risk Assessment
- Schedule B5b—Guideline on Methodology to Derive Ecological Investigation Levels in Contaminated Soils
- Schedule B5c—Guideline on Ecological Investigation Levels for Arsenic, Chromium (III), Copper, DDT, Lead, Naphthalene, Nickel and Zinc
- Schedule B6—Guideline on the Framework for Risk-Based Assessment of Groundwater Contamination
- Schedule B7—Guideline on derivation of health-based investigation levels
- Schedule B8—Guideline on Community Engagement and Risk Communication
- Schedule B9—Guideline on Competencies and Acceptance of Environmental Auditors and Related Professionals

Attachment 2 - Some Activities that may Cause Contamination

- acid/alkali plant and formulation
- agricultural/horticultural activities
- airports
- asbestos production and disposal
- chemicals manufacture and formulation
- defence works
- drum re-conditioning works
- dry cleaning establishments
- electrical manufacturing (transformers)
- electroplating and heat treatment premises
- engine works
- explosives industry
- gas works
- iron and steel works
- landfill sites
- metal treatment
- mining and extractive industries
- oil production and storage
- paint formulation and manufacture
- pesticide manufacture and formulation
- power stations
- railway yards
- scrap yards
- service stations
- sheep and cattle dips
- smelting and refining
- tanning and associated trades
- waste storage and treatment
- wood preservation

(Source: DUAP & EPA, 1998, *Managing Land Contamination – Planning Guidelines – SEPP 55-Remediation of Land*, Table 1, p.12)

Attachment 3 – Pre-Demolition Testing

A1. Background

Within Clarence Valley Council LGA, chemical treatment using Organochlorine pesticides beneath structures such as dwellings to provide an effective barrier to termites has occurred. It was a method that was used extensively from pre-1960's until the use of such pesticides was banned around July 1995.

Organochlorine pesticides are known to persist in the environment for upwards of seventy (70) years and therefore it is possible that given their residual nature, they may remain within the soil material beneath structures such as dwellings where they were applied.

Exposure to high levels of Organochlorine pesticides may lead to serious health concerns in humans and environmental pollution as a consequence this may pose an issue when considering applications for the demolition of structures.

Where chemical treatment involving the use of Organochlorines beneath the structure may have been carried out Clarence Valley Council must consider the requirements of State SEPP (Resilience and Hazards) 2021 in determining any development applications to demolish a structure.

A2. Requirements

Should the applicant agree that contamination of the site is likely due to the presence of pesticides, and only the presence of pesticides due to termite control practices described within this note, the following protocol will be adopted:

A satisfactory Preliminary Site Remediation Action Plan shall be submitted as part of the development application. The plan shall set objectives and document the process to remediate the and shall also include, but not be limited to, the minimum requirement to undertake the following assessment prior to release of the construction certificate:

- Prior to the **disturbance/removal of the concrete slab** commencing on site, a minimum of four (4) sample points shall be selected for the sampling of the soil material beneath the structure, the sample points shall be appropriately separated so as to provide a representative distribution pattern. The soil material shall ideally be accessed via breaching of the slab either by drilling or other method that will not lead to undue disturbance of the soil material beneath.
- Accessing the soil material from the sides of the slab is not an accepted sample method as the 0-150mm layer beneath the slab is unlikely to be intercepted.
- Samples of the soil material shall be taken from each of the four (4) sample points at the following depths: 0-150mm, 150-300mm and 300-500mm.
- Where the soil material is considered to be homogeneous at the four sample points and at each of the required depths, the samples from the same depth at each of the four points may be mixed to form a composite sample for analysis. Using this method will yield three (3) composite samples for analysis each consisting of four (4) sub-samples from each corresponding depth layer
- The samples shall be sent under appropriate chain of custody documentation to a NATA (National Association of Testing Authorities) certified laboratory for analysis of Organo-Chlorine pesticides (e.g., dieldrin, aldrin, heptachlor, chlordane etc.)

- Laboratory analysis results shall be submitted to Council for further consideration and written approval **prior to the disturbance/removal of the concrete slab**.
- An amended Remediation Action Plan (Final) is to be submitted if required by Council's Officer.
- Where composite sampling is utilized then results are to be adjusted and reported to reflect composite sample results.

A3. Note

The above procedures are to be carried out by a suitably qualified consultant with experience in contaminated soil sampling.

Attachment 4 – Conditions of Consent

It is suggested that conditions of consent for remediation work cover the following.

Statutory requirements

- meet requirements such as those of the EPA, Sydney Water, Department of Health, council and WorkCover Authority
- meet relevant regulations, and Australian standards and codes. See (EPA 1998a)

Health and safety

- prepare a health and safety plan in accordance with WorkCover Authority requirements
- meet all occupational health and safety and construction safety regulations
- establish site fencing, public safety warning signs, and security surveillance

Air quality

- ensure no burning of material on site
- maintain equipment in functional manner to minimise exhaust emissions
- cover vehicles entering and leaving the site with soil/fill material
- regularly monitor air quality throughout work
- establish dust suppression measures to minimise wind borne emissions of dust, having regard to site specific wind conditions

Water quality

- regularly monitor water quality throughout work
- store water for dust suppression in adequately bunded area and drain to a central collection sump and treat, if necessary, to meet EPA discharge criteria

Erosion and sediment control

- establish temporary erosion and sediment control measures prior to commencement
- maintain erosion and sediment control measures in functional condition
- meet the NSW Department of Housing's 1993 guidelines Soil and Water Management for Urban Development, if applicable
- submit detailed designs for pollution control system, including leachate collection and disposal, before commencement of work
- store any temporary stockpiles of contaminated materials in a secure area
- clean vehicles leaving the site

Noise

- control noise emissions in accordance with the Noise Control Act 1975

- ensure plant equipment is noise suppressed
- regularly monitor noise quality throughout work and send results to EPA/ consent authority

Waste

- remove, dispose of and monitor, in accordance with the requirements of the Environmentally Hazardous Chemicals Act 1985 and the Waste Minimisation and Management Act
- prepare, if contaminated solid is to be removed from site, a waste management plan and annual report detailing issues such as where it will go, how it will be treated and transportation issues

Landscaping and rehabilitation

- prepare landscaping plan for approval of consent authority
- landscape site in accordance with landscape plan
- progressively stabilise and revegetate disturbed areas in accordance with landscape plan

Consultants

- ensure professionals undertaking remediation are appropriately qualified and experienced

Validation

- prepare final soil validation program in accordance with EPA requirements
- submit validation notice to consent authority within a month of completion
- prepare and submit a detailed survey of all sites used as landfill disposal pits, identifying the boundaries and depth of disposal pits in relation to existing roadways and buildings

Performance bonds

Ongoing monitoring

- periodically monitor material containment areas for the leaching of contaminants