



CONTAMINATED LAND POLICY [DRAFT]

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About this Policy

This Policy sets out the framework for the management of contaminated land within the Canterbury-Bankstown Local Government Area (LGA). The Policy outlines how land contamination issues are incorporated into and addressed by Council's planning and environmental decision-making processes.

This Policy should be read in conjunction with:

- Planning Guidelines – Managing Land Contamination (1998)
- State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55)
- *Contaminated Land Management Act 1997*
- *Environmental Planning and Assessment Act 1979*
- *Protection of the Environment Operations Act 1997*
- Relevant EPA guidelines.

How to use this Policy

Generally, the five principle groups making use of the policy, will be, but not limited to,:

1. Canterbury-Bankstown Council.
2. Owners, developers and prospective purchasers.
3. Remediators of contaminated land.
4. Environmental consultants and accredited site auditors.
5. Interested persons and external groups.

The following table provides a quick reference to the relevant sections of this Policy for each user group:

User of Policy	Relevant/Specific Section of the Policy
1. Relevant Council Officers	Entire Policy, dependent on the issues involved.
2. Owners, developers, purchasers	Section 2 <i>Council's Decision Making Process.</i> Section 6 <i>Council Records & Community Information.</i>
3. Remediators of contaminated land	Section 3 <i>Council's Requirements for Remediation</i> Section 4 <i>Site Management – Remedial Action Plans</i>
4. Environmental consultant and accredited site auditors	Section 3 <i>Council's Requirements for Remediation</i> Section 4 <i>Site Management – Remedial Action Plans</i> Section 5 <i>Independent Site Auditing</i> Section 6 <i>Council Records & Community Information</i>



5. Interested persons and external groups	Section 2 <i>Council's Decision Making Process</i> Section 6 <i>Council Records & Community Information</i> Section 7 <i>Significant Risk of Harm from Contamination</i>
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Additional Information

For the following enquiries, the relevant organisations listed should be contacted:

Enquiries	Contact
Planning and development issues relating to land contamination	Development Assessment Officers Phone: 9707 9000
Environmental issues relating to land contamination	Regulatory Services Canterbury-Bankstown Council Phone: 9707 9000
Contaminated land legislation and guidelines	NSW Environment Protection Authority Phone: 131 555 www.epa.nsw.gov.au Note: The public register of contaminated land information can be accessed via the EPA website.
Planning legislation and guidelines	NSW Department of Planning and Environment Phone: 9228 6111 www.planning.nsw.gov.au
State Environmental Planning Policy No. 55 – Remediation of Land	NSW Department of Planning and Environment Phone: 9228 6111 www.planning.nsw.gov.au



Background

This Policy has been developed by Canterbury-Bankstown Council under the following:

- *Contaminated Land Management Act 1997* (CLM Act)
- State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55)
- Managing Land Contamination – Planning Guidelines (planning guidelines).

The objective of the CLM Act and the planning guidelines is to set in place accountabilities for managing contamination where a 'significant risk of harm to human health or the environment' is identified. The objective is to also provide for the accreditation of site auditors and ensure that contaminated land is managed with regard to the principles of Ecologically Sustainable Development (ESD).

Furthermore, SEPP 55 and the planning guidelines have the objective of providing a state wide planning approach to the remediation of contaminated land by establishing best practice for assessing rezoning and development applications, as well as outlining the type of information that is required to assist Council's decision-making processes.

1. Introduction

This Policy forms the basis for the management of land contamination within the Canterbury-Bankstown LGA and has been made as a policy under the planning guidelines and SEPP 55 in order to implement a contaminated land management framework. It applies to all land in the Canterbury-Bankstown LGA.

In accordance with planning guidelines, this Policy provides the framework for the integration of land contamination management into Council's planning and development process, and aims to:

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

The EPA's intervention in relation to contaminated land is triggered when land contamination poses a significant risk of harm to public health or the environment (section 7 CLM Act). Generally, sites that do not present a significant risk of harm will be dealt with by Canterbury-Bankstown Council under the provisions of the *Environmental Planning and Assessment Act 1979* (EPA Act), in accordance with the planning guidelines and SEPP 55.

Councils 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 section 145B and section 145C of the EPA Act.



2. Council's decision making process

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

2.1 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 (including review of available information, completion of checklists, site visits etc), will be based on available factual information provided by the applicant and other information available to Council. This information may include previous contamination investigations, previous zoning and uses of the subject land and restrictions relating to possible contamination such as notices issued by the EPA.

Note: Council has limited historical information following the destruction of the Bankstown Civic Centre by fire in 1997, resulting in a loss of Council's records.

2.2 Council procedures for rezoning applications

SEPP 55 requires Council to consider contamination issues in rezoning proposals (including when Council is the proponent of the rezoning). Council will not include land in a zone that would permit a change of use of the land from the existing use unless:

- Council has considered whether the land is contaminated, and
- where 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 land in the zone concerned is permitted to be used, and
- where 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 that the land will be so remediated before the land is used for that purpose (eg satisfied by provisions in the LEP or DCP that contamination issues will be addressed at DA stage).

In accordance with clause 6(4) of SEPP 55 Council will require a preliminary investigation to be submitted with rezoning applications where the land concerned is:

“(a) land that is within an investigation area¹,

¹ Investigation area means land declared to be an investigation area under Division 2 Part 3 of the CLM Act. 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.



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

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

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

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

***Note:** 'Table 1 Some Activities that may Cause Contamination', is located in the Managing Land Contamination Planning Guidelines (1998), which is reproduced in Appendix 1.

In addition to the requirements outlined in clause 6(4) of SEPP 55, Council will also require a preliminary investigation to be submitted if Council has reasonable grounds to believe the land may be contaminated because of the land's history, condition, or other information known to Council.

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

2.2.1 Spot rezonings

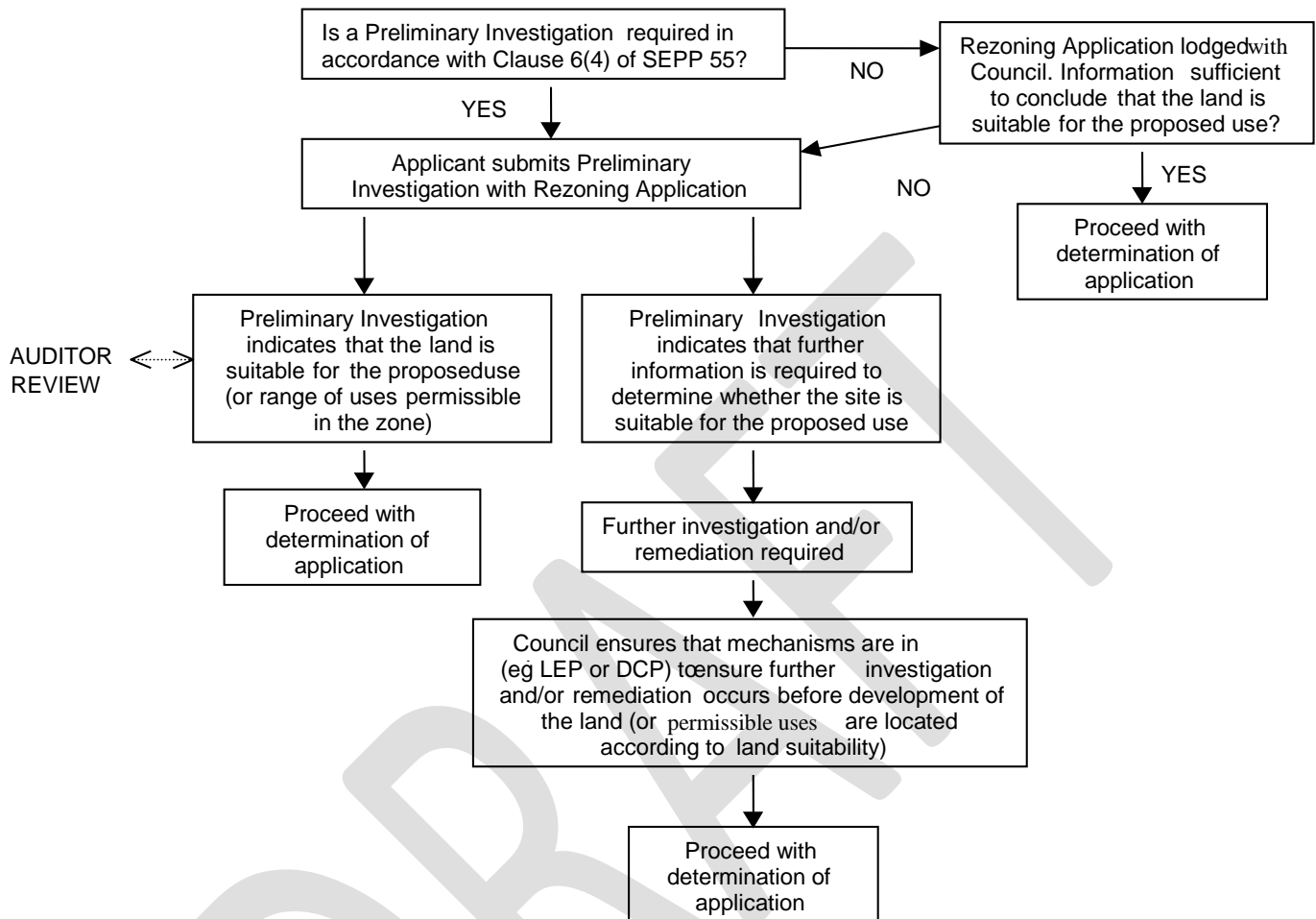
When Council receives a spot rezoning application for a specific development, Council may require a detailed investigation to be undertaken prior to Council determining the rezoning application.

2.2.2 General rezonings

When Council receives a rezoning application that covers more than one property, or Council itself proposes generalised rezoning, it may be difficult for Council to be satisfied that every part of the land is suitable for the permissible use(s) at the rezoning stage. In these circumstances, Council may require a preliminary investigation to be undertaken, and may include provisions in a 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.



FIGURE 1: COUNCIL PROCEDURE FOR CONSIDERING LAND CONTAMINATION ISSUES FOR REZONING APPLICATIONS



2.3 Council procedures for development applications

From 1 July 1998, section 79C(1) of EPA Act requires Council to consider '...the suitability of the site for the development' when assessing development applications. The risk from contamination to health and the environment is included in this assessment.

In accordance with clause 7 of SEPP 55, Council will not consent to the carrying out of any development on land unless:

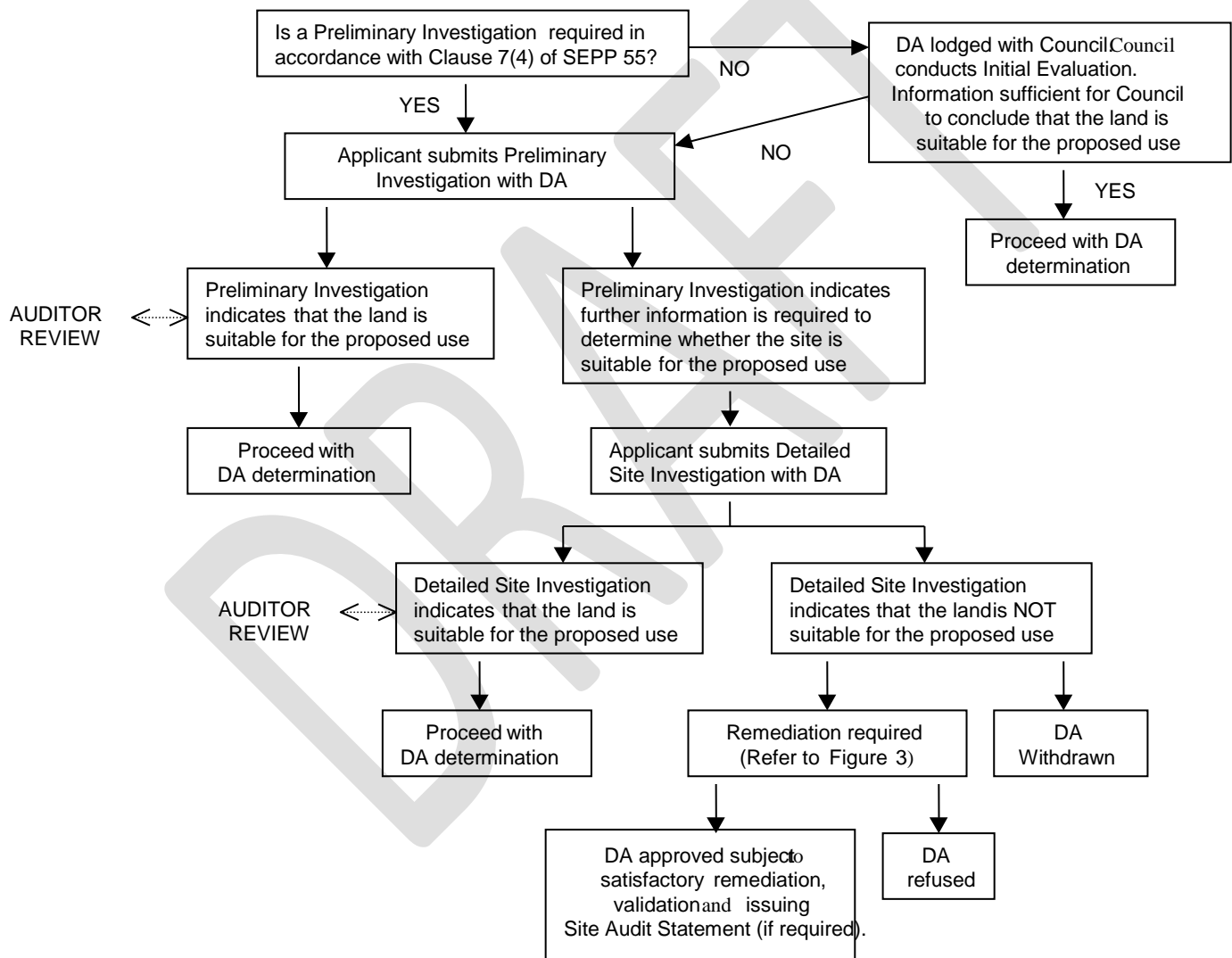
- "it has considered whether the land is contaminated, and
- if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and



- 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 subsections outline when Council will require information relating to site contamination issues to be submitted with subdivision and development applications. Council’s procedure for considering land contamination issues for subdivision and development applications is shown in Figure 2.

FIGURE 2: COUNCIL PROCEDURE FOR CONSIDERING LAND CONTAMINATION ISSUES FOR DEVELOPMENT APPLICATIONS





2.3.1 When does Council require a Preliminary Site Contamination Investigation (Stage 1)?

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. The preliminary investigation typically contains a detailed appraisal of the site history and a report based on visual site inspection and assessment. Where information on site contamination is limited, some soil sampling may be warranted.

SEPP 55 requires Council to consider contamination issues in determining development applications. In accordance with clause 7(4) of SEPP 55, Council will require a preliminary investigation to be submitted with a development application where the land concerned is:

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

Note: Table 1 referred to above is reproduced at Appendix 1.

In addition to the requirements outlined in clause 7(4) of SEPP 55, Council may also require a preliminary investigation to be submitted when:

- Council has reasonable grounds to believe the land is contaminated because of the land's history, condition, or other information known to Council.
- The site has been investigated and/or remediated but there is insufficient information available about the nature and extent of contamination and/or remediation, or the circumstances have changed.
- 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.
- Council's limited records have demonstrated that the site is associated with pollution incidents or illegal dumping of wastes.
- The site is adjoining land that has been associated with activities that may cause contamination listed in Table 1 and it is likely that this may have contaminated the subject premises.



The preliminary site contamination investigation shall be carried out in accordance with the requirements of the relevant NSW EPA Guidelines. The proponent is responsible for engaging a suitability qualified consultant to undertake the preliminary site contamination investigation. In addition, the proponent is responsible for all costs borne in engaging the consultant and site auditor, if requested by Council (see section 5 – Independent Site Auditing).

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

2.3.2 When does council require a Detailed Site Contamination Investigation (Stage 2)?

The objectives of a detailed site investigation are to:

- define the extent and degree of contamination;
- assess the potential risk posed by contaminants to human health and the environment; and
- obtain sufficient information for the development of a Remedial Action Plan (if necessary).

Council will require a detailed site contamination investigation to be undertaken when the results of the preliminary investigation demonstrate the potential for, or existence of contamination which may not be suitable for the proposed use of the land. In some cases, Stage 1 and Stage 2 investigations may be combined where the land is known to contain, or have contained, a potentially contaminating activity.

The detailed site contamination investigation shall be carried out in accordance with the requirements of the relevant NSW EPA Guidelines. Once again, the proponent is responsible for engaging a suitability qualified consultant to undertake the detailed site contamination investigation. In addition, the proponent is responsible for all costs borne in engaging the consultant and accredited site auditor if necessary (see section 5 – Independent Site Auditing).

The detailed site contamination investigation should include a statement which describes whether the site is suitable for the proposed use, 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.

2.3.3 When does Council require a Remedial Action Plan (RAP)?

The objectives of a Remedial Action Plan (RAP) are to:

- set remediation objectives;
- determine the most appropriate remedial strategy;
- identify necessary approvals that need to be obtained from regulatory authorities.

The RAP should document the remedial works to be undertaken at the site and also contain an environmental management plan and occupational health and safety plan for the remedial works.



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

If investigations find that contamination makes the land unsuitable for the proposed use and requires remediation, the need for an RAP will depend on whether the remediation constitutes category 1 or category 2 remediation works (refer to section 3 – Council's Requirements for Remediation).

If the remediation proposed is Category 1 (ie remediation work that requires Council development consent), Council may:

- Require the applicant to amend the DA (if already submitted), to include a remediation proposal (eg RAP); or
- Require a new and separate DA for the remediation to be submitted, before the DA is considered for the final use of the site.

If the proposed remediation is category 2 (ie remediation work that does not require consent), Council may:

- Impose conditions on the development consent for the use, requiring remediation to be carried out and validated either before other work commences or before occupation of the site; or
- Issue a deferred commencement consent for the use of the site, and require remediation to be carried out and validated before other work commences.

In accordance with clause 17 of SEPP 55, all category 1 remediation work must be carried out in accordance with a RAP approved by Council and prepared in line with the CLM Act and planning guidelines.

In situations where the proposed remediation involves onsite containment of contaminated material, the need for a continuing monitoring program will need to be assessed by the proponent's consultant and Council. Council may require an environmental management plan to be prepared for ongoing monitoring and maintenance requirements.

To ensure that future owners are aware of contaminated material (that may have been contained onsite), and any requirements for ongoing monitoring and maintenance, Council may impose a consent condition requiring a covenant to be registered on the title of the land, thereby providing notice of the existence of onsite containment of contaminated material. The covenant may also bind current and future owners to the responsibility of ongoing maintenance of the contaminated material, ongoing monitoring and any future remediation works required.

Alternatively, Council may place a restriction on the use of the land under section 88B of the *Conveyancing Act 1919* to achieve the same outcome.



2.3.4 When does Council require a Validation and Monitoring Report?

The objective of validation and monitoring reports is to demonstrate that the objectives stated in the RAP have been achieved and that any conditions of development consent have been complied with.

Ideally, validation should be conducted by the same consultant that conducted the site investigation and remediation process. Validation must confirm statistically that the remediated site complies with the clean-up criteria set for the site.

Council will require a validation and monitoring report to be submitted after remediation works have been completed, and prior to the commencement of building construction works. This will normally be achieved by Council placing a condition on any consent granted, requiring the submission of a validation report prior to the issuing of a construction certificate. This would be the case for small scale development sites involving straight forward issues.

Alternatively, Council may issue a deferred commencement consent for the proposed use, requiring that remediation and validation is undertaken prior to other work commencing. This alternative would be considered for sites involving complex remediation works or when other development/planning issues need to be addressed.

3. Council's requirements for remediation

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

In accordance with clause 9(f) of SEPP 55, remediation work that is not carried out in accordance with the site management provision contained in Chapter 4 is category 1 remediation work which requires Council consent.

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

3.1 Category 1 remediation work

Category 1 remediation work, as defined in clause 9 of SEPP 55, is work that requires consent (refer to clause 9 of SEPP 55 for a comprehensive list of the 'situations' which require development consent for remediation). Category 1 remediation work is advertised development unless the remediation work is designated development or State significant development. All category 1 remediation work must be advertised for 30 days pursuant to section 29A of the EPA Act.

If it eventuates that proposed remedial works constitute category 1 remediation work as part of the planning process, the applicant may either amend their current application to include a remediation proposal (if applicable) or lodge a new and separate development application for the remediation works.



3.2 Category 2 remediation work

Category 2 remediation is all work that is not defined as category 1 remediation. In accordance with clause 16 of SEPP 55, Council's Regulatory Services Unit must **be notified 30 days prior** to the commencement of category 2 remediation work. Council will record all notifications that are received for category 2 remediation.

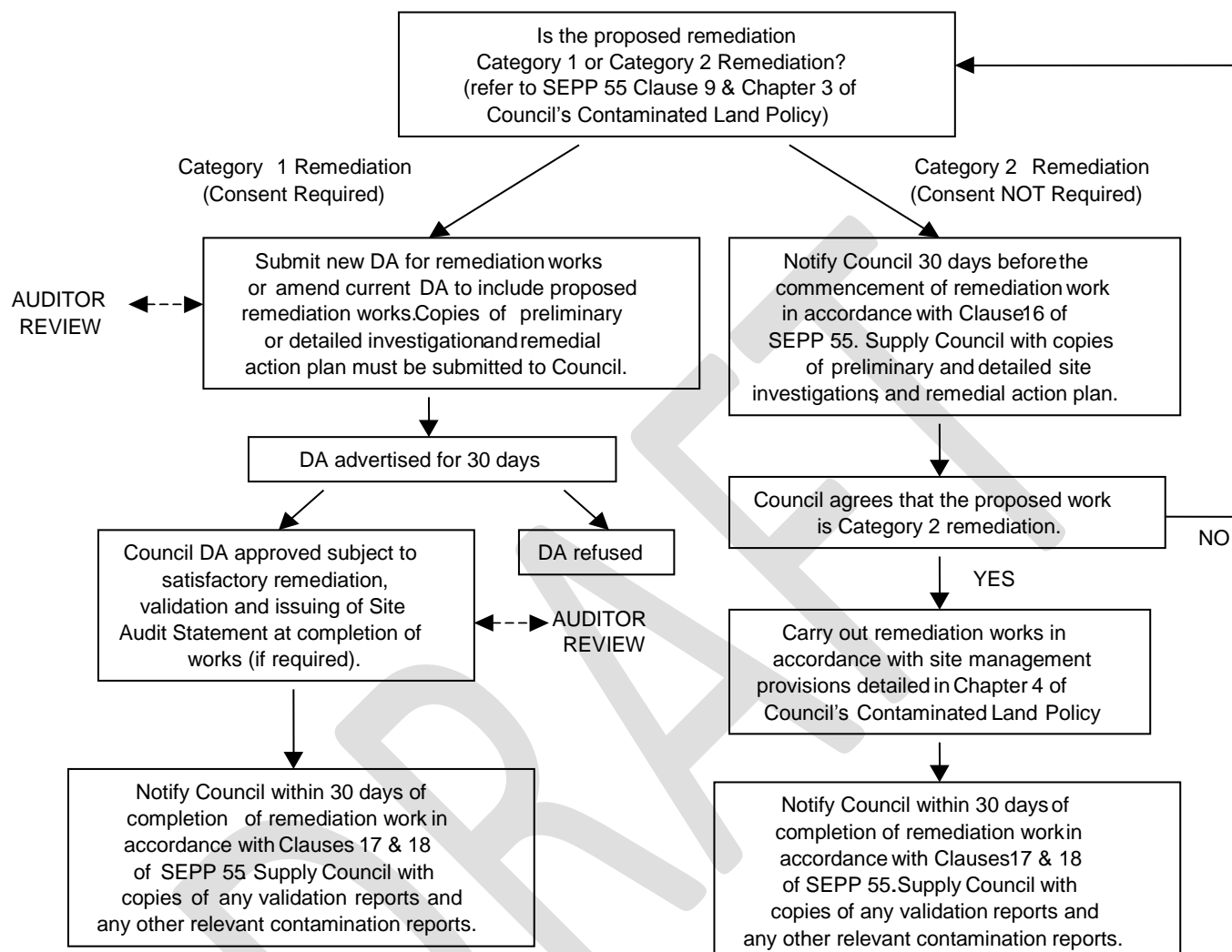
In addition to the information that must be submitted to Council as stipulated in clause 16(2) of SEPP 55, Council requires the following information to also be submitted before remediation work commences:

- copies of any Preliminary or Detailed Investigations and Remedial Action Plans for the site.
- contact details for the remediation contractor and/or party responsible for ensuring compliance of remediation work with all relevant regulatory requirements.

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



**FIGURE 3: COUNCIL PROCEDURE FOR CONSIDERING
SITE REMEDIATION PROPOSALS**



4. Site management – Category 2 remediation

Council has identified a number of site management provisions relating to the conduct of category 2 remediation. These provisions have been formulated to ensure that category 2 remediation work is carried out with appropriate controls to prevent an adverse impact on the environment or public amenity.

All category 2 remediation works must be conducted in accordance with the site management provisions, which apply across the Canterbury-Bankstown LGA. Category 2 remediation work that does not comply with the site management provisions outlined in this section will be classified as category 1 remediation work and will require consent (as per clause 9 (f), SEPP 55).



Development applications lodged for category 1 remediation works should identify any areas of non-compliance with the site management provisions and identify any alternative site management measures to be implemented.

Note: It is the responsibility of those remediating a site to ensure compliance with all relevant environmental legislation and regulations. Compliance with the site management provisions listed in this policy does not imply that all relevant environmental legislation and regulations have been complied with.

Non-compliance with relevant environmental legislation and regulations, such as the *Protection of the Environment Operations Act 1997* may incur on-the-spot fines of up to \$1500 for minor offences, or fines up to \$1 Million and 7 years imprisonment for more serious offences.

4.1 Site management provisions

4.1.1 Legislation and guidelines

All remediation work must comply with the requirements of:

- *The Contaminated Land Management Act 1997*
- The Managing Land Contamination Planning Guideline 1998
- SEPP 55 – Remediation of Land
- *Protection of the Environment Operations Act 1997*
- *Environmental Planning and Assessment Act 1979*

4.1.2 Remediation proposal

The remediation works shall be carried out in accordance with the proposal submitted by the applicant's consultant. Council is to be informed of any variations to the proposed remediation work.

4.1.3 Site validation

Council must be provided with information regarding the validation of the site within one (1) month of completion of the remediation works. This notification should take the form of a Validation Report and may address the following issues:

- Description and documentation of all works undertaken.
- Include results of validation testing and monitoring.
- Outline how all clean-up criteria and relevant legislation has been complied with.
- Determine the suitability of the site for the current or proposed use of the site.



4.1.4 Discovery of additional information during remediation

Council must be notified of any new information that comes to light during remediation that has the potential to alter previous conclusions regarding site contamination.

4.1.5 Hours of operation

All remediation work shall be conducted within the following hours:

Monday–Friday	7am - 6pm
Saturday	7am - 1pm

No work is permitted on Sundays or Public Holidays.

4.1.6 Soil and water management

Council's 'Soil Erosion and Sedimentation Control Guidelines' outlines the requirements for builders and developers relating to the preparation of a soil and water management plan. All remediation works shall be conducted in accordance with such a plan. A copy of the plan shall be kept onsite and made available to Council Officers on request. All erosion and sediment measures must be maintained in a functional condition throughout the remediation works. (See the publication Managing Urban Stormwater: Soils and Construction on the Office of Environment and Heritage website for guidance on issues to consider when preparing a soil and water management plan.)

A summary of the soil and water management measures for category 2 remediation in relation to stockpiles, site access, excavation pump-out, landscaping, rehabilitation and bunding are discussed below:

(i) Stockpiles

- No stockpiles of soil or other materials shall be placed on footpaths or nature strips unless prior Council approval has been obtained.
- All stockpiles of soil or other materials shall be placed away from drainage lines, gutters or stormwater pits or inlets.
- All stockpiles of soil or other materials likely to generate dust or odours shall be covered (where practical).
- All stockpiles of contaminated soil shall be stored in a secure area and be covered if remaining more than 24 hours (where practical).

(ii) Site Access

Vehicle access to the site shall be stabilised to prevent the tracking of sediment onto the roads and footpath. Soil, earth, mud or similar materials must be removed from the roadway by sweeping, shovelling, or a means other than washing, on a daily basis or as required.

Soil washings from wheels shall be collected and disposed of in a manner that does not pollute waters.



(iii) Excavation Pump-out

All excavation pump-out water must also be analysed for suspended solid concentrations, pH and any contaminants of concern, prior to discharge to the stormwater system. The analytical results must comply with relevant EPA and ANZECC standards for water quality.

Other options for the disposal of excavation pump-out water include disposal to sewer with prior approval from Sydney Water, or off-site disposal by a liquid waste transporter for treatment/disposal to an appropriate waste treatment/processing facility.

(iv) Landscaping/Rehabilitation

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

(v) Bunding

All land farming areas for hydrocarbon-contaminated soils shall be bunded to contain surface water runoff from the land farm areas and to prevent the leaching of hydrocarbons into the subsurface. All surface water discharges from the bunded areas to Council's stormwater system shall not contain detectable levels of TPH or BTEX.

4.1.7 Noise

Category 2 remediation work shall comply with the EPA's noise guidelines for the control of construction site noise which specifies that:

- For a cumulative period of exposure to construction activity noise of up to four weeks, the LA10 (15 minutes) emitted by the works to specific residences should not exceed the LA 90 background level by more than 20 dBA.
- For a cumulative construction noise exposure period of between four to 26 weeks, the emitted LA10 noise level should not exceed the LA90 level by more than 10 dBA.
- For a cumulative construction noise exposure period greater than 26 weeks, the emitted LA10 noise level should not exceed the LA90 level by more than 5 dBA.

All equipment and machinery shall be operated in an efficient manner to minimise the emission of noise.

4.1.8 Vibration

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



4.1.9 Air Quality

(i) Dust Control

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

- erection of dust screens around the perimeter of the site;
- securely covering all loads entering or exiting the site;
- use of water sprays across the site to suppress dust;
- covering of all stockpiles of contaminated soil remaining more than 24 hours (where practical); and
- keeping excavation surfaces moist.

(ii) Odour Control

No offensive odours shall be detected at any boundary of the site during remediation works by an Authorised Council Officer. The following procedures may be employed to comply with this requirement:

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

Records of volatile emissions and odours shall be logged, kept on-site and made available to Council Officers on request. Discharges from soil vapour extraction systems shall be regularly monitored in order to determine the mass of hydrocarbons that are being discharged to the atmosphere.

Contingency measures for the collection and treatment of hydrocarbon off gas shall be put in place prior to the commissioning of the soil vapour extraction systems. All discharge vents from soil vapour extraction systems (without treatment of hydrocarbon off gas), shall be located a minimum of 50 metres from any residential property boundary, road or recreational area. No material shall be burnt on-site.

4.1.10 Transport

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

- comply with all road traffic rules;
- minimise noise, vibration and odour to adjacent premises; and



- utilise State Roads and minimise use of local roads.

Category 2 remediation work shall ensure that all site vehicles:

- conduct deliveries of soil, materials, equipment or machinery during the hours of remediation work identified in site management provision no.4.1.5.
- securely cover all loads to prevent any dust or odour emissions during transportation;
- do not track soil, mud or sediment onto the road.

4.1.11 Hazardous materials

Hazardous and/or intractable wastes arising from the remediation work shall be removed and disposed of in accordance with the requirements of the NSW Environment Protection Authority (NSW EPA) and Safework NSW together with the relevant regulations.

Under the *Protection of the Environment Operations Act 1997* the transportation of Schedule 1 Hazardous Waste is a scheduled activity and must be carried out by a transporter licensed by the NSW EPA.

4.1.12 Disposal of contaminated soil

The disposal of contaminated soil shall have regard to the provision of both the POEO Act and Regulations and any relevant EPA guidelines such as the 'Environmental Guidelines: Assessment, Classification and Management of Liquid and Non-Liquid Wastes' (1999).

Any queries relating to the off-site disposal of 'waste' from a contaminated site should be referred to the NSW Government's Hazardous Materials Advice Unit. 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.

4.1.13 Containment/Capping of contaminated material

No contaminated material shall be capped on the site that contains concentrations of contaminants that are statistically above the soil investigation levels for urban development sites in NSW, for the range of land use permissible on the subject site. For example, a site zoned commercial/industrial must not cap material that contains concentrations of contaminants statistically above the 'commercial or industrial National Environmental Health Forum (NEHF) "F" health-based investigation levels'. These soil investigation levels for urban redevelopment in NSW are listed in the EPA's 'Guidelines for the NSW Site Auditor Scheme'.

It should be noted that where the proposed remediation involves onsite containment of contaminated material, the need for a continuing monitoring program should be assessed by both the proponent's consultants and Council.

To ensure that future owners of the site are aware of the contaminated material and any going maintenance and/or monitoring, Council may impose a consent condition on any subsequent



development application for the subject site, requiring a covenant to be registered on the title of the land, thereby giving notice of the existence of onsite containment of contaminated soil. The covenant may also bind the owners or any future owners to the responsibility of ongoing monitoring/maintenance, and any future remediation works required.

4.1.14 Importation of fill

Fill material must be sampled and validated (at its source if practicable), prior to it being imported onto a site. The validation must indicate that the material is free of contaminants or that contamination exists to a level appropriate for the intended use of the site (see below for appropriate methods of validation). Fill imported on to the site should also be compatible with the existing soil characteristic for site drainage purposes.

Council may require details of the validation of fill to be submitted with any future development applications for the site. Hence, fill material may be validated by the following methods:

- Imported fill should be accompanied by documentation from the supplier which certifies that the material is not contaminated based upon analysis of the material or the known past history of the site where the material is obtained; and/or
- Sampling and analysis of the fill material should be conducted in accordance with the relevant EPA Guidelines, to ensure that the material is not contaminated.

4.1.15 Groundwater

A licence shall be obtained from the Department of Primary Industries for approval to extract groundwater.

Prior to discharge to the stormwater system, site groundwater shall be analysed and treated for contaminants of concern, particularly those identified in preliminary or detailed site investigations. The analytical results must comply with relevant EPA and ANZECC standards for water quality. Under no circumstance shall polluted/contaminated site water be allowed to discharge to the stormwater system.

Other options for the disposal of groundwater include disposal to sewer with prior approval from Sydney Water, or off-site disposal by a liquid waste transporter for treatment/disposal to an appropriate waste treatment/processing facility.

4.1.16 Occupational health and safety

It is the employer's responsibility to ensure that all site remediation works shall comply with all NSW Work Health and Safety Regulations of SafeWork NSW.

4.1.17 Removal of underground storage tanks

The removal of underground storage tanks (UST) shall be undertaken in accordance with Safework NSW requirements and other relevant codes. The tank removal shall be conducted in accordance with the Australian Standard AS 4976–2008, The Removal and Disposal of Underground Petroleum



Storage Tanks. In the event of conflict between the Australian Standard and Safework NSW requirements, the latter shall prevail.

4.1.18 Site signage and contact numbers

A sign displaying the contact details of the remediation contractor (and site facilitator if different to the remediation contractor) shall be displayed on the site adjacent to the site access. This sign shall be displayed throughout the duration of the remediation works.

4.1.19 Community consultation

Owners and/or occupants of premises in the vicinity of the site shall be notified at least two days prior to the commencement of category 2 remediation works.

4.1.20 Site security

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

5. Independent site auditing

5.1 NSW Site Auditor Scheme

The NSW Site Auditor Scheme commenced on 1 June 1998. Site Auditors are experts who can provide an independent review of the work of a primary consultant conducted for all types of contaminated sites. Part 4 of the CLM Act allows the EPA to accredit suitably qualified and experienced individuals as site auditors.

All Council requests for a site audit (ie independent review) must be performed by a NSW EPA accredited auditor for contaminated land. An up-to-date list of NSW EPA accredited auditors can be obtained from the EPA's website.

5.2 Site audits

Section 47(1) of the CLM Act defines a site audit as: *'an independent review:*

- a) *that relates to investigation, or remediation, carried out (whether under this Act or otherwise) in respect of the actual or possible contamination of land, and*
- b) *that is conducted for the purpose of determining any one or more of the following matters:*
 - (i) *the nature and extent of any contamination of the land,*
 - (ii) *the nature and extent of the investigation or remediation,*
 - (iii) *what investigation or remediation remains necessary before the land is suitable for any specified use or range of uses.'*

The NSW EPA have also prepared 'Guidelines for the NSW Site Auditor Scheme', which outline the NSW Site Auditor Scheme, the process of appointing site auditors, and the legal, administrative and technical directions and guidelines for site auditors and the preparation of site audits statements.



5.3 Site audit statements

A site audit statement provides a clear statement about what land use is suitable for the site, including any conditions on that suitability (eg to maintain capping). A site audit statement must be prepared on a prescribed form (see Contaminated Land Management (Site Auditor) Regulations 1998). When an accredited auditor is requested to conduct a site audit, they must also prepare a site audit statement.

Section 47(2) of the CLM Act states that *“a reference to a site audit carried out for the purposes of a statutory requirement is a reference to a site audit carried out in order to secure compliance with:*

- a) a requirement under this Act, or*
- b) a requirement imposed by State Environmental Planning Policy No 55 Remediation of Land or by any other environmental planning instrument made under the Environmental Planning and Assessment Act 1979 or by any development consent given under that Act, or*
- c) any other requirement imposed by or under an Act, unless it is carried out only in order to secure compliance with a legal obligation arising from an agreement or arising in such circumstances as the regulations may prescribe.”*

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

5.4 When does Council require a site audit?

Council may request a site audit to be undertaken **at any or all stages** in the site investigation process. In accordance with the planning guidelines, Council will require a site audit prepared by a NSW EPA accredited auditor for contaminated land if Council:

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

The proponent will be informed by Council if a site audit is required after Council has conducted a review of contamination investigation reports and associated documents (eg development application) submitted to Council. The proponent is responsible for engaging an EPA accredited auditor to perform a site audit and all associated costs.



For sites which have complex issues associated with either the contamination assessment or remediation, it is wise to engage a NSW EPA accredited auditor in the initial stages of the assessment process.

5.5 What should a site audit cover?

The EPA 'Guidelines for the NSW Site Auditor Scheme' outlines what should be included in a site audit, however the guidelines state that in some situations, Council may also need to contribute to defining the scope of the site audit.

When Council requests a site audit, Council may also specify any issues that shall be included within the scope of the site audit. As well as requiring a site audit to address any issues raised in section 47(1)(b) of the CLM Act, the following are examples of issues that Council may also request the site auditor to address:

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

The proponent or the accredited auditor should liaise with Council during the preparation of the site audit to ensure that the scope addresses the concerns raised by Council.

Site audit statements may also carry conditions as stipulated by the site auditor. In this case, if the site audit statement is received prior to development of the site (as part of the planning process), Council will include the site audit conditions as conditions of consent.

Site auditors must advise Council when they intend to include conditions onto site audit statements. This will particularly be the case for those conditions that require ongoing administration by Council. In this instance, the site auditor is required to liaise with Council prior to the finalisation of the conditions and before the release of the site audit statement. It is important for Council to have some level of input into the development of these conditions in order to ensure that implementation procedures are practical and achievable.

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. These reports should also be provided to Council with the site audit statement for its records.



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 section 59 of the CLM Act to include information provided to Council by either the EPA or accredited auditors on certificates issued for the purposes of section 149 of the EPA Act.

The Bankstown Civic Centre was destroyed by fire in June 1997 and as a result, the majority of Council's information was lost at that time. Hence, information relating to the former Bankstown LGA contained in Council's remaining record system is limited and historical information regarding individual sites may therefore be incomplete.

A register of contaminated sites relating to the former Canterbury LGA prior to 2017 is not available.

6.1 Management of Council information

The process of information collection regarding land contamination is ongoing. Council's current records regarding contamination issues are dynamic and will change over time as land is investigated, remediated and validated. Information concerning contaminated land will be added to Council's property information system when development and subdivision applications are processed or when information is provided to Council via other sources.

To assist Council in the management of land contamination, the following information is collected in respect to individual parcels of land:

- Contamination reports submitted to Council (ie Preliminary Investigation, Detailed Investigation, Remedial Action Plans, Validation and Monitoring Reports etc).
- Site Audit Statements received by Council.
- EPA declarations and orders issued under the CLM Act (including voluntary investigation and remediation proposals agreed by the EPA).
- prior notification of category 2 remediation works.
- notification of completion of category 1 and category 2 remediation work.

6.2 Section 149 Planning Certificates

Under section 149 of the EPA Act, a person may request from Council a planning certificate containing advice on matters about the land that are prescribed in the EPA Regulation. One such prescribed matter is the existence of a Council policy to restrict the use of land which is affected by contamination.

Section 149(2) certificates issued by Council will not contain specific details of actual or potential site contamination (such as the types, level or location of specific contaminants) for individual parcels of land.



Council has adopted this approach for the following reasons:

- Council has limited historical records for the former Bankstown LGA following the destruction of the Bankstown Civic Centre by fire in 1997, resulting in a loss of Council files.
- Council records may not disclose land uses that were established illegally and/or have existing use rights that may have resulted in land contamination.
- Council's current records regarding contamination issues are dynamic and will change over time as land is investigated, remediated and validated.

Section 59(2) of the CLM Act provides that specific clauses relating to contaminated land issues must be included on s149 certificates where:

- 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."*

Section 149(2) certificates issued by Council will contain information on the prescribed matters listed above, where applicable.

In addition to detailing information relevant to the prescribed matters, all section 149(2) certificates issued by Council will also contain the following general clause relating to land contamination:

"Affected by a resolution of Council adopting a policy concerning the management of contaminated land. That policy applies to all land in the City of Canterbury Bankstown and will restrict development of the land if the circumstances set out in the policy prevail. A copy of the policy is available on Council's website at www.cbcity.nsw.gov.au or from the Customer Service Area. For further information please contact Canterbury-Bankstown Council's Development Unit on 9707 9999."

This approach has been taken in order for Council to meet its obligations as specified in the EPA Act and CLM Act.



6.3 Typical questions and answers regarding the General Clause

Q1. What is the clause all about?

This clause refers to the fact that Council has a Contaminated Land Policy.

Q2. Why is this clause on my section 149 certificate?

The clause relating to Council's Contaminated Land Policy has been applied to all section 149(2) certificates for each property within the Canterbury-Bankstown LGA.

Q3. Why has Council included a General Clause regarding contamination onto all section 149 certificates?

Council has included the clause on to all certificates:

- a) To inform people of the Contaminated Land Policy.
- b) In order for Council to meet its obligations under the relevant legislation, particularly the EPA Act and CLM Act.

Q4. What does the Contaminated Land Policy cover?

The Policy sets out a framework for the management of contaminated land within Canterbury-Bankstown Council. The Policy outlines how land contamination issues are addressed by Council's planning and environmental decision-making processes.

Q.5 Where can I get a copy of the Policy?

The Policy is available from the Bankstown and Campsie Customer Service Centres. The Policy can also be downloaded from the Council's website www.cbcity.nsw.gov.au

Q.6 Does this clause mean that my property is contaminated?

The clause does not indicate that a property **is or is not** contaminated. It simply outlines that Council has a policy regarding contaminated land that may apply to a property under certain circumstances.

Q.7 What does it mean by “....will restrict development of the land if the circumstances set out in the policy prevail.”

This part of the clause refers to the fact that the Contaminated Land Policy will only apply to certain properties in particular circumstances. This is clearly stipulated and defined in the Policy.

In determining all rezoning and development applications, Council must consider the possibility of land contamination and the implications it has for any proposed future uses of the land. Council has adopted a precautionary approach to ensure that any contamination issues are identified and dealt with early in the planning process.



Q.8 How can I find out about contamination issues for specific parcels of land?

If Council has any information regarding contamination or associated issues (including details from environmental and contamination reports), enquirers can access such information under the *Government Information (Public Access) Act 2009*. This will enable enquirers to view any available information contained in Council records.

Q.9 Will this clause cause de-valuation of my property?

Council is not the appropriate authority to provide an answer to this question. For further information contact the NSW Land and Property Information by phoning 9228 6666 or www.lpi.nsw.gov.au. This clause has been included on all certificates for each property within the Canterbury-Bankstown LGA and there have been no reported impacts.

6.4 Access to Council information

There are several parties that may be interested in accessing Council records in relation to land contamination issues including, current occupiers of sites, potential purchasers of land, contaminated land consultants and the community.

Council's Contaminated Land Policy allows enquirers to access information on individual parcels of land. Table 1 outlines how specific information regarding contamination can be obtained from Council and other sources.

6.4.1 When information cannot be provided

In some circumstances Council may not be able to provide full access to its records regarding land contamination issues. These circumstances may include:

- where records relating to the site were destroyed by the fire at the former Bankstown Civic Centre;
- the information is subject to legal privilege; and
- when the information requested is intended to be published without prior permission of Council, the current site owner and author of the contamination reports.

Table 1 Provision of Information Relating to Potential Land Contamination

	Type of Information Required	How to Obtain the Information
1	Site specific information from Council's Contaminated Land Register.	Customer to complete a request under the Government Information (Public Access) Act 2009 (GIPAA) to view available information held by Council (fee applies).
2	Information held on Council files in relation to land contamination issues.	Customer to complete a GIPAA request to view available information held by Council.



3	Information from reports held by Council in relation to land contamination issues.	Customer to complete a GIPAA request to view available information held by Council.
4	Information regarding site history and previous uses of a site.	Customer to complete a GIPAA request to view available information held by Council.
5	If Council has received a site audit statement for a specific property.	<p>a) The existence of a site audit statement is listed on the section 149 (2) planning certificate for the property in question. Customers can apply for a section 149(2) or 149(2 &5) certificate by completing an application form.</p> <p>b) Customers can request a copy of a site audit statement from Council by completing an Access to Information Form. <i>Council has taken the decision that site audit statements can be obtained via the Access to Information Form, as they are a document referred to on the s149 planning certificate.</i></p> <p>c) Customers can also request a copy of a site audit statement from the EPA.</p>
6	If any EPA declarations or orders have been made, or voluntary proposals agreed to under the CLM Act, which have been provided to Council.	<p>a) The existence of any EPA declarations or orders are listed on the section 149 (2) planning certificate for the property in question. Customers can apply for a section 149(2) or 149(2 &5) certificate by completing an application form.</p> <p>b) Customers can request copy of a declaration or order from the EPA.</p> <p>c) Customers can request a copy of a declaration or order from Council by completing an Access to Information request.</p>



7. Significant risk of harm from contaminated land

To manage contaminated land effectively, it is necessary to distinguish between situations where EPA regulation is required to protect humans and the environment and where it is not required.

The CLM Act specifies that the EPA can become involved where contamination presents a significant risk of harm to human health or some other aspect of the environment. The general objective involves a process for investigating and remediating land where contamination presents a significant risk of harm to human health or the environment.

Determining in any particular case whether or not contamination presents a significant risk of harm can be complex and difficult. It involves considerations such as type, nature, quantity, concentrations of contaminants and how they manifest themselves and so on. It also involves issues surrounding the current use of the land and who might be exposed to contaminants.

7.1 What is significant risk of harm?

The EPA 'Guidelines on Significant Risk of Harm from Contaminated Land and the Duty to Report', outlines that 'significant risk of harm' refers to the status of site where the contamination is considered serious and requires EPA regulatory intervention. The CLM Act defines a process for the EPA to determine whether or not a site presents a 'significant risk of harm to human health or the environment or both'.

7.2 Duty to report

Section 60 of the CLM Act sets out a duty that certain persons have to report to the EPA a significant risk of harm associated with contamination. This duty applies to 'the person whose activities in, on or under the land have caused contamination and presents a significant risk of harm'. The duty also applies to the owner of the land that poses a significant risk of harm. However, the guidelines allow for any person at any time to report to the EPA contamination that is considered to present a significant risk of harm.

Therefore, the duty to report also applies to Council as a landowner. In order for Council to meet its obligations under section 60 of the CLM Act, Council will follow the requirements of the EPA 'Guidelines on Significant Risk of Harm from Contaminated Land and the Duty to Report'.



Appendix 1 – Schedule of Potentially Contaminating Activities

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
explosive industry
gas works
iron and steel works
landfill sites
metal treatment
mining and extractive industries
oil production and storage
paint formulation and manufacture
pesticide manufacture and formulation
power stations
railway yards
scrap yards
service stations
sheep and cattle dips
smelting and refining
tanning and associated trades
waste storage and treatment
wood preservation

Note: It is not sufficient to rely solely on the above list to determine whether a site is likely to be contaminated or not. A conclusive status can only be determined after a review of the site history and, if necessary, sampling and analysis. This is reflected by Council's management of contaminated land and is addressed via the planning process.



Source: *Managing Land Contamination Planning Guidelines 1998*, Department of Urban Affairs and Planning & Environment Protection Authority.

The Department of Urban Affairs and Planning is now the NSW Department of Planning. The Environmental Protection Authority of now part of the NSW Department of Environment and Climate Change.

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Appendix 2 - Abbreviations

ANZECC	Australian and New Zealand Environment and Conservation Council
BTEX	Benzene/Toluene/Ethylbenzene/Xylene
CLM Act	<i>Contaminated Land Management Act 1997</i>
DA	Development Application
DCP	Development Control Plan
DECC	Department of Environment and Climate Change
EPA	Environment Protection Authority
EPA Act	<i>Environmental Planning and Assessment Act 1979</i>
ESD	Ecological Sustainable Development
LEP	Local Environment Plan
NEHF	National Environmental Health Forum
POEO Act	<i>Protection of the Environment Operations Act 1997</i>
RAP	Remedial Action Plan
SEPP 55	State Environmental Planning Policy No. 55 – Remediation of Land
Table 1	Table 1 – Some Activities that May Cause Contamination
TPH	Total petroleum hydrocarbons
UST	Underground Storage Tanks



Appendix 3 – Glossary

Category 1 remediation work	Remediation works that needs development consent.
Category 2 remediation work	Remediation work that does not need development consent under SEPP 55.
Contaminated land	Land in, on or under which any substance is present in 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.
Detailed investigation	An investigation to define the extent and degree of contamination, to assess potential risk posed by contaminants to health and the environment and to obtain sufficient information for the development of a remedial action plan if required.
Independent review	An evaluation by an independent expert required by a planning authority of any information submitted by a proponent, conducted at the components expense.
Initial evaluation	An assessment of readily available factual information to determine whether contamination is an issue relevant to the decision being made.
Investigation order	An order by the EPA under the <i>Contaminated Land Management Act 1997</i> to investigate contamination at a site or within an area.
Notification of remediation	Prior notice of category 2 remediation work given to the council in accordance with SEPP 55.
Planning authority	A public authority or other person responsible for exercising a planning function.
Planning function	Function exercised by a planning authority under the <i>Environmental Planning and Assessment Act 1979</i> .
Preliminary investigation	An investigation to identify any past or present potentially contaminating activities and to provide a preliminary assessment of any contamination.
Remedial action plan	A plan which sets remediation goals and documents the process to remediate a sit.
Remediation order	A direction from the EPA under the <i>Contaminated Land Management Act 1997</i> .
Remediation site	A site declared by the EPA under the <i>Contaminated Land Management Act 1997</i> as posing a significant risk of harm.
Remediation work	A work means a work in, on or under contaminated land, being a works that: removed the cause of the contamination of the land, dispersed,



destroys, reduces, mitigates or contains the contamination of the land, eliminates or reduces any hazard arising from the contamination of the land.

Site audit

An independent review by a site auditor of any or all stages of the site investigation process conducted in accordance with the *Contaminated Land Management Act 1997*.

Site auditor

A person accredited by the EPA under the *Contaminated Land Management Act 1997* to conduct site audits.

Site audit statement

A certificate issued by a site auditor stating what use the land is suitable.

Site audit summary report

A report containing the key information and the basis of consideration which leads to the issue of a site audit statement.

Site history

A land use history of a site which identifies activities or land uses which may have contaminated the site, established the geographical processes within the site, and determines the approximate time periods over which these activities took place.

Site investigation process

The process of investigating land which may be, or is, contaminated, for the purpose of providing information to a planning authority.

Spot rezoning

Rezoning of a small area of land.



Appendix 4 – Sources of Site History Information for Preliminary Site Investigations (Stage 1)

- Past aerial photographs
- Council records – town planning, development and building applications, complaints, pollution incident reports
- Local Historical Publications
- Current and previous site owners
- Current and previous site workers
- Long-term residents
- Past and Present Telephone Books
- Noxious Trades Act register of Noxious Trades
- Sand's Sydney and New South Wales Directory 1858–1932/3
- NSW Environment Protection Authority Section 35 Notices, past and present scheduled premises, unhealthy building land
- Sydney Water Corporation Trade Waste Agreements
- SafeWork NSW Dangerous Goods Branch
- Pacific Power sites containing present and past electrical substations