



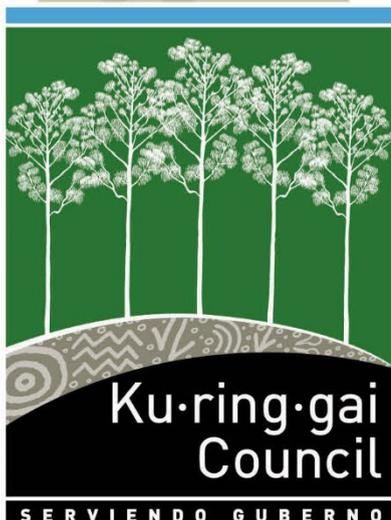
Ku-ring-gai Council

Contaminated Land Policy

Version Number 4

Adopted: 22 October 2024

Version Start: 23 October 2024



Contaminated Land Policy

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Controlled Document Information

Authorisation Details

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Related Document Information, Standards & References

Related Legislation:	<p><i>Environmental Planning and Assessment Act 1979 (EP&A Act)</i></p> <p><i>Protection of the Environment Operations Act 1997 (POEO Act)</i></p> <p><i>Contaminated Land Management Act 1997 (CLM Act)</i></p> <p>State Environmental Planning Policy (Resilience and Hazards) 2021 (Chapter 4 - Remediation of Land)</p> <p><i>Managing Land Contamination Planning Guidelines SEPP 55 – Remediation of Land, NSW Department of Urban Affairs and Planning and Environment Protection Authority (DUAP & EPA 1998)</i></p> <p>Contaminated Land Planning Guidelines – Contaminated Land Planning Guidelines – Draft</p> <p>https://www.planning.nsw.gov.au/policy-and-legislation/under-review-and-new-policy-and-legislation/remediation-of-land-sepp</p> <p><i>Protection of the Environment Operations (Underground Petroleum Storage Systems) Regulation 2019 (UPSS Regulation)</i></p> <p><i>Work Health and Safety Act 2011</i></p> <p><i>Environmental Planning and Assessment Regulation 2021</i></p> <p><i>Protection of the Environment Operations (Waste) Regulation 2014</i></p>	
Related Policies (Council & Internal)	<p>Ku-ring-gai Council Asbestos Policy, Model Asbestos Policy for NSW Councils, Division of Local Government, Department of Premier and Cabinet</p> <p>Ku-ring-gai Council Local Environment Plans</p> <p>Ku-ring-gai Council Development Control Plans</p>	

<p>Other References</p>	<p>Guidelines made or endorsed by EPA under the CLM Act, including the following key guidelines, among others:</p> <ul style="list-style-type: none"> • Consultants reporting on contaminated land – Contaminated land guidelines (NSW Environment Protection Authority, 2020) • Contaminated Land Management - Guidelines for the NSW Site Auditor Scheme, 3rd edition (NSW Environment Protection Authority 2017) • Guidelines on the Duty to Report Contamination under the Contaminated Land Management Act 1997 (NSW Environment Protection Authority 2015) • Guidelines for Assessing Former Orchards and Market Gardens (Department of Environment and Conservation 2005) • National Environment Protection (Assessment of Site Contamination) Measure (Commenced 1999; Amended 2013) <p>Planning Proposals - A guide to preparing planning proposals (NSW Department of Planning and Environment December 2018)</p> <p>Code of Practice: How to Manage and Control Asbestos in the Workplace (Safe Work Australia 2020)</p> <p>Code of Practice: How to Manage and control asbestos in the workplace (SafeWork NSW 2022)</p> <p>Underground Petroleum Storage Systems - Guidelines for Implementing the Protection of the Environment Operations (Underground Petroleum Storage Systems) Regulation 2019 (NSW Environment Protection Authority 2020)</p> <p>Managing Asbestos in or on soil (SafeWork NSW) https://www.safework.nsw.gov.au/resource-library/asbestopublications/managing-asbestos-in-or-on-soil (Accessed 14/02/2024)</p> <p>Managing Urban Stormwater – Soils and Construction (Landcom 2004) (note under review in 23/24)</p> <p>Contamination assessment of service station sites – Minimum Sampling requirements (NSW Environment Protection Authority 2023)</p> <p>Waste Classification Guidelines (NSW Environment Protection Authority 2014)</p>	<p>These guidelines may need to be followed when undertaking development activities relating to this policy.</p>
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Version History

Version Number	Version Start Date	Version End Date	Author	Details and Comments
1	5 June 2001	1 June 2004	Ben Armstrong	First version
2	2 June 2004	14 June 2016	Ben Armstrong	<p>The adopted Contaminated Land Policy was reviewed in consultation with internal users of the Policy and with respect to previous submissions. Comments were made in 2001 by the (former) NSW EPA but were not able to be considered at that time. The Council report details consideration of the EPA's comments.</p> <p>Various other amendments were recommended (mainly with respect to improvements in presentation, grammar etc.) including a requirement that all contamination reports clearly conclude whether the recommended remediation activities will result in a site becoming suitable for its intended use.</p>
3	15 June 2016	22 October 2024	Sophia Findlay	<p>Revisions include the removal of information contained in other documents (such as the <i>Contaminated Land Management Act 1997</i> and SEPP 55).</p> <p>Terminologies and flow charts have been updated to be consistent with current practice (such as changing Rezoning Application to Planning Proposal and including reference to the gateway determination process).</p> <p>References to relevant legislation, policy and guidelines have also been updated where appropriate, including the example notations for the 149 Certificate.</p>
4	23 October 2024	October 2028	Sophia Findlay	References to relevant legislation, policy and guidelines have been updated where appropriate. (e.g. removal of SEPP 55 references and update to SEPP Resilience and Hazards),

Policy

Purpose

This policy provides the framework for the integration of contaminated land management into the planning and development process, consistent with relevant key NSW legislation, policies and guidelines, including, but not limited to:

- *Environmental Planning and Assessment Act 1979* (EP&A Act);
- *Contaminated Land Management Act 1997* (CLM Act);
- State Environmental Planning Policy (Resilience and Hazards) 2021 - Chapter 4 - Remediation of Land; and
- NSW Contaminated Land Planning Guidelines:
 - Managing Land Contamination Planning Guidelines SEPP 55 – Remediation of Land, NSW Department of Urban Affairs and Planning and Environment Protection Authority (DUAP & EPA 1998)
 - Contaminated Land Planning Guidelines - Draft

Objectives

The objectives of this Policy (in relation to contaminated land) are to:

- Ensure that changes of land use will not increase health or environmental risks;
- Avoid inappropriate restrictions on land use; and
- Provide information to support decision-making and community awareness.

Scope

This Policy applies to all land in the Ku-ring-gai Local Government Area (LGA).

This policy provides guidance for when contamination needs to be considered as part of a planning proposal for rezoning or development application, or where voluntarily addressing potential contamination issues.

Responsibilities

Several sections of Council are responsible for the implementation of this policy. They include:

- **Development & Assessment Services:** responsible for the application of this policy in development applications
- **Regulation & Compliance:** responsible for ensuring conditions of development approvals have been met and regulation of Underground petroleum storage systems (UPSS)
- **Land Information:** responsible for updating Council's property information system with new contamination information.
- **Urban & Heritage Planning:** responsible for the application of this policy in planning proposals and any zoning changes in the Local Environment Plan (LEP)
- **Environment & Sustainability:** responsible for ensuring land contamination information, including updates to the NSW EPA "record of notices", is passed onto the Land Information team and for policy reviews.

Other sections of Council may be responsible for remediating land through operations, capital projects, maintenance and other works. Where this is required, the processes outlined in SEPP Resilience and Hazards, Environmental Protection Authority (EPA) guidelines will be undertaken as part of the relevant assessment required for the activity.

Policy Statement

Background

This policy forms the basis for the management of land contamination within the Ku-ring-gai LGA and outlines how and when the requirements of the *Contaminated Land Management Act 1997* and associated policies and guidelines, such as Chapter 4 - 'Remediation of Land' in the State Environmental Planning Policy (Resilience and Hazards), need to be considered and addressed through planning proposals (for rezoning) and in development applications.

In determining all planning proposals (for rezoning) and development applications Council must consider the possibility of former land contaminating activities and the implications that these activities may have for any proposed or permissible future use of the land. For example, many areas of Ku-ring-gai were used for intensive agricultural purposes, including orchards and market gardens, where metal-based pesticides were applied. These and other potentially contaminating activities are listed in Appendix A of this Policy.

Many sites identified as potentially contaminated by activities listed in Appendix A may not be contaminated to levels that warrant regulation by the Environmental Protection Agency (EPA). However, any contamination may still pose health and environmental risks and as such need to be investigated and addressed as per the processes outlined in this Policy.

Implementation

Planning proposals for rezoning

Figure 1 provides an outline of Council's procedure for considering land contamination issues within planning proposals for rezoning.

All planning proposals for rezoning are required to include a statement on whether the site is likely to be contaminated.

Council will conduct an initial evaluation as part of the assessment process for a planning proposal to determine whether contamination is an issue and whether sufficient information is available for Council to make the decision in good faith. If Council is satisfied that the initial evaluation concludes that contamination is not an issue, further investigations may not need to be conducted. However, Council will require further investigation to be undertaken where the land concerned:

- has been notified to or regulated by EPA;
- is where a potentially contaminating activity is being or has been carried out, or where there is incomplete knowledge of such activities; or
- includes land where Council has reasonable grounds to believe that the land may be contaminated because of the land's history, condition, or other information known or provided to Council.

Further investigation commences with a Preliminary Investigation to assess the potential for contamination. Based on the preliminary investigation, if Council is satisfied that contamination is not an issue, Council may not require any further investigations to be conducted.

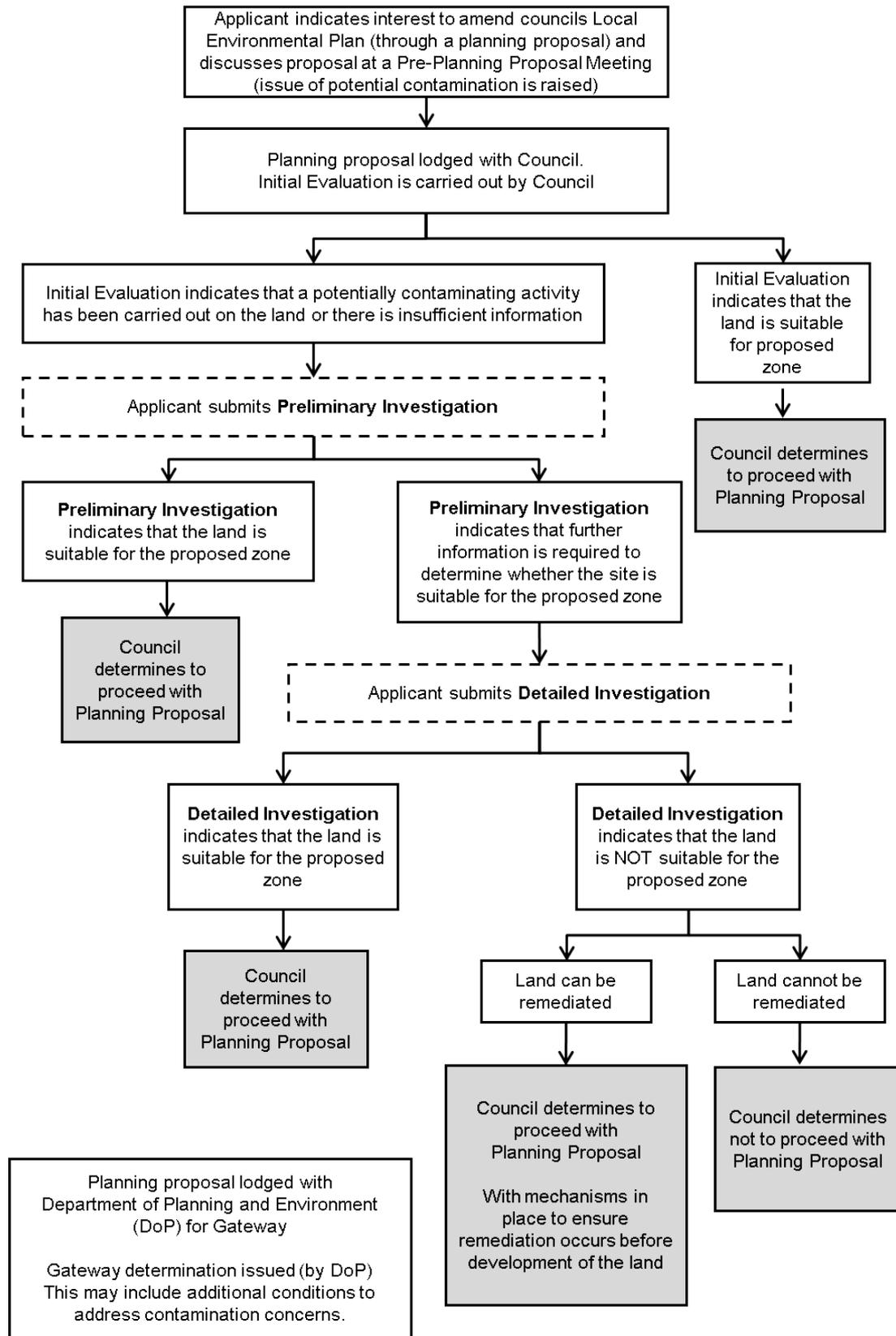
If required, a Detailed Investigation will assess the nature, extent and degree of contamination, potential risks posed by contamination and obtain sufficient information to develop a Remedial Action Plan (RAP) where required, as part of the development application process (outlined in Figure 1).

Where a detailed investigation is required, it should conclude whether the site is suitable for all purposes permissible in that zone or if it can be made suitable through remediation. If remediation is required, the investigation should also list the feasible remediation options available to remediate the site in order to make it suitable for any purpose permissible in that zone. If a feasible option is available, the planning proposal can proceed, ensuring that remediation is addressed prior to the redevelopment of the land, as

per the requirements for development applications (outlined in Figure 1). If the detailed investigation shows that the site is contaminated such that it cannot be remediated, Council may not allow the planning proposal to proceed.

Council may require an independent review of the investigation by a site auditor (EPA accredited).

Figure 1: Council’s procedure for considering land contamination issues within planning proposals for rezoning



NB: Council may require an independent review by a site auditor at any or all stages of the site investigation process.

Development applications (including subdivisions)

Figure 2 provides an outline of Council's procedure for considering land contamination issues for development applications.

Council must consider "the suitability of the site for the development" when assessing development applications (DAs). The risk from contamination to people's health and the environment is included in this assessment. Council will not grant consent to the carrying out of any development on land unless Council has first considered whether the land is contaminated, and if contaminated, that Council is satisfied:

- that the land is suitable in its contaminated state for the purpose of the proposed development; and
- if remediation is required, Council is satisfied that the land will be remediated before the land is used for that purpose.

Council will conduct an initial evaluation as part of the assessment process for any development activities to determine whether contamination is an issue and whether sufficient information is available for Council to carry out its assessment functions in good faith. If Council is satisfied that the site is suitable for the proposed development in terms of land contamination, then Council may not require any further investigations to be conducted and the development application can proceed through Council's usual processes. However, Council will require further investigation where it is found that the land concerned is:

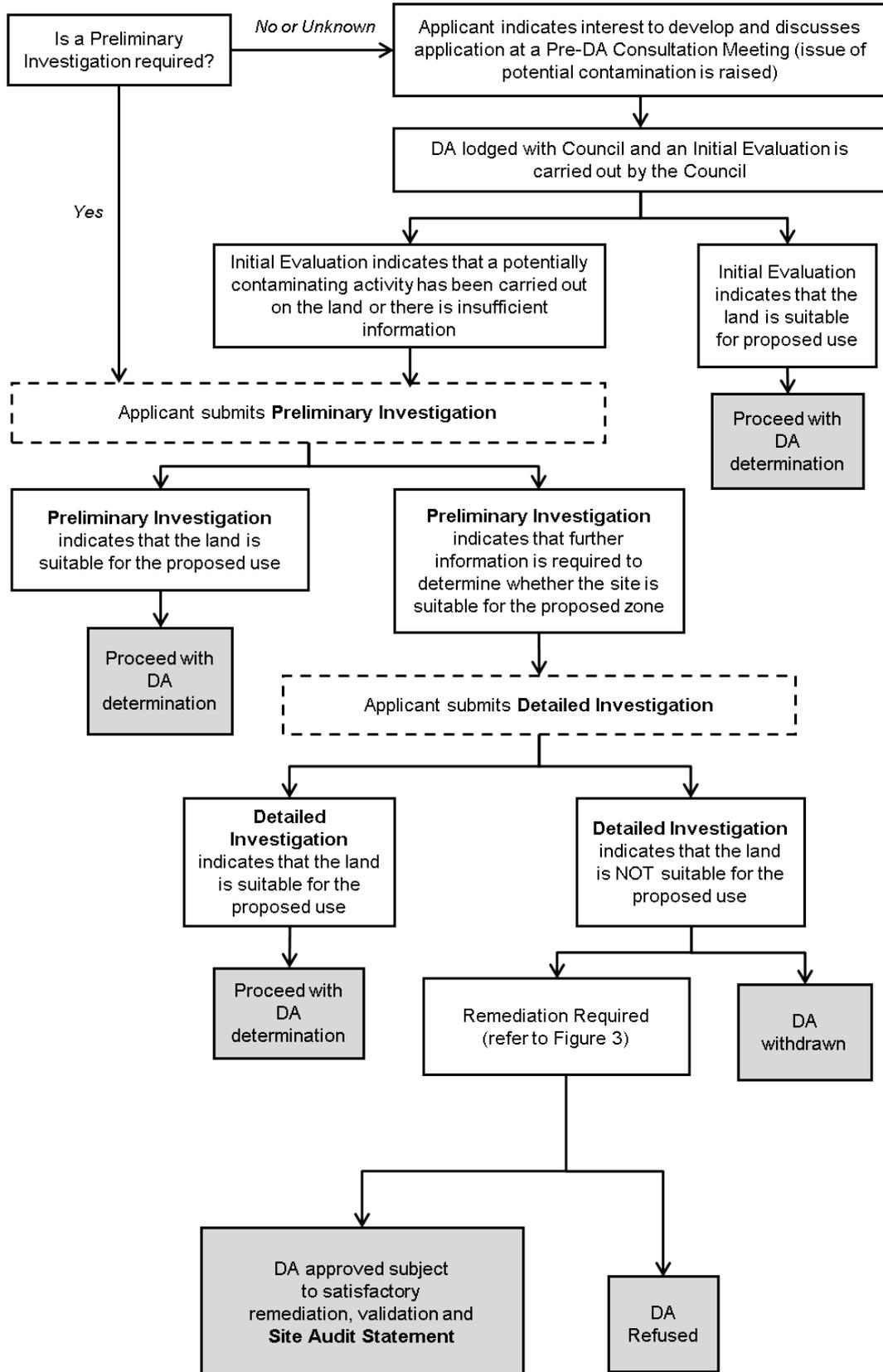
- land that has been notified to or regulated by EPA;
- land where a potentially contaminating activity is being or has been carried out, or where there is incomplete knowledge of such activities; or
- where Council has reasonable grounds to believe that the land may be contaminated because of the land's history, condition, or other information known by or provided to Council.

The process of further investigation (as shown in Figure 2) is the same as that undertaken for planning proposals (as outlined in Figure 1).

If the results of the investigation process demonstrate the existence of contamination, which may preclude the land from being suitable for the proposed use, the proponent may choose to either withdraw the development application or to remediate the land. If the latter is chosen, Council will require the submission of a Remedial Action Plan.

To avoid undue burden on property owners who may have hazardous materials in buildings, but are unlikely to have contaminated soil, Council uses standard conditions of development consent which include provisions for managing hazardous materials (like lead paint and asbestos) appropriately. Council may decide that the contamination investigation process outlined in this Policy may not be necessary for that property where Council finds, after initial investigation of a property, that the only contamination issue is lead paint or asbestos in a building, and where it is also satisfied that these materials will be managed through the standard conditions of development consent.

Figure 2: Council’s procedure for considering land contamination issues for development applications



NB: Council may require an independent review by a site auditor at any or all stages of the site investigation process.

Requirements for investigation and remediation

Figure 3 outlines Council's procedure for considering site remediation proposals. In summary:

- The proponent is responsible for all costs borne for remediation activities and Council will not consider any subsequent development applications for the site until it is satisfied that the site is suitable for the proposed use.
- All site contamination investigations shall be carried out by a suitably qualified and experienced consultant, such as members of the Australian Contaminated Land Consultants Association (ACLCA), in accordance with guidelines made or approved by the EPA.
- All remediation must be carried out and validated by a suitably qualified and experienced consultant, in conjunction with an appropriate RAP and with the aid of appropriately experienced and licensed contractors, as required.
- Classification and disposal of any waste should be undertaken in accordance with NSW Environmental Protection Authority (2014) *Waste Classification Guidelines* and the *Protection of the Environment (Waste) Regulation 2014* and is the responsibility of the owner or their contractor/agent.
- All reports associated with investigation, remediation and validation must be of an appropriate standard, be complete and be consistent with all relevant EPA made or endorsed guidelines under the *Contaminated Land Management Act 1997* (CLM Act).
- Where remediation and validation involve an underground petroleum storage system (UPSS) (including an underground storage tank or UST), specific validation and reporting requirements in *Underground Petroleum Storage Systems - Guidelines for implementing the Protection of the Environment Operations (Underground Petroleum Storage Systems) Regulation 2019* (NSW Environmental Protection Authority (2020) must be met.
- All Category 1 remediation work (as defined within SEPP Resilience and Hazards) must be advertised for 28 days pursuant to the *Environmental Planning and Assessment Act 1979* (EP&A Act).
- Council must be notified in writing, consistent with SEPP Resilience and Hazards, at least 30 days before commencement of Category 2 remediation works (as defined within SEPP Resilience and Hazards, or no later than the day before the commencement of the work in the case of a work referred to in section 4.11(b) of SEPP Resilience and Hazards.

A copy of the Validation Report and Site Audit Statement from a site auditor (where one has been issued) must be forwarded to Council within 30 days of the completion of remediation works, as required by SEPP Resilience and Hazards.

All remediation activities are to be undertaken in line with any other relevant planning documents, guidelines and standards, as appropriate. These include relevant landscaping, vegetation protection, water management and other environmental (noise, vibration, air quality) considerations covered by Australian Standards and guidelines such as *Managing Urban Stormwater – soils and construction* (Landcom 2004).

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

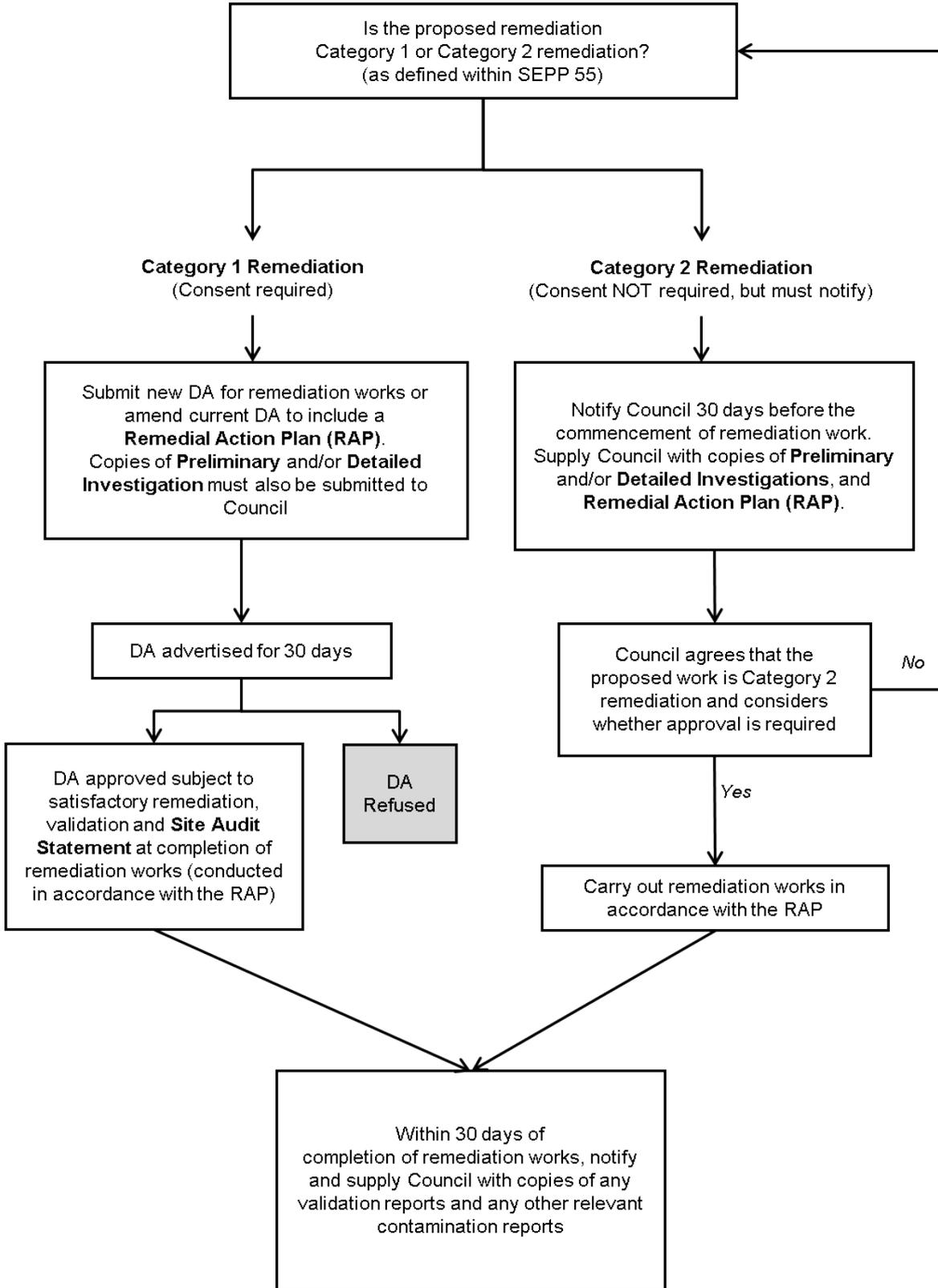
Council will generally require a Validation Report to be submitted by the applicant after remediation works have been completed. This will normally be achieved by Council placing a condition on a development consent requiring the submission of a Validation Report and in some instances, the submission of a Site Audit Statement (SAS). The Validation Report must demonstrate that the objectives stated in the approved RAP have been achieved and that any conditions of development consent in regard to the contaminated land have been satisfied.

Council may require independent review of the investigation, remediation and validation by a site auditor.

A private certifier cannot sign off on development involving remediation works. Section 129 of the *Environmental Planning and Assessment Regulation 2021* outlines the requirements pertaining to complying development on contaminated land. It requires a 'qualified person' as stipulated in section

129(7) prepare a statement to accompany an application certifying that the land is suitable for the intended purpose; and the remediation works specified in the statement have been carried out.

Figure 3: Council’s procedure for considering site remediation proposals



NB: Council may require a site audit by a site auditor at any or all stages of the site investigation process.

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Remediation proposals not in association with a development application or planning proposal for rezoning

Owners of land which has been identified as or is suspected of being contaminated may wish to voluntarily carry out investigation or remediation at any time. These activities must be carried out in accordance with the procedure outlined within Figure 3 and with relevant legislation and guidelines, including notifications to Council, and in accordance with any conditions of consent.

Council will consider the results of any investigations or remediation carried out when deciding what information to provide on the Planning Certificate for a property.

When does Council require an independent site audit?

Council can request an independent review by a site auditor at any stage during contamination investigations and remediation, at the cost of the proponent. Site auditors are EPA accredited experts who can provide an independent review of a primary consultants work, for all types of contaminated sites. The EPA maintains a list of accredited site auditors on their web site: <http://www.epa.nsw.gov.au>.

There may be circumstances where a proponent for rezoning or development considers that their land is suitable for intended or permissible use(s) based on investigation (preliminary or detailed) only, that is, without remediation. In such cases, Council is likely to require a Site Audit Statement prepared by the site auditor certifying that the land is suitable.

Where the proponent implements remediation and validation to make land suitable for intended or permissible land use(s), Council is likely to require a Site Audit Statement prepared by the site auditor certifying that the land is suitable. Council will also require a Site Audit Statement to be prepared by the site auditor for contaminated land if Council:

- believes on reasonable ground 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 undertake its own technical review.

Council will inform the proponent in writing if a site audit is required. Either the proponent or the appointed site auditor shall liaise with Council during the preparation of the site audit to ensure that the scope of the site audit addresses concerns raised by Council.

Where a site audit is required to determine the suitability of a site to meet a particular permissible land use, the timing of issue of a Site Audit Statement in relation to the stage of development will be dependent on the adopted approach to remediation. Council will likely require a Site Audit Statement subsequent to remediation and validation, but prior to commencement of building construction works, including ground preparation works, laying of services and pouring of slabs. It is preferable that the proponent and their site auditor discuss the timing of the Site Audit Statement prior to Council issuing final consent conditions.

Where a Site Audit Statement may conclude land is suitable conditional upon implementation of a site/environmental management plan (SMP/EMP), the appointed site auditor shall liaise with Council prior to completion of the Site Audit Statement. The method of compliance with such conditions, including the legal enforceability of any SMP/EMP is to be discussed and agreed upon. Where compliance of a condition can only be ensured with the involvement of an authority, including Council, the site auditor must seek written approval from the relevant authority or Council before issuing a statement with such conditions. This includes approval of any SMP/EMP upon which a Site Audit Statement will be conditional.

It is recommended that the site auditor is engaged early on in the site assessment process, to ensure that the consultant works to the auditor's satisfaction and to avoid lengthy delays.

Council may not require a site audit where:

- Council believes on reasonable grounds, that the land is unlikely to have been contaminated; or
- The information in a Preliminary Investigation provided by the applicant is correct and complete and meets minimum standards, procedures and guidelines; or
- Where information provided by the proponent indicates that the land is not likely to have been contaminated by activities undertaken on the land; or
- If the only potentially contaminating activities involve an existing structure on the land incorporating lead-based paints and/or asbestos, that is considered not to have contaminated the land. In such circumstances, Council may require further information from the applicant, and may impose consent or other conditions regarding safe removal and disposal of hazardous materials.

Council records and community information regarding contaminated land

Council has a responsibility to provide information regarding land use history, land contamination and remediation. Council also has a statutory responsibility to include certain contaminated land information on planning certificates.

Council has conducted a review of readily available information to gather information on land use history and potentially contaminated land. Council does not hold a “register” of contaminated sites. Council’s records regarding contamination issues, including information management systems, are dynamic and will change over time as land is investigated, remediated and validated and as new sites of potential contamination are identified.

Development of Council’s property information system has involved:

- consideration of “activities that may cause contamination”, including those in Appendix A;
- consultation with staff of the Council and affected property owners, and
- a review of selected Council property files.

Council will consult as necessary with property owners about information regarding contamination to be recorded on the property information system.

Council’s property information system has been prepared in good faith in the interests of responsible planning and is used as a first point of reference by staff. However, in terms of information on contamination, it is not necessarily comprehensive or definitive and should be viewed as evolving.

A notation in relation to contamination against a property on the information system does not necessarily imply the actual existence of contamination on the property. Notations may also be made on the property information system in relation to investigations and remediation work carried out for individual properties. This will enable staff to identify land which has been fully remediated or remediated for specific land uses.

Some properties listed on the information system may be subject to legal notices under legislation administered by the EPA. The public should consult with the EPA for up-to-date information on any such land.

Under Section 10.7 of the EP&A Act, a person may request from Council a Planning Certificate that contains advice on matters about a property, including for example, the existence of a Council policy to restrict the use of land, as a result of potential or known contamination. In order to ensure that the most up-to-date information is accessed, the public should also refer to the EPA’s website, www.epa.nsw.gov.au.

Council will include a range of questions and notations (as appropriate) on a Planning Certificate for a property in relation to potential or known contamination, including wording consistent with examples provided in Section 5 of the Contaminated Land Planning Guidelines (and as shown in Appendix B). Council will take into consideration any information that the property owner can provide in relation to contamination or land use, with regards to making possible changes to notations on planning certificates.

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However, Council will take a precautionary approach when considering information and may consult the EPA when necessary, in order to make a decision.

No notation will be necessary where Council's Policy does not restrict the use of the land, unless the property is the subject of a Site Audit Statement, which must be referred, in accordance with Part 5 of the CLM Act.

Property owners, or persons authorised by them in writing, may be provided with information (if any) from the Council's property information system in relation to their own property. Such requests by the Owner must be in writing to the General Manager or in person at Council's offices. Such requests by an Owner's Agent, whether in writing or in person, must be accompanied by written authorisation signed by the Owner.

When Council is formally advised, or notes an update on the EPA website, that a notice has been issued under the CLM Act, section 10.7 planning certificates are to be updated accordingly.

All other inquiries in relation to potentially contaminated land can be made by requesting planning certificates or through a written request for other information to the General Manager, in accordance with Council's schedule of fees and charges. In some circumstances Council may not be able to provide full access to its records held on land contamination issues, such as when the information is subject to legal privilege, contrary to the provisions of an Act or where other permissions may be required to release information.

Definitions

Term / Abbreviation	Definition
CLM Act	Contaminated Land Management Act 1997
Contamination of Land	The presence in, on or under the land of a substance 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 aspect of the environment.
Development	Includes the erection of any building, the subdivision of land and the carrying out of any work, and the use of the land or building or work thereon for a purpose which is different from the purpose for which the land or building or work was last being used.
DA	Development application
EMP	Environmental Management Plan
EPA	Environment Protection Authority
EP&A Act	Environmental Planning and Assessment Act 1979
Initial Evaluation	Is carried out by the planning authority to determine whether contamination is an issue and whether sufficient information is available to carry out a planning function in good faith. The initial evaluation can be based on readily available factual information and should be carried out regardless of the nature of the proposed or the current use.
Investigation	A preliminary investigation identifies past or present potentially contaminating activities and provides a preliminary assessment of contamination. A detailed investigation is required where a preliminary investigation indicates that the land is contaminated or that it is, or was, formerly used for a potentially contaminating activity and there is a potential risk posed by contamination to health and the environment under the proposed land use. A detailed investigation defines the nature, extent and degree of contamination; assesses potential risk posed by the

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	contamination; and obtains sufficient information to develop a remedial action plan (RAP) , if required.
Land	Includes: a) the sea or an arm of the sea; b) a bay, inlet, lagoon, lake or body of water, whether inland or not and whether tidal or non-tidal; and c) a river, stream or watercourse, whether tidal or non-tidal; and d) a building erected on the land.
Remediation	(a) removing, dispersing, destroying, reducing, mitigating or containing the contamination of any land, or (b) eliminating or reducing any hazard arising from the contamination of any land (including by preventing the entry of person or animals on the land). SEPP Resilience and Hazards defines whether it is Category 1 or 2 remediation. Category 1 remediation requires consent and is deemed to be “advertised development” unless the remediation work is designated development or State significant development. Category 2 remediation work is all remediation work that is not Category 1 remediation work, and does not require development consent.
Remedial Action Plan (RAP)	A plan of remediation that demonstrates how the proponent or their consultant proposes to reduce risks to acceptable levels and achieve clean-up objectives for the site.
SEPP Resilience and Hazards	State Environmental Planning Policy (Resilience and Hazards) 2021
Site Auditor	Any individual accredited as a Site Auditor under Part 4 of the CLM Act.
Site Audit Statement	The written opinion by a site auditor, on an EPA-approved form, of the essential findings of a site audit.
SMP	Site Management Plan
UPSS	Underground petroleum storage system
UST	Underground storage tanks

Appendix A - Potentially contaminating activities

The following list is based on information provided in the NSW Draft Contaminated Land Planning Guidelines, and includes some activities that may cause contamination of land, among others:

- 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

There are other potentially contaminating activities, and reliance on this list alone is not sufficient to determine whether a site is likely to be contaminated or not.

Appendix B – Notations for Planning (Section 149) Certificates

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

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

YES. Council is aware that the land to which the certificate relates is < insert a, b, c, d or e > under Part <relevant part and section > of the Contaminated Land Management Act 1997. Some further information in relation to this matter may also be available from the NSW Environment Protection Authority:

(a) ***significantly contaminated land*** (if the land (or part of the land) is significantly contaminated land at the date when the certificate is issued): Yes (include link)/No

(b) ***subject to a management order*** (if it is subject to such an order at the date when the certificate is issued): Yes (include link)/No

(c) ***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): Yes (include link)/No

(d) ***subject to an ongoing maintenance order*** (if it is subject to such an order at the date when the certificate is issued): Yes (include link)/No

(e) ***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): Yes (include link)/No

OR

Not applicable.

Do any Council Policies or Resolutions restrict the development of the property due to the likelihood of landslip, bushfires, flooding, tidal movements, subsidence, contamination or any other risk?

As to which option (1 – 4 below) is included in any particular Planning Certificate depends on what information Council has in relation to the state of contamination (or potential contamination) of the site which is the subject of the Certificate.

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

- Has a previous land use history which could have involved use of contaminants on the site, for example, land which may have been used for an activity listed in Appendix 1; or
- Is known to be contaminated, but
- **Has not been remediated.** An appropriate notation may be:

Council has adopted by resolution a Contaminated Land Policy (www.krg.nsw.gov.au/Council/Policies) which may restrict the development of the land. This policy is implemented when zoning or land use changes are proposed on lands which may have previously been used for certain purposes. Consideration of Council's adopted policy and the application of provisions under relevant State legislation is warranted.

This site is regulated by XXX [insert Council or the NSW EPA as relevant] and contaminated-land enquiries should be directed to the relevant customer service team.

If contained on the EPA list of notified sites include a regulatory status such as:

- *'contamination currently regulated under CLM Act', '*

- *contamination formerly regulated under the CLM Act’, or*
- *‘regulation under CLM Act not required’.*

If under currently under investigation by the EPA include the notation:

“This site appears on the EPA’s List of Notified Sites for possible contamination. For more information visit the EPA’s website or call 131 555.”

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

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

Council has adopted by resolution a Contaminated Land Policy (www.krg.nsw.gov.au/Council/Policies) which may restrict the development of land. This policy is implemented when zoning or land use changes are proposed on lands which are considered to be contaminated, or on land which have been remediated for a specific use. Consideration of council’s adopted policy and the application of provisions under relevant State legislation is warranted.

This site is regulated by XXX [insert Council or the NSW EPA as relevant] and contaminated-land enquiries should be directed to the relevant customer service team.

3. Where Council records **do not contain a clear site history within significant gaps in information** and council cannot determine whether or not the land is contaminated, and therefore the extent to which council’s policy should apply, council may decide to take a cautious approach. In such cases an appropriate notation might be:

Council has adopted by resolution a Contaminated Land Policy which may restrict the development of the land. This policy is implemented when zoning or land use changes are proposed on lands which have previously been used for certain purposes. Council records do not have sufficient information about previous use of this land to determine whether the land is contaminated. Consideration of Council’s adopted policy and the application of provisions under relevant State legislation is warranted.

This site is regulated by XXX [insert Council or the NSW EPA as relevant] and contaminated-land enquiries should be directed to the relevant customer service team.

4. **No** notation would be necessary under this question where Council’s Policy **does not restrict** the use of land and is unlikely to result in a restriction once the land has been further investigated. This would include:

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

However, all other certificates shall contain the following note:

Note: A review of Council’s readily available records has been conducted to identify previous land uses that may have caused land contamination. This review did not reveal any reason for contamination of this property. However, prior to urban settlement, sizeable areas of Ku-ring-gai were covered by agricultural and horticultural activities. These uses are listed in the Managing

Land Contamination Planning Guidelines as activities that may cause contamination. If you are concerned about possible contamination of the site you should make your own investigations regarding the condition of this property.

Section 10.7(5) of the EP&A Act provides that Planning Certificate can contain information other than that prescribed by relevant legislation. These Planning Certificates attract an additional fee under Council's Fees and Charges Policy. This information may include notation from the property file, such as:

- Relevant site history in relation to potential contamination from Council's property file records;
- The nature of any potential contamination from the Council's property information system;
- Whether Council has any records of investigation or remediation undertaken.