

## **MINUTES OF ORDINARY MEETING OF COUNCIL HELD ON TUESDAY, 1 JUNE 2004**

**Present:** The Mayor, Councillor A Ryan (Chairperson) (Gordon Ward)  
Councillors I Cross & N Ebbeck (Wahroonga Ward)  
Councillors A Andrew & E Malicki (Comenarra Ward)  
Councillors L Bennett & T Hall (St Ives Ward)  
Councillor M Lane (Gordon Ward)  
Councillor M Shelley (Roseville Ward)

**Staff Present:** General Manager (Brian Bell)  
Director Environment & Regulatory Services (Michael Miocic)  
Manager Development Assessment Services (Matthew Prendergast)  
Director Planning & Environment (Leta Webb)  
Director Technical Services (Greg Piconi)  
Director Open Space (Steven Head)  
Director Community Services (Janice Bevan)  
Director Finance & Business (John McKee)  
Senior Governance Officer (Geoff O'Rourke)  
Office Co-ordinator/WP (Casey Locke)

*The Meeting commenced at 7.03pm*

*The Mayor offered the Prayer*

### 259 **APOLOGIES**

File: S02194

Councillor M Shelley tendered an apology for non-attendance for meeting of 8 June 2004 (prior commitment) and requested leave of absence.

NOTE: Councillor G Innes had previously been granted leave of absence from this Council meeting (see Minute No 179).

### **Resolved:**

(Moved: Councillors Lane/Hall)

That the apology by Councillor M Shelley for non-attendance on 8 June 2004 be accepted and leave of absence be granted.

**CARRIED UNANIMOUSLY**

## **DECLARATION OF PECUNIARY INTEREST**

The Mayor adverted to the necessity for Councillors and staff to declare a Pecuniary Interest in any item on the Business Paper.

No such interest was declared.

## **ADDRESS THE COUNCIL**

The following members of the public addressed Council on items not on the Agenda:

J Kellow  
O Cahill  
I Glendinning  
F Freeman  
P Elwin

## **DOCUMENTS CIRCULATED TO COUNCILLORS**

The Mayor adverted to the documents circulated in the Councillors' papers and advised that the following matters would be dealt with at the appropriate time during the meeting:

Refers GB.4: Review of Council's Contaminated Land Policy – Memorandum from Senior Environmental Planning & Projects Officer dated 1 June 2004

## **CONFIRMATION OF MINUTES**

### **260 Minutes of Ordinary Meeting of Council**

File: S02131  
Meeting held 25 May 2004  
Minutes numbered 242 to 258

### **Resolved:**

(Moved: Councillors Lane/Shelley)

That Minutes numbered 242 to 258 circulated to Councillors were taken as read and confirmed as an accurate record of the proceedings of the Meeting.

**CARRIED UNANIMOUSLY**

## MINUTES FROM THE MAYOR

261

### **Gazettal of Ku-ring-gai's Local Environment Plan 194**

File: S02036

Last Friday the Minister Assisting the Minister for Infrastructure and Planning, The Hon. Diane Beamer MP, gazetted the final version of Council's Local Environment Plan 194.

This marked the culmination of an exhaustive process that included wide community consultation, a massive number of submissions from residents and extensive deliberations by Council.

The Minister's final version of LEP 194 disregarded many of the legitimate concerns raised by residents and Councillors.

There is likely to be continuing public debate about the plan and the wider residential development strategy.

Such debate is obviously healthy, but in doing this we need to avoid the recriminations and division that beset the previous Council.

We need to work together as best we can to protect Ku-ring-gai from future over-development – and the best way we can do this is to accept this result, and focus on stage two of the residential strategy.

In summary, these are the main implications from the gazetted plan:

- Allowing developments up to five storeys next to single dwellings and heritage items in areas along the Pacific Hwy/railway corridor and St Ives shopping centre. This has ignored Council's proposal for densities to be graded in accordance with the landscape and surrounding development.
- The removal from the plan of Council's proposed six special areas of high conservation and heritage value.
- A single medium density zone, which has the potential to limit housing choice. Council's plan would have provided for a greater range of medium density housing including townhouses.
- The removal of floor space ratios, which has the potential to lead to poor design and over-development of sites.

- The failure to exempt the Council from SEPP 53 for the entire Pacific Highway corridor as originally promised by Minister Beamer. Only properties rezoned under LEP 194 have been exempted from SEPP 53.

This means the Council still may be forced to approve inappropriate dual occupancies on sites in the corridor area.

The Government's one significant concession relates to stage two of Ku-ring-gai's Residential Development Strategy.

The Government will now require us to examine further options for medium density housing in large commercial centres along the Pacific Highway.

This will help protect neighbourhood centres from over-development.

We need to respond to this direction by the Minister and look at options in these larger commercial centres.

This appears to be the trade-off being offered by the Government – less development in smaller residential areas in return for higher densities along the spine, although extra housing choices may be appropriate in some of these smaller neighbourhood centres.

Such developments could revitalise some of these smaller neighbourhood centres, make them more vibrant and turn them into true community centres rather than mere shopping centres.

While many of the conditions in LEP 194 are unacceptable to many in the community, its gazettal at least provides some certainty and the opportunity to win back control of planning issues.

We need to keep working together to get exemption from SEPP 53 for the entire Council area.

This means continuing a dialogue with the State Government.

As this result has clearly shown, there is a high price to be paid for the perceived disregard of the Government's demands on planning issues.

We must ensure this never happens again!!

I now ask Councillors and the wider community to accept this result, draw a line in the sand and focus on the second stage of our residential strategy.

### **Resolved:**

(Moved: Councillors Hall/Lane)

- A. That the Mayoral Minute, as amended, be received and noted.

- B. That Council place a half page advertisement in the North Shore Times advising residents of the making of LEP 194 by the Minister. The advertisement to provide details of the key elements of the LEP as made by the Minister, together with details of the Minister's requirements for Stage Two of the Residential Development Strategy.
- C. That delegation be given to the Mayor and General Manager to approve the text of the proposed advertisement.

*For the Resolution:           The Mayor, Councillor A Ryan, Councillors Cross, Andrew, Ebbeck, Hall, Lane, Malicki and Shelley*

*Against the Resolution:   Councillor Bennett*

*The above Resolution was CARRIED as an Amendment to the Original Motion. The Original Motion was:*

*That the Mayoral Minute, as amended, be received and noted. The Original Mayoral Minute was:*

*Last Friday the Minister Assisting the Minister for Infrastructure and Planning, The Hon. Diane Beamer MP, gazetted the final version of Council's Local Environment Plan 194.*

*This marked the culmination of an exhaustive process that included wide community consultation, a massive number of submissions from residents and extensive deliberations by Council.*

*The Minister's final version of LEP 194 disregarded many of the legitimate concerns raised by residents and Councillors.*

*There is likely to be continuing public debate about the plan and the wider residential development strategy.*

*Such debate is obviously healthy, but in doing this we need to avoid the recriminations and division that beset the previous Council.*

*We need to work together as best we can to protect Ku-ring-gai from future over-development – and the best way we can do this is to put the past behind us, accept this result, and focus on stage two of the residential strategy.*

*In summary, these are the main implications from the gazetted plan:*

- *Allowing developments up to five storeys next to single dwellings and heritage items in areas along the Pacific Hwy/railway corridor and St Ives shopping centre. This has ignored Council's proposal for densities to be graded in accordance with the landscape and surrounding development.*
- *The removal from the plan of Council's proposed six special areas of high conservation and heritage value.*

- *A single medium density zone, which has the potential to limit housing choice. Council's plan would have provided for a greater range of medium density housing including townhouses.*
- *The removal of floor space ratios, which has the potential to lead to poor design and over-development of sites.*
- *The failure to exempt the Council from SEPP 53 for the entire Pacific Highway corridor as originally promised by Minister Beamer. Only properties rezoned under LEP 194 have been exempted from SEPP 53.*

*This means the Council still may be forced to approve inappropriate dual occupancies on sites in the corridor area.*

*The Government's one significant concession relates to stage two of Ku-ring-gai's Residential Development Strategy.*

*The Government will now require us to examine further options for medium density housing in large commercial centres along the Pacific Highway.*

*This will help protect neighbourhood centres from over-development.*

*We need to respond to this direction by the Minister and look at options in these larger commercial centres.*

*This appears to be the trade-off being offered by the Government – less development in smaller residential areas in return for higher densities along the spine.*

*It is important to note that extra housing choices may be appropriate in some of these smaller neighbourhood centres.*

*Such developments could revitalise some of these smaller neighbourhood centres, make them more vibrant and turn them into true community centres rather than mere shopping centres.*

*While many of the conditions in LEP 194 are unacceptable to many in the community, its gazettal at least provides some certainty and the opportunity to win back control of planning issues.*

*We need to keep working together to get exemption from SEPP 53 for the entire Council area.*

*This means continuing a dialogue with the State Government.*

*As this result has clearly shown, there is a high price to be paid for the perceived disregard of the Government's demands on planning issues.*

*We must ensure this never happens again!!*

*I now ask Councillors and the wider community to accept this result, draw a line in the sand and focus on the second stage of our residential strategy.*

**Councillor Hall withdrew**

## **REPORTS FROM COMMITTEES**

### **Minutes of Ku-ring-gai Traffic Committee**

File: S02110  
Meeting held 25 May 2004  
Minutes numbered 242 to 258

262 **General Matter - Item Under Delegated Authority**

File: S02738  
*Vide Minute No KTC10*

Advice on matters considered under the Delegated Authority.

#### **Resolved:**

(Moved: Councillors Shelley/Lane)

That the information regarding traffic facilities approved in February/March/April 2004 under Delegated Authority, be noted.

**CARRIED UNANIMOUSLY**

263 **General Matter - Sydney Adventist Hospital Fun Run**

File: S02158  
Ward: Comenarra  
Electorate: Ku-ring-gai  
*Vide Minute No KTC11*

To consider a request from the Sydney Adventist Hospital for a Fun Run on Sunday 17 October 2004.

#### **Resolved:**

(Moved: Councillors Shelley/Lane)

- A. That permission be given for the proposed Fun Run to be held on Sunday 17 October 2004 following the routes shown on Sketch Plan No. SAH Fun Run\_KTC/05/04, subject to the event organisers observing the following conditions:
1. That organisers obtain permission from Hornsby Council for the use of streets that are under its control.
  2. That organisers liaise with the Police Local Area Command Kuring-gai and be responsible for the supply/erection of any necessary barriers and road cones at their cost to ensure the safe conduct of the event.
  3. That event organizers ensure participants use footpaths where practicable and at other times to run/walk as near as practicable to the right hand side of the carriageway, facing on-coming traffic.
  4. That any Police direction given, be promptly obeyed.
  5. That any motor vehicle used in conjunction with this event must be driven at the general speed of traffic. When used for relief or supervisory purposes while stationary, such vehicle must be clear of the trafficable portion of the roadway used by moving traffic.
  6. Roads and Traffic Authority accredited marshals are to be provided at appropriate positions as agreed by the Police Service to make motorists aware of the potential danger of runners/walkers in the vicinity.
  7. That all marshals to be in position prior to the commencement of the event and remain until dismissed by the organisers.
  8. That Marshals be briefed as to their duties and responsibilities prior to commencement of the event.
  9. The Sydney Adventist Hospital supply 10 million dollars public liability insurance cover, naming Ku-ring-gai Council as principal and the evidence of the Policy should be received by Council one week prior to the event.
  10. That Council's Regulatory Officer visit the site during the event, to ensure Council's conditions of approval are being observed.
- B. That Mr Brittony Reynaud of the Sydney Adventist Hospital Foundation be notified of Council's decision, and be requested to respond in writing to Council by 3 September 2004, confirming the Hospital's acceptance of Council's decision for conducting the Fun Run 2004.

**CARRIED UNANIMOUSLY**



**Lucinda Avenue, Wahroonga**

File: 88/05725/03

Ward: **Comenarra**

Electorate: Hornsby

*Vide Minute No KTC12*

To consider the outcome of a residents' meeting and recommend follow-up actions.

**Resolved:**

(Moved: Councillors Shelley/Lane)

- A. That Council note that a meeting with residents of Lucinda Avenue has been held, as resolved, and the outcomes of that meeting.
- B. That the Roads and Traffic Authority be requested to alter the sign installed at Lucinda Avenue approaching Pacific Highway, to indicate that there is no access to the F3 freeway from Lucinda Avenue.
- C. That any further action regarding access into the area and the proposed traffic treatments in Lucinda Avenue, at the locations proposed, be deferred until further information is available regarding the proposed interchange of Pacific Highway and the F3 freeway and that the matter be reported back to the Traffic Committee following discussions with the consultant engaged to undertake the F3 to Sydney Orbital study.
- D. That the Roads and Traffic Authority be informed that Council will not be proceeding with a roundabout in Lucinda Avenue at Eastbourne Avenue at present, and that Council will therefore not expend the Authority's funding in 2003/04 for this project. The Authority be requested to allow this funding to be spent by Council in 2004/05 because of the particular issues relating to this project.
- E. That \$24,000, available in Council's Traffic Facilities Program in 2003/04 for work in Lucinda Avenue be carried over to 2004/05 and that subject to the outcome of the SKM study being known, consideration be given in the 2004/05 Budget process to allocating the remainder of the work subject to assessment under Council's priority ranking system.
- F. That residents of Lucinda Avenue and Sydney Adventist Hospital be informed of Council's decision.

**CARRIED UNANIMOUSLY**

*Standing Orders were suspended to deal with the  
Business Paper items where there are speakers first*

*after a Motion moved by Councillors Ebbeck and Shelley  
was CARRIED UNANIMOUSLY*

## **GENERAL BUSINESS**

### 265 **Meeting Cycle - June And July 2004**

File: S02355

To consider amending the meeting cycle for June and July 2004 because of the school holidays.

#### **Resolved:**

(Moved: Councillors Shelley/Cross)

That Council amend its Meeting Cycle for June and July 2004, as follows:

1 June	Ordinary Meeting of Council	
8 June	Ordinary Meeting of Council	
22 June	Ordinary Meeting of Council	
29 June	Ordinary Meeting of Council	
6 July	Ordinary Meeting of Council	Postponed to 20 July 2004
13 July	Ordinary Meeting of Council	Cancelled
20 July	Ordinary Meeting of Council	
27 July	Ordinary Meeting of Council	

**CARRIED UNANIMOUSLY**

### 266 **Review Of Council's Contaminated Land Policy**

File: S02694

To present the revised Contaminated Land Policy to Council for adoption following its public exhibition.

#### **Resolved:**

(Moved: Councillors Shelley/Andrew)

That the revised Contaminated Land Policy as **attached** be adopted (Attachment A).

**CARRIED UNANIMOUSLY**

### 267 **Council Expenditure of Section 94 Funds**

File: S02073

To recommend to Council expenditure of Section 94 funding for new library materials.

**Resolved:**

(Moved: Councillors Shelley/Ebbeck)

- A. That Council approve expenditure of \$7,200 of Section 94 funding for the purchase and cataloguing of additional Chinese language materials.
- B. That Library staff purchase the items during the 2004-05 Financial Year.

**CARRIED UNANIMOUSLY**

268

**30 Tennyson Avenue, Turramurra - Detached Dual Occupancy, Comprising Retention Of The Existing House And Construction Of An Additional Two Level Dwelling And Pool To The Rear Of The Site**

File: DA1051/03

Ward: Wahroonga

Applicant: G Fury c/- Glendinning Minto & Associates

Owner: G & N Fury

To determine a development application seeking consent for a detached dual occupancy.

**Resolved:**

(Moved: Councillors Cross/Ebbeck)

That Development Application No 1051/03 for a detached dual occupancy development and swimming pool at 30 Tennyson Avenue, Turramurra be approved for a period of two (2) years from the date of the Notice of Determination, subject to the following conditions:

**GENERAL CONDITIONS**

1. The development to be in accordance with Development Application No 1051/03 and Development Application plans:
  - Project 2251, Drawings 01, 02, 04, 05 and 06, "New Residence 30 Tennyson Avenue. Turramurra", drawn by Greg Nicol, dated July 2003.
  - Project 2251, Drawing 03, "New Residence 30 Tennyson Avenue. Turramurra", drawn by Greg Nicol, dated June 2003.

all referenced by Council as DA 1051/03 and date stamped 22 August 2003.

2. All building works shall comply with the Building Code of Australia.
3. The submission of the approved plans to Sydney Water, before any work is commenced to ensure that the proposed structure meets that Authority's By-Laws. Failure to submit these plans before commencing work will render the owner liable to a penalty and may result in the demolition of work.
4. External finishes and colours are to be sympathetic to the surrounding built environment.
5. The approved building shall not be occupied unless the development has been completed in accordance with all conditions of consent and the approved plans and an Occupation Certificate has been issued.
6. For the purpose of ensuring the compliance with the terms of the approval, an approved copy of the plan and this Consent and Construction Certificate shall be kept on site at all times.
7. For the purpose of safety and amenity of the area, no building materials, plant or the like are to be stored on the road or footpath without the written approval being obtained from the Council beforehand. The pathway shall be kept in a clean, tidy and safe condition during building operations. Council reserves the right, without notice, to rectify any such breach and to charge the cost against the applicant/owner/builder, as the case may be.
8. **HOURS OF WORK:** For the purpose of residential amenity, noise generating work carried out in connection with building and construction operation, including deliveries of building materials and equipment, is restricted to the following hours: Mondays to Fridays inclusive: 7.00am to 5.30pm. Saturdays: 8.00am to 12.00 noon. Sundays and Public Holidays: Not Permitted. The use of the following items of plant on the site is also restricted to the abovementioned hours: compressors, bulldozers, power operated woodworking machines, excavators and loaders, jackhammers, Ramset guns, concrete mixers and concrete delivery wagons, hoists, winches, welding and riveting plant.

Whilst work on Saturdays may be performed until 5.30pm, such work or any associated activities shall not involve the use of any noise generating processes or equipment.

9. For the purpose of public safety, a sign shall be erected on the site prior to any work commencing which is clearly visible from a public place stating that unauthorised entry to the site is not permitted and showing the name of the builder or another person responsible for the site and a telephone number for contact outside working hours. The sign may only be removed on satisfactory completion of the works.

10. The applicant is advised that the Construction Certificate plans and specifications must comply with the provisions of the Building Code of Australia.
11. Toilet facilities are to be provided, within the work site on which work involved in the erection or demolition of a building is being carried out, at the rate of one toilet for every 20 persons or part of 20 persons employed at the site.
12. The demolition is to be carried out in accordance with the guidelines contained in Australian Standard 2601-1991: The Demolition of Structures.
13. Access to demolition sites shall be protected as directed by the Principal Certifying Authority by the use of suitable fences or hoardings.
14. Where a new development is not commencing immediately following demolition, the demolition shall be limited to the extent of the footprint of the building/s on the site and no excavation shall be carried out.
15. Demolition work, including removal of material or debris from the site, on any building in a residential area shall only be carried out during the following hours: Mondays to Fridays inclusive: 7.00am to 5.30pm. Saturdays: 8.00am to 12.00 noon. Sundays and Public Holidays: Not Permitted.
16. A person taking down or demolishing or causing to be taken down or demolished any building or part thereof shall, upon identifying or suspecting that asbestos is present in the building, immediately notify the Workcover Authority. The Authority is the controlling body for the safe removal, handling and disposal of asbestos. The Authority supervises and monitors contractors engaged in asbestos removal.

The requirements and standards imposed by the Authority, its consultants or contractors shall be complied with.

17. Erosion control measures shall be provided on demolition sites to prevent the siltation of watercourses and drainage systems.
18. Dust control measures shall be taken on all demolition sites so as to avoid a nuisance to adjoining properties and harm to the environment.
  - a. A person taking down or demolishing or causing to be taken down or demolished any building or portion of any building shall:
    - i. cause the windows or other openings in the external walls to be close boarded or otherwise covered;
    - ii. cause screens of canvas, hessian, boards, mats or other suitable material to be fitted in appropriate locations;
    - iii. cause areas, components and debris to be wetted down; in such a manner as to minimise, as far as practicable, the nuisance arising from the escape of dust during such taking down or demolition.

- b. Such person shall not chute, throw or let fall or cause to chute, throw or let fall from the floor to floor or into any basement of such building any building materials or any other matter so as to cause dust to escape from the building or cause any such material to fall or cast upon a public way to the annoyance, inconvenience, or danger of persons using such public way.
- 19. Soil on vacant sites is to be stabilised as soon as possible to prevent erosion and the site shall be kept clear of excess vegetation.
- 20. A temporary construction exit and sediment trap to reduce the transport of sediment from the site onto public roads shall be provided before demolition commences.
- 21. Existing stormwater lines on the site are to be blocked and made inoperable after buildings are demolished so as to prevent the conveyance of silt or sediments into the gutter or street drainage system.
- 22. All combustible material shall be removed from the site on a daily basis. Material shall not be burnt on the site.
- 23. Materials salvaged from a demolition may be stored on site provided they are non combustible, neatly and safety stockpiled and not likely to become a harbourage for vermin.
- 24. Trees and vegetation on a site shall not be disturbed except with the approval of the Council.
- 25. Adequate precautions shall be taken to ensure the protection of adjoining premises and persons therein from damage and injury during the process of demolition.
- 26. The applicant or builder/developer is responsible for the cost of making good any damage that may be caused to any Council property as a result of work associated with the demolition.
- 27. Waste storage facilities for Dwelling 1 and Dwelling 2 shall be provided in accordance with Council's Waste Management Development Policy.
- 28. Stormwater runoff from all hard surfaces, or landscaped areas which are not at natural ground level, shall be piped to the interallotment stormwater drainage line benefiting the subject site.
- 29. To maintain capacity of the Public drainage system, an On-site Stormwater Detention System must be provided in accordance with Council's Stormwater Management Manual. Unless otherwise approved, separate detention systems are to be provided for each residence. An overflow is to be incorporated that will direct any excess flow to the downstream drainage system and subsoil drainage is to be provided from the underside of the sediment control sump to the outlet line or other approved location.

The system is to be cleaned regularly and maintained to the satisfaction of Council.

NOTE 1: The on-site stormwater detention system and property drainage system is not to require excavation or fill underneath the canopy areas of any trees to be retained unless as approved by a qualified arborist's certification that such excavation will not affect the longevity of the subject tree(s).

NOTE 2: If the applicant wishes to vary the prescribed storage and outflow volumes contained in Council's Stormwater Management Manual, a detailed analysis must be provided following the guidelines set out in Council's requirements for on-site detention with full computations accompanying the submission including a flood routing analysis.

NOTE 3: All roof, driveway and other hard-surface runoff water is to be intercepted and directed to the on-site stormwater detention system. If some areas of hard-surface are unable to be directed to the detention system an adjustment to the rate of discharge is to be made to attain the required site discharge.

NOTE 4: If a landscaped surface type detention system is used the storage volume required is to be increased by 20%.

NOTE 5: The standard Council On-site Stormwater Detention Calculation Sheet is to be completed and included on design drawings. This is available from Council upon request.

30. For stormwater control a 200mm wide grated channel/trench drain with heavy duty removable galvanised grates is to be provided in front of the garage door and connected to the stormwater drainage system.
31. The public footways and roadways adjacent to the site are to be maintained in a safe condition, at all times, during the course of the works. A safe pedestrian circulation route a minimum of 1.5m wide and with a pavement free of trip hazards must be maintained at all times on or adjacent to the public footways fronting the construction site. Where the footpath is damaged, repair works must be carried when directed by Council officers and in accordance with the relevant clauses of the current edition of AUS-SPEC.

Where circulation is diverted on to the roadway clear directional signage and protective barricades must be installed in accordance with Aust AS1742-3 1996 *"Traffic Control Devices for Work on Roads"*.

If pedestrian circulation is not satisfactorily maintained, and action is not taken promptly to rectify the defects, Council may undertake proceedings to stop work.

32. The provision of temporary sediment and erosion control facilities and measures are to be installed, prior to the commencement of any works on the site to minimise and/or eliminate unnecessary erosion and loss of sediment. These facilities must be maintained in working order during construction works and up to the completion of the maintenance period. All sediment traps must be cleared on a regular basis and after each major storm, and/or as directed by the Principal Certifying Authority, with all silt being removed from the site, or to an approved location within the site.
33. Driveways and access ramps must be designed not to scrape the underside of cars. In all respects, the proposed vehicle access and accommodation arrangements must be designed and constructed to comply with Australian Standard AS 2890.1 – “Off-Street car parking”.
34. A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained. Application must be made through an authorised Water Servicing Coordinator. Please refer to “Your Business” section of Sydney Water’s web site at [www.sydneywater.com.au](http://www.sydneywater.com.au) then the “e-developer” icon or telephone 13 20 92. Following application a “Notice of Requirements” will detail water and sewer extensions to be built and charges to be paid. Please make early contact with the Coordinator, since building of water/sewer extensions can be time consuming and may impact on other services and building, driveway or landscape design.
35. For the purpose of any Council inspections, the appropriate fees set out in Councils adopted Schedule of Fees and Charges are payable to Council, prior to the release of the approved plans. A re-inspection fee per visit may be charged where remedial work is unprepared at the requested time of inspection or where remedial work is unsatisfactory and a further inspection is requested. Engineering fees must be paid prior to the final approval of the works.
36. The provision of temporary sediment and erosion control facilities and measures are to be installed, prior to the commencement of any works on the site to minimise and/or eliminate unnecessary erosion and loss of sediment. These facilities must be maintained in working order during construction works and up to the completion of the maintenance period. All sediment traps must be cleared on a regular basis and after each major storm, and/or as directed by the Principal Certifying Authority, with all silt being removed from the site, or to an approved location within the site.
37. A Tree Preservation Order exists within the Ku-ring-gai Council area whereby the removal, lopping or destruction of any tree exceeding 5.0 metres in height or 4.0 metres in canopy spread (except where exempt as defined under Council’s Tree Preservation Order) without prior written consent of Council is prohibited.

Release of the Construction Certificate gives automatic approval to the removal ONLY of those trees located on the subject property within the footprint of a proposed new building/structure or within 3.0 metres of a proposed new dwelling. Where this application is for a building/structure other than a dwelling then ONLY trees within the area to be occupied by this building/structure may



be removed. Other trees SHALL NOT be REMOVED or DAMAGED without an application being made under Council's Tree Preservation Order.

38. The landscape works shall be completed prior to issue of final Certificate of Compliance and maintained in a satisfactory condition at all times.
39. The landscape works shall be completed prior to issue of final Certificate of Compliance and maintained in a satisfactory condition at all times.
40. On completion of the landscape works, a Landscape Architect or qualified Landscape Designer shall submit a report certifying correct installation, faithful to the landscape plan to the Principal Certifying Authority with a copy to Council, prior to issue of final Certificate of Compliance.
41. Tree roots between 10mm and 50mm diameter, severed during excavation, shall be cut cleanly by hand and the tree subsequently treated with a root growth hormone and wetting agent, by an experienced Arborist/Horticulturist with a minimum qualification of the Horticulture Certificate or Tree Surgery Certificate.
42. All excavation, including excavation for footings and stormwater pipes and pits, carried out within the specified radius of the trunk/s of the following tree/s shall be hand dug:

Tree/Location	Radius From Trunk
<i>Cedrus atlantica</i> (Atlantic Cedar)/ north of proposed dwelling	4m
<i>Fagus sylvatica</i> (Beech)/ North of proposed dwelling	5m

43. No mechanical excavation of the proposed pool shall be undertaken within the specified radius of the trunk/s of the following tree/s until root pruning by hand along the perimeter line of such works is completed:

Tree/Location	Radius From Trunk
<i>Jacaranda mimosifolia</i> (Jacaranda)/ Eastern boundary	4m

44. The applicant shall ensure that at all times during the construction period no activities, storage or disposal of materials shall take place beneath the canopy of any tree protected under Council's Tree Preservation Order.

#### CONDITIONS TO BE COMPLIED WITH PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

45. A plan and specification of the proposed landscape works for the site shall be prepared in accordance with Council's Development Control Plan No 38, by a

Landscape Designer to enhance the amenity of the built environment and protect the Ku-ring-gai landscape character. The plan must be submitted to Council prior to the release of the Construction Certificate and be approved by Council's Landscape Development Officer prior to the commencement of works. A Landscape Assessment fee of \$50.00 will be payable on lodgement of the required landscape plan, in accordance with the following schedule.

#### Landscape Plan Certification Fees

Minor Landscaping Works	\$50.00
New Dwellings/Dual Occupancies	\$120.00
Multi-Unit Housing	\$100.00 plus \$30.00 per unit
Commercial	\$100.00 plus 10 cents per m <sup>2</sup>

NOTE: The landscape concept plan is generally acceptable except for the number of canopy trees.

46. Each dual occupancy site shall support a minimum number of 5 trees that will attain 13.0 metres in height on the site, to preserve the tree canopy of Ku-ring-gai, in accordance with Council's policy of Tree Retention/Replenishment on Residential Allotments adopted 26 April 1988. The existing tree/s, and additional tree/s to be planted, shall be shown on the Landscape Plan/Site Plan. The plan shall be submitted to Council prior to release of Construction Certificate and approved by Council's Landscape Development Officer, prior to commence of work.
47. A cash bond/bank guarantee of \$2000 shall be lodged with Council as a Landscape Establishment Bond prior to the release of the Construction Certificate to ensure that the landscape works are installed and maintained in accordance with the approved landscape plan or other landscape conditions.

Fifty percent (50%) of the this bond will be refunded upon issue of the final Certificate of Compliance, where landscape works as approved have been satisfactorily installed. The balance of the bond will be refunded 3 years after issue of the building certificate, where landscape works has been satisfactorily established and maintained.

It is the responsibility of the applicant to notify Council in relation to the refunding of the bond at the end of the 3 year period. Where a change of ownership occurs during this period it is the responsibility of the applicant to make all arrangements regarding transference of the bond and to notify Council of such.

48. A cash bond/bank guarantee of \$3000 shall be lodged with Council prior to the release of the Construction Certificate to ensure that the following trees are maintained in the same condition as found prior to commencement site development work.

The bond will be returned following issue of the final Certificate of Compliance, provided the trees are undamaged.

In the event that any specified trees are found damaged, dying or dead as a result of any negligence by the applicant or its agent, or as a result of the construction works at any time during the construction period, Council will have the option to demand the whole or part therefore of the bond.

Tree/Location

*Cedrus atlantica* (Atlantic Cedar) / north of proposed dwelling \$1000

*Fagus sylvatica* (Beech) / North of proposed dwelling \$1000

*Jacaranda mimosifolia* (Jacaranda) / Eastern boundary \$1000

49. An amended stormwater detention plan is required for the detention to the existing house. All three trees are to be retained on the bank where the detention basin is proposed and only fill which has previously been deposited removed. No other levelling is permitted in this area. The galvanized posts to support the hebel block wall shall be located so as not to sever tree roots of 50mm diameter or greater.
50. The Long Service Levy is to be paid to Council in accordance with the provisions of Section 34 of the Building and Construction Industry Payments Act 1986 prior to the issue of the Construction Certificate. Note: Required if cost of works exceed \$25,000.00.
51. It is a condition of consent that the applicant, builder or developer or person who does the work on this residential building project arrange the Builders Indemnity Insurance and submit the Certificate of Insurance in accordance with the requirements of Part 6 of the Home Building Act 1989 to the Council or other Principal Certifying Authority for endorsement of the plans accompanying the Construction Certificate. It is the responsibility of the applicant, builder or developer to arrange the Builder's Indemnity Insurance for residential building work over the value of \$12,000 and to satisfy the Council or other Principal Certifying Authority by the presentation of the necessary Certificate of Insurance so as to comply with the applicable requirements of Part 6 of the Home Building Act 1989. The requirements for the Builder's Indemnity Insurance does not apply to commercial or industrial building work or for residential work less than \$12,000, nor to work undertaken by persons holding an Owner/Builder's Permit issued by the Department of Fair Trading (unless the owner/builder's property is sold within 7 years of the commencement of the work).
52. The Infrastructure Restorations Fee calculated in accordance with the Council's adopted schedule of Fees and Charges is to be paid to the Council prior to any earthworks or construction commencing. The applicant or builder/developer will be held responsible for and liable for the cost any damage caused to any Council property or for the removal of any waste bin, building materials, sediment, silt, or any other article as a consequence of doing or not doing anything to which this consent relates. "Council Property" includes footway,

footpath paving, kerbing, guttering, crossings, street furniture, seats, litter bins, trees, shrubs, lawns mounds, bushland, and similar structures or features on road reserves or any adjacent public place. Council will undertake minor restoration work as a consequence of the work at this site in consideration of the "Infrastructure Restorations Fee" lodged with the Council prior to the release of the Construction Certificate. This undertaking by the Council does not absolve the applicant or Builder/developer of responsibility for ensuring that work or activity at this site does not jeopardise the safety or public using adjacent public areas or of making good or maintaining "Council property" (as defined) during the course of this project.

53. A contribution is to be paid for the provision, extension or augmentation of community facilities, recreation facilities, open space and administration that will, or are likely to be, required as a consequence of development in the area.

TOTAL CONTRIBUTION FOR THIS DEVELOPMENT OF ONE (1) ADDITIONAL DWELLING IS CURRENTLY \$12,459.72. The amount of the payment shall be in accordance with the Section 94 charges as at the date of payment. The charges may vary at the time of payment in accordance with Council's Section 94 Contributions Plan to reflect changes in land values, construction costs and the consumer price index.

This contribution shall be paid to Council prior to the release of the Construction Certificate and the amount payable shall be in accordance with the Council's adopted Section 94 Contributions Plan for Residential Development, effective from 20 December 2000, calculated for additional persons as follows:

1. Preparation of New Residents Kit	\$10.98
2. New Resident Survey	\$9.87
3. New child care centre (including land acquisition and construction of facility)	\$252.13
4. Additions/alterations to Acron Rd child care centre for additional 20 places	\$2.41
5. New Library bookstock	\$17.95
6. New Public Art	\$2.93
7. Acquisition of Open Space - Turramurra	\$1,966.00
8. Koola Park upgrade and reconfiguration	\$143.09
9. North Turramurra Sportsfield development	\$986.80
10. Section 94 2000-2003 Study and Interim Plan preparation cost	\$49.34
11. Section 94 Officer for period of Plan 2000-2003	\$118.42

To obtain the total contribution figure the following table of occupancy rates is to be used:

#### OCCUPANCY RATES FOR DIFFERENT DWELLING SIZES

Small dwelling (under 75 sqm)	1.25 persons
Medium dwelling (75 - under 110 sqm)	1.75 persons
Large dwelling (110 – under 150sqm)	2.75 persons
Very Large dwelling (150sqm or more)	3.5 persons

54. The following are required details and must be submitted to the Principal Certifying Authority prior to issue of the Construction Certificate. Any matter listed below must have a Certificate attached from a suitably qualified person to the effect that the design or matter complies with the relevant design Standard or Code which the Certificate must identify.
- a. Details prepared by a practicing structural engineer for all or any reinforced concrete, structural steel or timber framing.
  - b. Wind bracing details complying with AS 1684-1992 National Timber Framing Code, AS 1170.2-1989 Wind Load Code or AS 4055-1992 Wind Loads for Housing Code.
  - c. Upper floor joist details, engineered or complying with AS 1684-1992 National Timber Framing Code.
  - d. Retaining walls and associated drainage.
  - e. Wet area waterproofing details complying with the Building Code of Australia.
  - f. Mechanical ventilation details complying with Australian Standard 1668-1993 Mechanical Ventilation & Airconditioning.
  - g. Glazing details complying with AS 1288-1989 Glass in Buildings and Installation Code.
  - h. Stormwater disposal details complying with Council's Stormwater Management Manual and/or other conditions of this consent.
55. The consent holder shall submit to the satisfaction of Council, a Waste Management Plan in accordance with Development Control Plan 40.
56. **DRIVEWAYS AND FOOTPATHS:** Approval of this Development Application is for works wholly within the property and does not imply approval of footpath or driveway levels, materials or location within the road reserve regardless of whether this information is shown on the Application.

Footpath and driveway levels at the property boundary/road alignment are to be obtained from Council prior to release of the Construction Certificate. All footpaths and driveways are to be constructed strictly in accordance with Council's specifications "Construction of Gutter Crossings and Footpath Crossings". This is issued with alignment levels after completing the necessary application form at Customer Services and payment of the appropriate fee.

The grading of such footpaths or driveways outside the property are to comply with Council's standard requirements. The suitability of the grade of such paths or driveways inside the property is the sole responsibility of the applicant, and this may be affected by the alignment levels fixed by Council.

Note 1: The construction of footpaths and driveways outside the property, in materials other than those approved by Council, is not permitted and Council may require immediate removal of unauthorised installations.

Note 2: When completing the request for driveway levels application from Council, the applicant must attach a copy of the relevant Development Application drawing which indicates the position and proposed level (if applicable) of the proposed driveway at the boundary alignment. Failure to submit this information may delay processing.

57. Prior to the issue of the Construction Certificate, longitudinal driveway sections are to be provided for approval by the Principal Certifying Authority (PCA). These are to be along both sides of the proposed driveway from the centreline of the frontage street to the proposed garage/carport slab, demonstrating that vehicular access can be obtained using grades of 20% (25% maximum) or less without scraping the underside of a car. All changes in grade are to comply with Australian Standard 2890.1 – 1993 “Off-street car parking”. If a new driveway crossing is proposed then the longitudinal sections must incorporate the driveway crossing levels as issued by Council upon prior application at Customer Services.
58. Full design drawings of the proposed method of achieving the requirements for on-site stormwater detention and all supporting calculations are to be prepared by a suitably qualified and experienced civil/hydraulic engineer in accordance with Council requirements. These must be submitted to and approved by the Principal Certifying Authority (PCA) prior to issue of the Construction Certificate.
59. Submission of design documentation for the required interallotment drainage system from the subject property to the proposed point of discharge to a recognised public drainage system. The design is to be approved by the Principal certifying Authority prior to issue of the Construction Certificate. Plans are to be prepared by a suitably qualified and experienced consulting engineer in accordance with the requirements of Council’s Stormwater Management Manual, and must include the following details:
  - a. Surrounding survey detail including all trees within seven (7) metres of the proposed drainage system.
  - b. Longitudinal section showing existing ground levels and proposed invert levels.
  - c. Means to preserve the root systems of trees within seven (7) metres of the drainage system.
  - d. New pipes within the downstream easement drainage system are to be sized to have adequate capacity to carry design flowrates, or detention system overflows where detention systems are to be provided, from the subject property.
60. The property drainage system (including but not limited to gutters, downpipes, pits, joints, flushing facilities and all ancillary plumbing) shall be designed and based upon a 235mm/hour rainfall intensity for a duration of five (5) minutes (1:50 year storm recurrence) for impervious surfaces. Design drawings and calculations are to be prepared by a suitably qualified and experienced civil/hydraulic engineer in accordance with Council’s Stormwater Management

Manual and the national Plumbing and Drainage Code. These must be submitted to and approved by the Principal Certifying Authority (PCA) prior to issue of the Construction Certificate.

NOTE 1: The property drainage system is not to require excavation or fill underneath the canopy areas of any trees to be retained unless as approved by a qualified arborist's certification that such excavation will not affect the longevity of the subject tree(s).

NOTE 2: If the proposed drainage system involves piping underneath or within the building then the designer is to certify that the design is in accordance with AS3500.3.2:1998 and the BCA.

NOTE 3: All enclosed floor areas, including habitable and garage floor levels, are to be safeguarded from outside stormwater runoff ingress by suitable differences in finished levels, gradings and provision of stormwater collection devices.

61. The stormwater drainage design submitted, Young Consulting Engineers Drawings 219383-01 to 04, Issue A, dated 5/8/03, requires amendment in that several trees are shown to be removed which are actually to be retained according to the Landscape Plan.

62. For stormwater retention and quality control, provision of a five (5) metre long first-flush absorption trench for each dwelling designed to capture and retain the first-flush stormwater runoff from the subject property after which runoff bypasses the trench and reverts to the main drainage system. Design drawings are to be prepared by a suitably qualified and experienced civil/hydraulic engineer and submitted for approval by the Principal Certifying Authority (PCA) prior to issue of the Construction Certificate.

NOTE 1: The first-flush system may be achieved by the use of a separate low-level outlet from a pit located on the main drainage system.

NOTE 2: Where practicable, runoff from driveway and landscaped areas is to be directed to the retention system in preference to roof runoff.

NOTE 3: The trench shall be 700mm wide x 700mm deep and fitted with half round PVC (230mm radius) dome sections backfilled with crushed or round river gravel to within 150mm of surface level, surrounded with suitable geofabric and finished with topsoil.

NOTE 4: The trench is to be at least 5 metres from private property boundaries and 3 metres from the footings of any structure.

NOTE 5: A suitably designed litter and coarse sediment 450mm square grated arrestor pit is to be provided immediately upstream of the trench.

NOTE 6: The trench is not to require excavation underneath the canopy areas of any trees to be retained unless as approved by a qualified

arborist's certification that such excavation will not affect the longevity of the subject tree(s).

NOTE 7: Upon completion, certification from a suitably qualified person is to be submitted to the Principal Certifying Authority with respect to this condition being satisfied.

NOTE 8: This requirement does not apply where the Applicant considers installation to be impractical.

OR

For stormwater retention, provision of a 2000 litre rainwater tank for each dwelling designed to capture and retain runoff from at least one roof downpipe after which runoff bypasses the tank and reverts to the main drainage system. Design drawings are to be prepared by a suitably qualified and experienced civil/hydraulic engineer and submitted for approval by the Principal Certifying Authority (PCA) prior to issue of the Construction Certificate.

NOTE 1: The tank is to be located at or above existing natural ground level.

NOTE 2: If abutting a wall of the dwelling, the tank must be below the eaves line.

NOTE 3: The tank must not be located on the front façade of a dwelling.

NOTE 4: If the tank is to be attached to a structure then a structural engineer is to certify the adequacy of the design of the structure to carry the tank.

NOTE 5: Maximum height of the tank is 1.8 metres above natural ground level where installed along the side boundary setback of a dwelling.

NOTE 6: The tank is to be a commercially manufactured tank designed for the use of water supply and to be installed in accordance with manufacturers specifications.

NOTE 7: The tank is to be located above an available landscaped area so that the tank may be readily used for watering purposes.

NOTE 8: The tank is to be fitted with a standard garden tap or similar which is to be clearly marked as not to be used for drinking purposes.

NOTE 9: The tank is to be fitted with measures to prevent mosquito breeding.

NOTE 10: Upon completion, certification from a suitably qualified person is to be submitted to the Principal Certifying Authority with respect to this condition being satisfied



NOTE 11: This requirement does not apply where the Applicant considers installation to be impractical.

63. To prevent surface stormwater from entering the building, the finished habitable ground floor level(s) of the building shall be a minimum of 150mm above adjacent finished ground level(s). The entire outside perimeter of the building must have overland flow escape routes which will protect all finished floor levels from flooding during times of complete subsurface drainage blockage.
64. Submission, for approval by the Principal Certifying Authority (PCA) prior to issue of the Construction Certificate, of a Soil and Erosion Control Plan prepared in accordance with the NSW Department of Housing document "Managing Urban Stormwater – Soils and Construction" (1998) by a suitably qualified and experienced engineer or surveyor. Such controls should include but not be limited to appropriately sized sediment basins, diversion systems, appropriate controls for each stage of works identified and barrier fencing which maximises and protects areas which are not to be disturbed. The plan must also specify inspection and maintenance regimes and responsibilities and rehabilitation measures.

#### CONDITIONS TO BE COMPLIED WITH PRIOR TO WORK COMMENCING

65. To preserve the following tree/s, no work shall commence until the area beneath the canopy of the following tree/s is fenced off as specified below to prevent any activities, storage or the disposal of materials within the fenced area. The fence/s shall be maintained intact until the completion of all demolition/building work on site.

Tree/Location	Location of fence
<i>Cedrus atlantica</i> (Atlantic Cedar)	Start fence at the W boundary
<i>Fagus sylvatica</i> (Beech)	extend along the N edge of the
<i>Salix matsudana 'Tortuosa'</i> (Tortured Willow)	existing driveway and then around
All North of proposed dwelling	the eastern side of the Beech at a 3m radius from the trunk. Extend back to W Parallel to northern fence
<i>Jacaranda mimosifolia</i> (Jacaranda)	3.5 metre radius from the
centre of Eastern boundary	the tree

66. The tree protection fence shall be constructed of galvanised pipe at 2.4 metre spacings and connected by securely attached chain mesh fencing to a minimum height of 1.8 metres prior to work commencing.
67. Upon completion of the installation of the required tree protection measures you are required to contact Council on telephone 9424 0888 or facsimile 9418 1117

to arrange an inspection of the site, in this regard a minimum of 24 hours notice is required. Following the carrying out of a satisfactory inspection and subject to the payment of all relevant monies and compliance with any other conditions of approval, work may commence.

68. Prior to the commencement of any work, the Principal Certifying Authority shall be notified in writing of the name and contractor licence number of the owner/builder who intends to carry out the approved works.
69. Prior to commencing any construction or subdivision work, the following provisions of the Environmental Planning & Assessment Act, 1979 (the 'Act') are to be complied with:
  - a. A Construction Certificate is to be obtained in accordance with Section 81A(2)(a) of the Act.
  - b. A Principal Certifying Authority is to be appointed and Council is to be notified of the appointment in accordance with Section 81A(2)(b) of the Act.
  - c. Council is to be notified in writing, at least two (2) days prior to the intention of commencing buildings works, in accordance with Section 81A(2)(c) of the Act.
  - d. Should the development be certified by a Principal Certifying Authority other than Council, a fee for each Part 4A Certificate is to be paid to Council on lodgement of those Certificates with Council.
70. The Construction Certificate shall not be released until a Site Management Plan is submitted to the Principal Certifying Authority and approved by a suitably qualified professional.

The plan shall indicate the planned phases of the construction work, erosion and drainage management, tree protection measures, areas nominated for storing materials, site access and where vehicle parking is proposed, during construction.

#### CONDITIONS TO BE COMPLIED WITH PRIOR TO OCCUPATION

71. Prior to issue of the Final Compliance Certificate or the issue of a Subdivision Certificate, all disused driveway crossings, pipe crossing and/or kerb laybacks are to be reinstated as footway and kerb and/or gutter to the satisfaction of Council's Development Engineer. Reinstatement works to generally match surrounding infrastructure. Any infrastructure within the road reserve along the frontage of the subject site or within close proximity which has been damaged as a result of construction works on the subject site is to be repaired to the satisfaction of Council's Development Engineer, at the Applicants cost.
72. The creation of a Positive Covenant and Restriction on the Use of Land under Section 88B of the Conveyancing Act 1919, burdening the property with the requirement to maintain the on-site stormwater detention facilities on the property. These must be created prior to issue of the Final Compliance Certificate or issue of a Subdivision Certificate. The terms of the instruments

are to be generally in accordance with the Council's "draft terms of Section 88B instrument for protection of on-site detention facilities" (available from Council on request) and to the satisfaction of Council.

For existing Titles, the Positive Covenant and the Restriction on the use of Land is to be created through an application to the Land Titles Office in the form of a request using forms 13PC and 13RPA. The relative location of the On-Site Detention facility, in relation to the building footprint, must be shown on a scale sketch, attached as an annexure to the request forms.

73. In order to maintain Council's database of as-constructed on-site stormwater detention systems, if the Principal Certifying Authority is not Council then a copy of the approved stormwater detention design, the works-as-executed drawings and the Engineer's certification of the as-constructed system is to be provided to Council, attention Development Engineer, prior to issue of the Final Compliance Certificate or issue of a Subdivision Certificate.
74. The Section 73 Sydney Water compliance certificate must be obtained and submitted prior to issue of the Final Compliance Certificate or issue of the Subdivision Certificate.
75. Construction of the On-site Stormwater Detention System is to be supervised and upon completion a Certificate and Works-as-Executed (WAE) plan is to be submitted to the Principal Certifying Authority for approval, prior to issue of the Final Compliance Certificate. Certification is to be provided by a suitably qualified civil/hydraulic engineer and the WAE plan is to be prepared by a registered surveyor. The certifying engineer must also complete and submit Council's standard On-site Stormwater Detention Certification sheet.

The Certificate is to be with respect to compliance with:

- Compatibility of the drainage system with the approved plans
- The soundness of the structure.
- The adequacy of the outlet control mechanism to achieve the discharge as specified.
- The capacity of the detention storage as specified.
- The size of the orifice or pipe control fitted.
- The maximum depth of storage over the outlet control.
- The adequate provision of a debris screen.
- The inclusion of weepholes in the base of the outlet control pit.
- The provision of an emergency overflow path.
- All enclosed floor areas, including habitable and garage floor levels, being safeguarded from outside stormwater runoff ingress by suitable differences in finished levels, gradings and provision of stormwater collection devices.

The Works-as-Executed drawing(s) are to include all relevant levels including:

- invert levels
- surface or pavement levels

- floor levels including adjacent property floor levels
  - maximum water surface level to be achieved in the storage zone
  - dimensions of basin(s), tank(s), pit(s), etc.
  - location(s) of basin(s), tank(s) and distances from buildings, boundaries, and easements, etc.
  - storage volume(s) provided and supporting calculations
  - size of orifice(s)
76. Construction of the property stormwater drainage works is to be supervised and upon completion certified by a suitably qualified and experienced civil/hydraulic engineer, prior to issue of the Final Compliance Certificate, that:
- a. The works were carried out and completed in accordance with the approved plans.
  - b. All enclosed floor areas, including habitable and garage floor levels, are safeguarded from outside stormwater runoff ingress by suitable differences in finished levels, gradings and provision of stormwater collection devices.
- A Works-as-Executed drawing of the property stormwater drainage system is also to be furnished by the Certifier Prior to issue of the Final Compliance Certificate.
77. Submission to the Principal Certifying Authority for approval of documentary evidence of the creation of, or existence of, the required drainage easements on the Titles of the affected downslope neighbouring properties. This is to include, as a minimum, the Title & Instruments creating the easement.
78. The construction of the proposed interallotment drainage system to the satisfaction of the Principal Certifying Authority. The works are to be supervised by the designing engineer and certified upon completion that the as-constructed works comply with the approved design documentation and with Council's Stormwater Management Manual. A registered surveyor is to provide a Works-as-executed drawing of the as constructed works and must certify that all drainage structures are wholly contained within the drainage easement(s). The certification and Works-as-executed drawing must be submitted for approval by the Principal Certifying Authority prior to the issue of an Occupation Certificate.
79. That installation of lighting to the satisfaction of Council, is provided to all paths, accessways, parking areas and building entries so as to enhance the amenity and security around the dual occupancy dwellings. Any external lighting shall be directed away from adjoining residential sites and all light spill is to be contained wholly within the boundaries of the subject site.
80. Any pool motor enclosures, pumps and/or filters are to be soundproofed to ensure there is no noise reading exceeding 5dba above the background noise level when measured at the nearest residential property boundary.

81. Obscure glazing to a minimum height of 1.7m above finished floor level shall be installed in the south facing upper level windows and the western facing window of Bedroom 4.
82. The private open space of Dwelling 1 is to be screen from the north-facing private open space of Dwelling 2 by a 1.8m high solid timber fence.

#### BUILDING CONDITIONS

83. Any mechanical ventilation installed in a dwelling shall comply with the requirements of Part 3.8.5.0 of the Building Code of Australia Housing Provisions. Documentary evidence of compliance is to be obtained from a suitably qualified person and submitted to the Principal Certifying Authority prior to the issue of an Occupation Certificate.
84. The building works are to be inspected during construction by the Council, an accredited certifier or other suitably qualified person/s (as applicable) and a Compliance Certificate shall be issued prior to proceeding to the subsequent stages of construction, encompassing not less than the following stages:
  - a. All sediment and erosion control and tree protection measures and installations in place on the site prior to the commencement of any earthworks, excavations or other work.
  - b. Any pier holes and/or foundation material.
  - c. Any steel reinforcement prior to placement of concrete. This includes all reinforcement of floors, slabs, trenches, columns, beams and stairs (if components of this structure).
  - d. Any structural components (i.e. timber framework, structural steelwork or the like) before fixing any lining or covering.
  - e. Any stormwater drainage works prior to covering.
  - f. The completed landscape works in accordance with the approved plans.
  - g. The completed structure prior to occupation.

The required inspection fees (which also covers the issue of the Compliance Certificate) are to be paid to the Council before the issue of a Construction Certificate for this development.

If inspections are to be carried out by Council, 24 hours notice is required by Council's Department of Environmental and Regulatory Services, by telephoning Customer Service on 9424 0888 during business hours (8.30am to 4.30pm) or by facsimile on 9418 1117.

Note: Inspections of work which is found to be defective or not ready will attract a reinspection fee. Please cancel bookings which will not be ready for inspection.

85. All structural timber members subject to weather exposure shall have a durability class rating of 2 or better in accordance with Australian Standard 1684.2-1999 (National Timber Framing Code), or be preservative treated in

accordance with Australian Standard 1604-1980 (Preservative Treatment for Sawn Timbers, Veneers and Plywood).

86. For the purpose of safety and convenience a balustrade of 1.0 metre minimum height shall be provided to any landing, verandah, balcony or stairway of a height exceeding 1.0 metre above finished ground level. The design may consist of vertical or horizontal bars but shall not have any opening exceeding 125mm. For floors more than 4.0 metres above the ground, any horizontal elements within the balustrade or other barrier between 150mm and 760mm above the floor must not facilitate climbing.

87. For the purpose of safe ingress and egress the stairs are to be constructed within the following dimensions:

Risers:	Maximum 190mm	Minimum 115mm
Going (Treads):	Maximum 355mm	Minimum 240mm

Note: Dimensions must also comply with limitations of two (2) Risers and one (1) going equaling a maximum 700mm or minimum 550mm. The Risers and Goings shall be uniform throughout the length of the stairway.

88. For fire safety an automatic fire detection and alarm system shall be installed throughout the dwelling in accordance with the following requirements:
- a. A smoke alarm system complying with Part 3.7.2 of the Building Code of Australia Housing Provisions; or
  - b. Smoke alarms which:
    - i. comply with Australian Standard 3786 or listed in the Scientific Services Laboratory Register of Accredited Products (all accredited products should have scribed on them the appropriate accreditation notation); and
    - ii. are connected to the mains and have a standby power supply; and
    - iii. are installed in suitable locations on or near the ceiling and as prescribed under Part 3.7.2 of the Building Code of Australia Housing Provisions.

To ensure compliance with this condition, a Compliance Certificate or documentary evidence from a suitably qualified person is to be submitted to the Principal Certifying Authority.

89. Termite protection which will provide whole of building protection in accordance with Australian Standard 3660 - "Protection of Buildings from Subterranean Termites" is to be provided.

Council has a non chemical policy for termite control but will consider proposals involving physical barriers in combination with approved chemical systems. Handspraying is prohibited.

Where a monolithic slab is used as part of a termite barrier system, the slab shall be constructed in accordance with Australian Standard 2870.1 or as designed by a structural engineer but in either case shall be vibrated to achieve maximum compaction.

To ensure compliance with this condition, a Compliance Certificate or documentary evidence from a suitably qualified person is to be submitted to the Principal Certifying Authority prior to the issue of an Occupation Certificate.

90. The following are required details and must be submitted to the Council on completion of the works. Any matter listed below must have a Certificate attached from a suitably qualified person to the effect that the design or matter complies with the relevant design Standard or Code which the Certificate must identify.
- a. Wet area waterproofing details complying with the Building Code of Australia.
  - b. Glazing details complying with AS 1288-1989 Glass in Buildings and Installation Code.

**CARRIED UNANIMOUSLY**

**Councillor Hall returned**

269 **A2 Hope Street, Pymble - Torrens Title Subdivision Of An Approved Dual Occupancy**

File: DA 343/04

Ward: St Ives

Applicant: Mr In-Joo Chung C/- Glendinning Minto & Associates

Owner: Mr and Mrs Chung

**The following members of the public addressed Council:**

**O Cahill**

**N Nolan**

Councillor Bennett has called the matter before Council.

**Resolved:**

(Moved: Councillors Bennett/Hall)

That Development Application No 343/04 for the torrens title subdivision of an approved dual occupancy at A2 Hope Street, Pymble being Lot 3, DP 658574 be approved for a period of two (2) years from the date of the Notice of Determination, subject to the following conditions:

## GENERAL CONDITIONS

1. The development to be in accordance with Development Application No 343/04 and Development Application plans prepared by Widsoma Pty Ltd Architectural & Legal Consultants, reference number C.C.003, dated January 2004 and lodged with Council on 8 April 2004, and as amended by this consent.
2. A straight line of subdivision (this line shall extend perpendicular to Hope Street) dividing Lot A and Lot B shall be located 20.6 metres from the western boundary.

## CONDITIONS TO BE COMPLIED WITH PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE

3. The appropriate fees set out in Councils adopted Schedule of Fees and Charges is payable to Council, prior to the issue of the Subdivision Certificate.
4. The submission of an original Plan of Subdivision plus five (5) copies suitable for endorsement by the Certifying Authority.

Note 1: The Plan of Subdivision must be lodged with Council's Standard Lodgement Form, available from Council's Customer Services.

Note 2: The following details **must** be submitted with the Plan of Subdivision:

- a. The 88B Instrument.
- b. The Engineer's Certification on Council's Standard Certification Sheet and the Works-as-Executed Plan prepared by a registered surveyor of the on-site Stormwater detention facilities for all dwellings.
- c. Any Engineers and/or Surveyors Certification required by other conditions in this consent.
- d. The Section 73 Compliance Certificate.

Note 3: Council will check the consent conditions and failure to submit the required information will delay issue of the Subdivision Certificate and require payment of re-submission fees.

5. The submission of an instrument under Section 88B of the Conveyancing Act with the Plan of Subdivision, plus five (5) copies, creating any required easements, rights-of-carriageway, positive covenants, restrictions etc, with Kuring-gai Council being named as the authority whose consent is required to release, vary or modify the same.
6. All drainage works required under DA 172/03 are to be completed to the satisfaction of Council prior to the issue of the Subdivision Certificate.
7. The creation of a Positive Covenant and Restriction on the Use of Land under Section 88B of the Conveyancing Act 1919, burdening the property with the



requirement to maintain the on-site stormwater detention facilities on the property prior to the issue of a Subdivision Certificate. The terms of the instruments are to be generally in accordance with the Council's "draft terms of Section 88B instrument for protection of on-site detention facilities" and to the satisfaction of Council. The location of the on-site detention systems for all dwellings is to be clearly denoted on the final subdivision plan.

8. In order to maintain Council's database of as-constructed on-site stormwater detention systems under DA 172/03, if the Principal Certifying Authority is not Council then a copy of the approved stormwater detention design, the works-as-executed drawings and the Engineer's certification of the as-constructed system is to be provided to Council, attention Development Engineer, prior to the issue of a Subdivision Certificate.
9. Prior to the issue of a Subdivision Certificate, all disused driveway crossings, pipe crossing and/or kerb laybacks are to be reinstated as footway and kerb and/or gutter to the satisfaction of Council's Development Engineer. Any infrastructure within the road reserve along the frontage of the subject site or within close proximity which has been damaged as a result of construction works on the subject site is to be repaired to the satisfaction of Council's Development Engineer.
10. Creation of burdens including drainage easements, service easements and rights-of-carriageway as required. A registered surveyor is to certify prior to the issue of the Subdivision Certificate that all interallotment drainage lines, services or driveways are fully contained within the proposed burdens and/or that future provision of such are fully covered by the proposed burdens. Alternatively if the surveyor is of the opinion that no interallotment easements or rights-of-carriageway are required then certification to this effect from the surveyor is to be submitted.
11. Creation of suitable drainage easements with minimum widths in accordance with Council's Water Management Plan DCP47 over all of the inter-allotment and Council drainage systems.
12. A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained. Application must be made through an authorised Water Servicing Coordinator. Please refer to "Your Business" section of Sydney Water's web site at [www.sydneywater.com.au](http://www.sydneywater.com.au) then the "e-developer" icon or telephone 13 20 92.

The Section 73 Certificate must be submitted to Council prior to the issue of the Subdivision Certificate.

13. The developer shall submit to the Certifying Authority a letter from the energy supply authority and either Telstra or Optus confirming that satisfactory arrangements have been made for the provision of underground telephone and power services, prior to issue of the Subdivision Certificate.

14. The subdivision certificate shall not be released until all conditions of consent of DA172/03 for the proposed dual occupancy development have been satisfied and an occupation certificate has been issued by the Principal Certifying Authority have been satisfied and an Occupation Certificate issued for that development by the Principal Certifying Authority (PCA).

**CARRIED UNANIMOUSLY**

270

**Council Meeting Frequency And Committee Structure**

File: S03324

**The following members of the public addressed Council:**

**U Righetti**

**Z Edwards**

For Council to determine its frequency for ordinary meetings of council and also to establish its process for decision making and community participation in undertaking this role.

**Council adjourned for a short interval at 9.22pm  
during discussion after a Motion moved by  
Councillors Bennett and Lane was CARRIED  
and the Chairperson ruled accordingly.  
The Meeting resumed at 9.29pm**

Those present were:

The Mayor, Councillor Ryan  
Councillor Andrew  
Councillor Bennett  
Councillor Cross  
Councillor Ebbeck  
Councillor Hall  
Councillor Lane  
Councillor Malicki  
Councillor Shelley

**Resolved:**

(Moved: Councillors Lane/Hall)

- A. That ordinary Council meetings be held on the first, second and fourth Tuesday of each month.
- B. That Council adopt the following Advisory Committees consistent with the terms outlined within the report:

- a. Traffic Committee
  - b. Access Committee
  - c. Companion Animals Advisory Committee
  - d. Heritage Advisory Committee
  - e. Parks, Sport and Recreation Reference Group
  - f. Bushland, Catchments and Natural Areas Reference Group
- D. That Charters for the committees be in accordance with those **attached** to the report as amended (Attachment B).
- E. That the following informal committees be initiated:
- a. Policy Committee
  - b. Planning Committee
  - c. Finance Committee
  - d. Infrastructure Committee
  - e. Community Development Committee
- G. That staff provide generic terms of reference for review at the first meeting of each informal committee.
- H. That nominations for community positions be considered at the first meeting of each Advisory Committee.
- I. That informal committees establish specific project groups that include community participation as appropriate.

**CARRIED UNANIMOUSLY**

- C. That Council nominate a Chair and Deputy Chair for each advisory committee as follows:

***Traffic Committee***

(Moved: Councillors Hall/Shelley)

Chair: Councillor Lane

(Moved: Councillors Lane/Cross)

Deputy Chair: Councillor Ebbeck

**CARRIED UNANIMOUSLY**

***Access Committee***

(Moved: Councillors Hall/Malicki)

Deputy Chair: Councillor Shelley

NOTE: A separate report will be submitted to Council to appoint a Chair to the Access Committee.

**CARRIED UNANIMOUSLY**

***Companion Animals Advisory Committee***

(Moved: Councillors Cross/Ebbeck)

Chair: Councillor Andrew

(Moved: Councillors Cross/Ebbeck)

Deputy Chair: Mayor, Councillor Ryan

**CARRIED UNANIMOUSLY**

***Heritage Advisory Committee***

(Moved: Councillors Ebbeck/Lane)

Chair: Councillor Cross

(Moved: Councillors Lane/Ebbeck)

Deputy Chair: Councillor Bennett

**CARRIED UNANIMOUSLY**

***Parks, Sport and Recreation Reference Group***

(Moved: Councillors Shelley/Lane)

Chair: Councillor Ebbeck

(Moved: Councillors Ebbeck/Cross)

Deputy Chair: Councillor Malicki

**CARRIED UNANIMOUSLY**

***Bushland, Catchments and Natural Areas Reference Group***

(Moved: Councillors Cross/Ebbeck)

Chair: Councillor Malicki

(Moved: Councillors Malicki/Ebbeck)

Deputy Chair: Councillor Andrew

**CARRIED UNANIMOUSLY**

- F. That Council nominate a Chair and Deputy Chair for each of the informal committees as follows:

### ***Policy Committee***

(Moved: Councillors Shelley/Hall)

Chair: Councillor Innes

*For the Resolution: The Mayor, Councillor A Ryan, Councillors Ebbeck, Hall, Lane and Shelley*

*Against the Resolution: Councillors Cross, Andrew, Bennett and Malicki*

(Moved: Councillors Cross/Lane)

Deputy Chair: Councillor Andrew

**CARRIED UNANIMOUSLY**

### ***Planning Committee***

(Moved: Councillors Shelley/Lane)

Chair: Mayor, Councillor Ryan

**CARRIED UNANIMOUSLY**

(Moved: Councillors Lane/Ebbeck)

Deputy Chair: Councillor Hall

*For the Resolution: The Mayor, Councillor A Ryan, Councillors Ebbeck, Hall, Lane and Shelley*

*Against the Resolution: Councillors Cross, Andrew, Bennett and Malicki*

### ***Finance Committee***

(Moved: Councillors Lane/Hall)

Chair: Councillor Shelley

*For the Resolution: The Mayor, Councillor A Ryan, Councillors Ebbeck, Hall, Lane and Shelley*

*Against the Resolution: Councillors Cross, Andrew, Bennett and Malicki*

(Moved: Councillors Lane/Cross)

Deputy Chair: Councillor Ebbeck

**CARRIED UNANIMOUSLY**

***Infrastructure Committee***

(Moved: Councillors Ebbeck/Lane)

Chair: Mayor, Councillor Ryan

(Moved: Councillors Lane/Ebbeck)

Deputy Chair: Councillor Shelley

**CARRIED UNANIMOUSLY**

***Community Development Committee***

(Moved: Councillors Lane/Hall)

Chair: Councillor Hall

(Moved: Councillors Lane/Hall)

Deputy Chair: Councillor Shelley

**CARRIED UNANIMOUSLY**

**Councillor Cross departed**

**QUESTIONS WITHOUT NOTICE**

271 **Bicentennial Park - Request Lighting in Off Leash Area**

File: S02243

Question Without Notice from Councillor E Malicki

Can we investigate installing lighting in the Off Leash area at Bicentennial Park as it is a heavily used area yet it is one of the only unlit areas of the Bicentennial Park?

**Answer by the Mayor**

So noted and will be reported.

272 **Bushland Management Division of Open Space**

File: S02462

Question Without Notice from Councillor E Malicki

Is the Bushland Management section of Open Space being downgraded, reduced in size or changed in any way at all?

Can a report be brought to Council on this matter, please?

**Answer by Director Open Space**

The resources have been placed into the draft Management Plan, there is no change from previous allocations.

273 **Tree Preservation Order**

File: S02419

Question Without Notice from Councillor T Hall

Would the General Manager confirm that this Council's Tree Preservation Order provides the necessary enforcement powers following the 1996 amendments to the Environment Planning and Assessment Act or has Ku-ring-gai the same difficulties faced by the Sydney City Council following its recent Land of Environment Court Judgement against it, relating to Sydney Domain trees?

**Answer by Director Open Space**

It is very early days in that Judgement but the initial information that I have been provided suggest that the Domain lands are in fact governed by State legislation and is as such, the State Legislation over-rides a Council's LEP which may include the Tree Preservation Order.

274 **Advertising Sign Fee under Section 608 of the Local Government Act**

File: S02367

Question Without Notice from Councillor T Hall

In 1996, Council adopted a control plan which provided for a 3-year fee covering all approved signs displayed on premises and not a fee-free sign as previously applied.

Is there resistance to the application of this 3-year fee when you have only very small signs that are now being imposed a \$126.00 fine fee on those existing signs which seems to be a burden on shopkeepers, etc.

**Answer by Director Environment & Regulatory Services**

I am not aware of any resistance but it's something I will take on notice and report back.

## **INSPECTIONS COMMITTEE – SETTING OF TIME, DATE AND RENDEZVOUS**

The next Inspections Committee will take place at 9.00am on a date to be determined to inspect the following locations:

- Freeway Lands at Wahroonga
- Canoon Road Netball Courts  
(both inspections to occur when netball is scheduled)

*The Meeting closed at 9.55pm*

The Minutes of the Ordinary Meeting of Council held on 1 June 2004 (Pages 1 - 40) were confirmed as a full and accurate record of proceedings on 8 June 2004.

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General Manager

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Mayor / Chairperson



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- Appendix 1 Schedule of activities that may cause contamination
- Appendix 2 Letter to be used when details regarding contamination need to be added to Council's property information system

## 1. BACKGROUND

This Policy forms the basis for the management of land contamination within the Ku-ring-gai local government area and implements State legislative requirements.

The general aim of the *Contaminated Land Management Act 1997* (CLM Act) is to establish a process for investigating and (where appropriate) remediating contaminated land. The Act sets out accountabilities for managing contamination, including Ku-ring-gai Council's own accountability for management of affected lands.

A package of reforms has been developed to complement the CLM Act, including *State Environmental Planning Policy No 55 – Remediation of Land* (SEPP55) and the *Managing Land Contamination: Planning Guidelines (the Planning Guidelines)* published by the Department of Urban Affairs and Planning & NSW Environment Protection Authority.

The planning and development control process as provided for in the *Environmental Planning and Assessment Act 1979* (EP&A Act) also plays an important role in the management of land contamination. You will notice several references to it in the Policy.

### 1.1 What is the Aim of this Policy?

This Policy applies to all land in the Ku-ring-gai local government area. In accordance with the *Planning Guidelines*, this Policy provides the framework for the integration of land contamination management into the planning and development process, and aims to:

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

In most cases Ku-ring-gai Council will deal with contaminated sites under the provisions of this Policy, however, if it is found or suspected that land contamination poses a significant risk of harm to public health or the environment then the NSW Environment Protection Authority (EPA) must be notified. The EPA can make declarations to order investigations or remediation of land (Section 7 of the *Contaminated Land Management Act 1997*).

**Please Note:** “Although the former Environment Protection Authority is now a part of the NSW Department of Environment and Conservation, certain statutory functions and powers continue to be exercised in the name of the Environment Protection Authority (EPA)”

### 1.2 What does “Land” mean under this Policy?

One aspect of contaminated land management under this Policy differs significantly to the *Planning Guidelines*. This has arisen through a difference between the definitions of “land” in the EP&A Act and in the CLM Act.

Council has previously investigated this matter with the (then) NSW Environment Protection Authority (now ~~known as~~ **part of** the NSW Department of Environment & Conservation or “DEC”) and the (then) Department of Urban Affairs and Planning (now known as the Department of Infrastructure Planning and Natural Resources or “DIPNR”). The former Department of Urban Affairs and Planning advised at that time, that the definition of land, for the purposes of both SEPP55 and Part 5 of the EP&A Act, includes buildings. The Department also advised that Section 149 certificates were the appropriate place to notify interested parties about the affect of Council’s policy on contaminated land/buildings.

Because of the well-established nature of development within Ku-ring-gai, this is likely to classify many buildings as “potentially contaminated land”. Therefore, to avoid undue burden on property owners who may have lead paint in buildings on their property, 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 in cases 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.

## 2. COUNCIL'S DECISION MAKING PROCESS

In determining all 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. A precautionary approach will be adopted to ensure that land contamination issues are identified and dealt with early in the planning process. This Chapter outlines how Council evaluates whether contamination may be an issue, and also the decision making process for carrying out Council's planning functions (eg rezoning of land, development consent etc).

It is worthwhile noting at this point that all contamination investigations must be carried out by a suitably qualified and experienced consultant and are carried out at the applicant/proponent's expense. Development consent or approval will not be given until Council is satisfied that the land is suitable for its proposed use. At any time during the decision making process, Council can request that a contaminated site auditor who has been formally accredited by the EPA is contracted to carry out an independent review of the investigation or any remedial work. Chapter 4 of this Policy explains the circumstances under which Council would require a site audit and what is involved in a site audit.

### 2.1 Council's Procedure for Considering Land Contamination Issues for Rezoning Applications.

- SEPP 55 requires Council to consider contamination issues in rezoning applications (including when Council is the proponent of the rezoning). Section 2.1.1 to 2.1.4 describe Council's procedure for considering land contamination issues for rezoning applications and the procedure is summarised in Figure 1.

In considering a rezoning application, Council must consider whether the land is or might be contaminated, and;

- if the land is contaminated, Council must be satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for all the purposes permissible in that zone, and;
- if the land require remediation to be made suitable for any purpose permissible in that zone, Council must be satisfied that the land will be remediated before the land is used for that purpose. (eg provisions in a Local Environmental Plan (LEP) or Development Control Plan (DCP) address contaminated at the Development Application stage).

When Council receives a rezoning application that covers more than one property or when 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. Council 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.

### 2.1.1 Initial Evaluation by Council

All rezoning applications are required to include a statement as to whether the site is likely to be contaminated. Council will conduct an initial evaluation as part of the assessment process for a rezoning application to determine whether contamination is an issue, and whether sufficient information is available for Council to make the decision in good faith.

The initial evaluation will be based on readily available factual information provided by the applicant and other information available to Council (eg previous contamination investigations, previous zoning and uses of the subject land, restrictions relating to possible contamination such as notices issued by the EPA. For that purpose, the contamination may be within a structure/building or other structure on the land, rather than only within the soil of that land.

If council is satisfied that the initial evaluation concludes that contamination is not an issue, then Council may not require any further investigations to be conducted, however Council will require further investigation to be conducted and results submitted with rezoning applications where it is found through the initial evaluation that the land concerned is:

- land that is within an investigation area which has been notified as such by the NSW EPA;
- land on which an activity referred to in Appendix 1 is being, or is known to have been, carried out; or
- proposed for development involving residential, educational, recreational, child care or hospital purposes and there is incomplete knowledge about whether an activity referred to in Appendix 1 is being, or is known to have been, carried out.

Council may also require further investigation to be submitted if 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.

Section 2.1.2 and 2.1.3 outline the process for further investigation.

### 2.1.2 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.

The preliminary site contamination investigation shall be carried out in accordance with the requirements of the NSW EPA *Guidelines for Consultants Reports on Contaminated Sites*. The applicant is responsible for engaging a suitably qualified **and experienced** consultant to undertake the preliminary site contamination investigation and is responsible for all costs borne in engaging the consultant.

If required for the investigation, applicants may request Council to perform a search of its records to determine previous approved developments at the site (see Chapter 5).

If Council is satisfied that contamination is not an issue, then Council may not require any further investigations to be conducted.

If the results of the preliminary investigation demonstrate the potential for, or existence of, contamination which may preclude the land from being suitable for the proposed zone, Council may require a detailed contamination investigation (See Section 2.1.3).

### 2.1.3 Detailed Site Contamination Investigation (Stage 2)

Council will require a detailed site contamination investigation to be undertaken when the result of the preliminary investigation demonstrate the potential for, or existence of, contamination, which may preclude the land from being suitable for the proposed zoning. In some cases Stage 1 and Stage 2 investigations may be combined where the land is known to be contaminated or where the site history is clear.

Council may not require a detail investigation at the rezoning stage, if, after considering the findings of a preliminary investigation, Council includes provisions in a LEP or DCP (see Section 2.1.4).

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
- if necessary, obtain sufficient information for the development of a Remedial Action Plan (RAP).

~~The detailed site contamination investigation shall be carried out in accordance with the requirements of the relevant DEC Guidelines.~~ **The detailed site contamination investigation shall be carried out in accordance with guidelines made or approved by the Environment Protection Authority under Section 105 of the Contaminated Land Management Act 1977 (guidelines are available on the EPA's website <http://www.environment.nsw.gov.au>).** The proponent is responsible for engaging a suitably qualified **and experienced** consultant to undertake the detailed site contamination investigation. In addition, the proponent is responsible for all costs borne in engaging the consultant and site auditor (see Chapter 4).

The detailed site contamination investigation **should be consistent with the requirements of the EPA's Guidelines for Consultant's Reporting on Contaminated Sites** and should state 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 report 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 rezoning can proceed with certain provisions. (see Section 2.1.4).

If the detailed site contamination investigation shows that the site is contaminated such that it cannot be remediated, Council may not allow the rezoning to proceed.

The CLM Act places a duty on the ~~polluter and owner~~ **owner and the polluter** of contaminated land that presents a “significant risk of harm” to public health or the environment to report that contamination to the EPA.

#### **2.1.4 Provisions in a LEP or DCP**

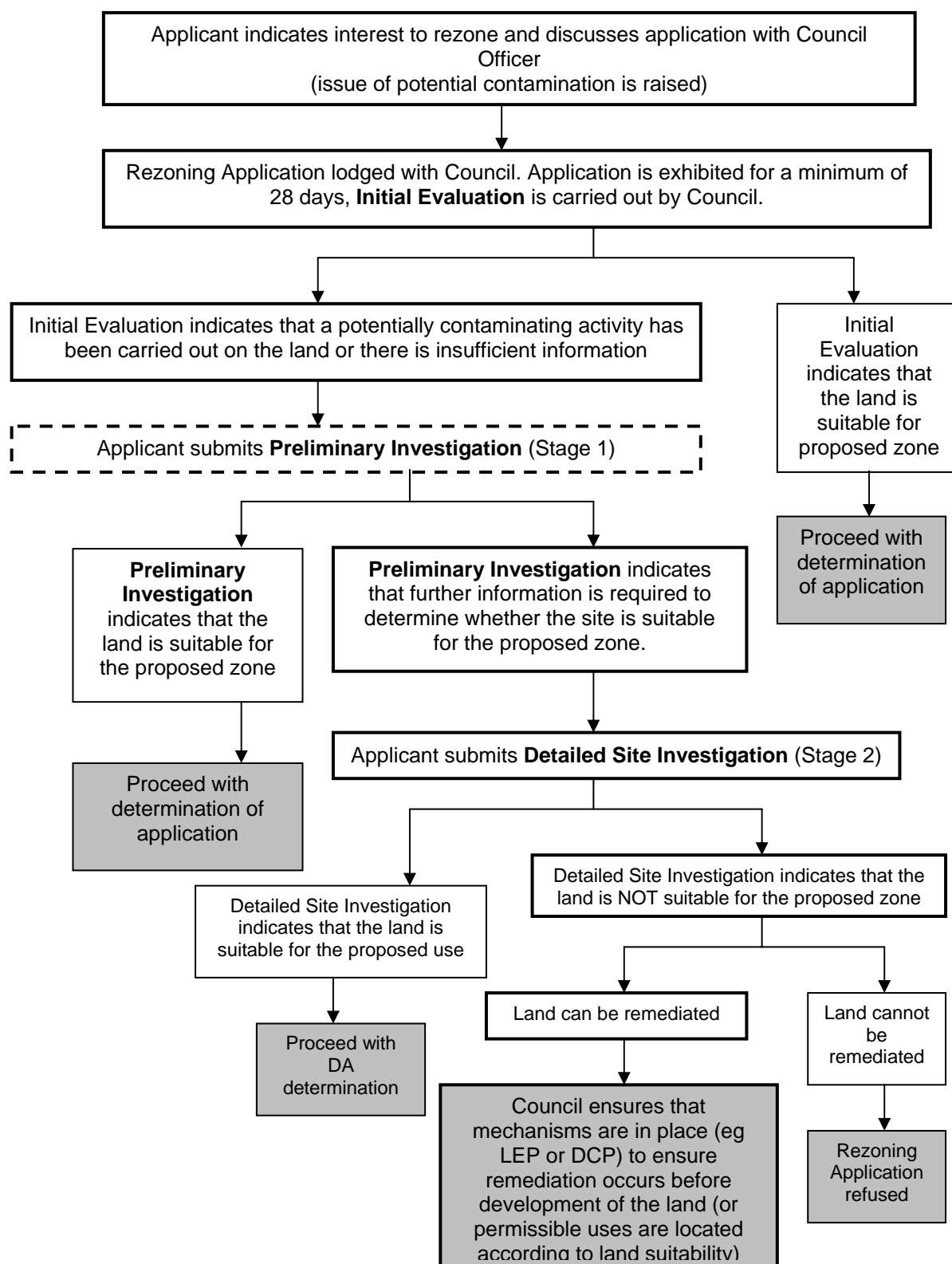
If site contamination investigations show that the site is contaminated, but that remediation is feasible, Council may include provisions in a Local Environmental Plan or Development Control Plan to ensure that remediation is addressed prior to the redevelopment of the land. Section 2.2.4 and 2.25 outline the process for remediation and validation prior to development.

For generalised rezonings of more than one property, Council may decide to only consider the findings of a preliminary investigation and, if contamination is an issue, include provisions in a LEP or DCP to ensure that a detailed investigation is carried out prior to redevelopment.

The rezoning can proceed as usual once these provisions are in place.



**Figure 1 Council's Procedure for Considering Land Contamination Issues for Rezoning Applications**



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

## **2.2 Council Procedures for Considering Land Contamination Issues for Development Applications (including Subdivisions)**

The *Environmental Planning and Assessment Act 1979* requires Council to consider “the suitability of the site for the development” when assessing development applications (DAs). The risk from contamination to 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 the land is contaminated, Council is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose of the proposed development, and;
- 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.

Council’s procedure for considering land contamination issues for development applications is summarised in Figure 2 and outlined in Section 2.2.1 to 2.2.5.

### **2.2.1 Initial Evaluation by Council**

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

The initial evaluation will be based on readily available, factual information provided by the applicant and other information available to Council (eg previous contamination investigations, previous zoning and uses of the subject land, and restrictions relating to possible contamination such as notices issued by the EPA). For that purpose, the contamination may be within a structure/building or other structure on the land, rather than only within the soil of that land.

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.

Council will require further investigation, however, where it is found through the initial evaluation that the land concerned is:

- land that is within an investigation area which has been notified as such by the EPA;
- land on which activities referred to in Appendix 1 are being, or are known to have been, carried out; or

- land on which there is incomplete knowledge about whether activities referred to in Appendix 1 are being, or are known to have been carried out, and if the proposed development involves residential, educational, recreational, child care or hospital purposes.

Council may also require further investigation when:

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

Council will notify the applicant or proponent in writing if further investigations are required. Section 2.2.2 and 2.2.3 outline the process for further investigation.

### **2.2.2 Preliminary Site contamination Investigation (Stage 1)**

Council will require a preliminary investigation from an applicant or proponent if the results of the initial evaluation (see Section 2.2.1) carried out by Council suggest that contamination may be an issue.

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.

The preliminary investigation shall be carried out in accordance with the EPA *Guidelines for Consultants Reporting on Contaminated Sites*. The proponent is responsible for engaging a suitably qualified **and experienced** consultant to undertake the preliminary site investigation. In addition, the proponent is responsible for all costs borne in engaging the consultant.

Applicants may request Council to perform a search of its records to determine previous approved development at the site (see Chapter 5).

If council is satisfied that the site is suitable for the proposed use, then Council may not require any further contamination investigations to be conducted and the development application can proceed through Council's usual procedures.

If the results of the preliminary investigation demonstrate the potential for, or existence of, contamination which may preclude the land from being suitable for the proposed use, Council may require a detailed site contamination investigation (see Section 2.2.3).

### 2.2.3 Detailed Site Contamination Investigation (Stage 2)

Council will require a detailed site contamination investigation to be undertaken when the results of the preliminary investigation (see Section 2.2.2) demonstrate the potential for, or existence of, contamination, which may preclude the land from being suitable for the proposed use. In some cases Stage 1 and Stage 2 investigations may be combined where the land is known to be contaminated.

The objectives of a detailed site contamination investigation (Stage 2) are to:

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

The detailed site contamination investigation shall be carried out in accordance with the requirements of the EPA *Guidelines for Consultants Reports on Contaminated Sites*. The proponent is responsible for engaging a suitably qualified **and experienced** consultant to undertake the detailed site contamination investigation. In addition, the proponent is responsible for all costs borne in engaging the consultant.

The detailed site contamination investigation shall state whether the site is suitable for the proposed use and for all other purposes permissible in the zone, or if remediation is necessary. If remediation is required, the report should also list the feasible remediation options available to remediate the site in order to make it suitable for the proposed use.

If Council is satisfied that the site is suitable for the proposed use, then Council may not require any further investigations to be conducted and the development application can proceed through Council's usual procedures.

If the results of the detailed site contamination investigation 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 DA or to remediate the land. If the latter is chosen, Council will require a Remedial Action Plan (see Section 2.2.4).

The CLM Act places a duty on the ~~polluter or owner~~ **owner and the polluter** of contaminated land that presents a “significant risk of harm” to public health or the environment to report that contamination to the EPA.

#### **2.2.4 Remedial Action Plan (RAP) (Stage 3)**

If a property owner decides to carry out remediation, Council will require the submission of a Remedial Action Plan developed by a suitably qualified **and experienced** consultant. Prior to determining the subdivision or 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.

The objectives of a remedial act plan (RAP) are to:

- set remediation objectives:
- determine the most appropriate remedial strategy; and
- identify necessary approvals that need to be obtained from regulatory authorities (eg: EPA, Department of Infrastructure Planning and Natural Resources (DIPNR, formerly the Department of Land and Water Conservation), NSW Fisheries, the Roads and Traffic Authority, etc).

Section 3.2 details what should be included in a remedial action plan (RAP).

#### **2.2.5 Validation and Monitoring Report (Stage 4)**

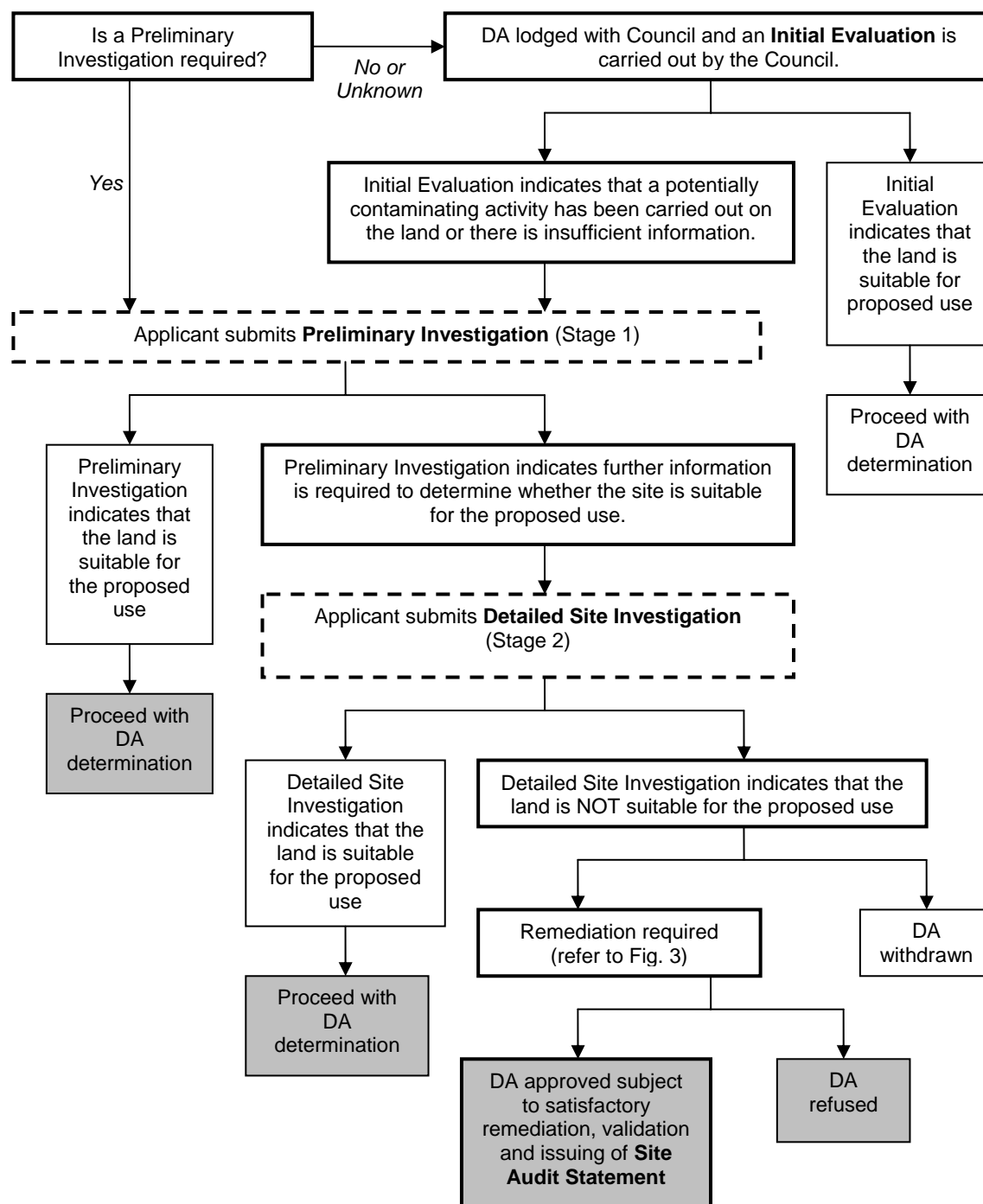
The objective of the validation and monitoring report is to demonstrate that the objectives stated in the RAP have been achieved and that any conditions of development consent in regard to contaminated land have been complied with.

Council will require a validation and monitoring report to be submitted by the applicant after remediation works have been completed, and prior to the commencement of building construction works. This will normally be achieved by Council planning a condition on any consent granted requiring the submission of a validation and monitoring report prior to the issuing of a construction certificate. Alternatively, Council may issue a deferred commencement or a staged consent for the proposed use, requiring that remediation and validation is undertaken prior to other work commencing.

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

Council may require independent review of the remediation and validation by an EPA accredited auditor (see Chapter 4).

**Figure 2 Council's Procedure for Considering Land Contamination Issues for Development Applications**



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

### 2.3 Remediation Proposals not in Association with a Rezoning or Development Application

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, regardless of whether they intend to carry out development, or apply for rezoning of that land.

Investigation must be carried out in accordance with the relevant EPA guidelines by a suitably qualified **and experienced** consultant. Remediation must be carried out according to relevant State legislation and the process outlined in Chapter 3 of this Policy.

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 (see Chapter 5).

**It should be noted that ~~any person~~ there is a duty on polluters and owners of land, who become aware that land ~~may have been~~ is contaminated in such a way as to present a “significant risk of harm” (to human health, or to the environment) ~~has a duty under Section 60 of the Contaminated Land Management Act 1997 to notify the Department of Environment and Conservation~~ Environment Protection Authority, in writing and as soon as possible practicable. Any such person is also advised to refer to the relevant section of the Act, and/or ~~Department of Environment and Conservation~~ the Environment Protection Authority for further information.**

### 2.4 Agricultural and Horticultural Land in Ku-ring-gai

Prior to urban settlement, many areas of Ku-ring-gai were used for agricultural and horticultural purposes. These activities are listed in Appendix 1 as activities that may cause contamination. Council was unable to identify these areas accurately in the readily available records that were reviewed during the development of this Policy.

The EPA guidelines do not provide any guidance on the duration of time since the activity ceased and the requirement for investigation of contamination. However the EPA have advised that arsenic-based pesticides were applied to intensive agriculture such as orchards and market gardens more than 50 years ago. Land where these uses occurred may have elevated levels of arsenic, lead, copper and zinc.

An EPA discussion paper, the *“~~Draft Guidelines for Assessment of Orchard and Market Garden Contamination—Contaminated Sites Discussion Paper~~”* **“Draft Guidelines for Assessing Former Orchards and Market Gardens”**, provides some guidance on more recently redeveloped orchards and market gardens. According to the discussion paper, chemicals of concern in these areas include organochlorine (OCs) and organophosphate (OPs). The use of the residual organochlorine pesticides such as dieldrin, heptachlor and DDT, gradually diminished in the early 1980s and from 1986/87 have either been restricted or prohibited from agricultural use. The predicted persistence of these compounds are 5 to 15 years.

The EPA have suggested the following approach to historical agricultural lands in Ku-ring-gai. Where an initial evaluation by a Council officer assessing a development application or rezoning proposal identifies that the land was previously used for agricultural or horticultural purposes, the Council officer may request a preliminary investigation (see Section 2.1.2 and 2.2.2 respectively) to be carried out to determine the history of the property.

If the preliminary investigation shows that the land was only used for broadacre agricultural purposes **then the application may proceed. Although** ~~it would be less~~ **it is still** likely that pesticides were used **for broadacre-type farming the likelihood of elevated levels of residual pesticides remaining in the soil would be lower** ~~and the application may proceed.~~ However, if **investigations show that** the land was used as an intensive orchard or market **then** a further investigation (ie sampling) may be required.

Further investigation may take the form of a detailed investigation such as that described in the EPA *Guidelines for Consultants Reporting on Contaminated Site*. However the abovementioned EPA discussion paper on *Assessment of Orchard and Market Garden Contamination* details a less-intensive sampling regime for these types of properties. Applicants should also be referred to these guidelines where relevant.



### 3. COUNCIL'S REQUIREMENTS FOR REMEDIATION

#### 3.1 Is Consent Required for Remediation?

SEPP 55 attempts to facilitate remediation of contaminated land by only requiring development consent for remediation under certain conditions. If remediation falls under these conditions it is defined as Category 1 remediation work, and requires consent. All other remediation is classified as Category 2 and does not require separate development consent. This section defines Category 1 and Category 2 remediation work.

All remediation must be carried out by a suitably qualified **and experienced** consultant in conjunction with a Remedial Action Plan. Council's procedure for considering site remediation proposals is shown in Figure 3.

#### Category 1 Remediation Work

SEPP 55 defines Category 1 remediation work as remediation work that is:

- a) designated development, or
- b) carried out or to be carried out on land declared to be a critical habitat, or
- c) likely to have a significant effect on a critical habitat or a threatened species, population or ecological community, or
- d) development for which another State Environmental Planning Policy or a Regional Environmental Plan requires development consent, or
- e) carried out or to be carried out in an area or zone to which any classifications to the following effect apply under an environmental planning instrument:
  - i) coastal protection;
  - ii) conservation or heritage conservation;
  - iii) habitat area, habitat protection area, habitat or wildlife corridor;
  - iv) environment protection;
  - v) escarpment, escarpment protection or escarpment preservation;
  - vi) floodway;
  - vii) littoral rainforest;
  - viii) nature reserve;
  - ix) scenic area or scenic protection;
  - x) wetland; or
  - xi) carried out or to be carried out on any land in a manner that does not comply with a policy made under the contaminated land planning guidelines by the council for any local government area in which the land is situated (or if the land is within the unincorporated area, the Western Lands Commissioner).

Category 1 remediation requires consent and is deemed to be “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 s.29A of the *Environmental Planning and Assessment Act 1979*.

If, for a proposed development, remedial works are required and constitute Category 1 remediation work, 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.

## **Category 2 Remediation Work**

Category 2 remediation work is all remediation work that is not Category 1 remediation work (see Section 3.1.1). Category 2 remediation work does not require development consent. Part 5 of the *Environmental Planning & Assessment Act 1979* applies where development consent is not required under a planning instrument but where an approval from a public authority is required (eg Council, NSW Department of Environment & Conservation (incorporating the National Parks and Wildlife Service), Department of Infrastructure Planning and Natural Resources, NSW Fisheries, NSW Roads and Traffic Authority, etc.).

Each determining authority will consider the potential significance of any environmental impacts from the proposed remediation. If any of the determining authorities consider that the proposed remediation is likely to significantly affect the environment, an Environmental Impact Statement (EIS) would be required. If consent is not required for remediation under the SEPP. It is unlikely that the remediation will significantly affect the environment and therefore an EIS will probably not be necessary. However, this is a decision that must be made on a case by case basis. If each determining authority decides an EIS is not required, then a ‘Review of Environmental Factors’ must be prepared. (Council’s Planning Officers can assist with further information about the Part 5 environmental assessment process).

Council must be notified at least 30 days before commencement of Category 2 remediation works. Prior notice of Category 2 remediation works must:

- a) be in writing;
- b) provide name, address and telephone number of the person who has the duty of ensuring that the notice is given;
- c) briefly describe the remediation work;
- d) show why the person considers that the work is Category 2 remediation work (refer to clause 9, 14 and (if it applies) 15(1) of SEPP 55);
- e) specify, by reference to its property description and street address (if any), the land on which the work is to be carried out;
- f) provide a map of the location ; and

g) provide estimates of the dates for the commencement and completion of the work.

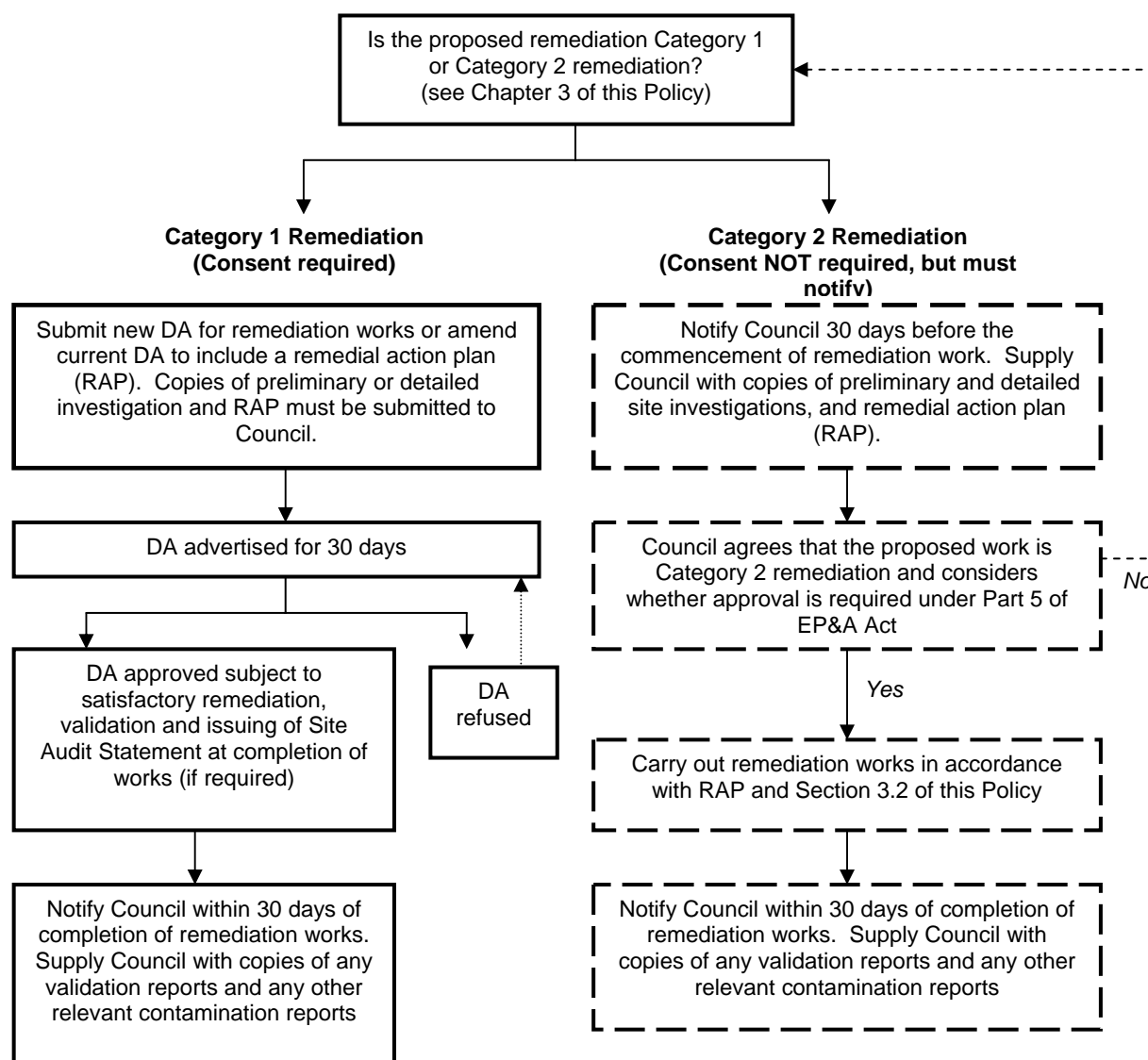
The following information must be submitted with the notification of works:

- A copy of any contamination investigation reports and Remedial Action Plan for the subject site.
- Contact details for the remediation contractor and party responsible for ensuring compliance of remediation work with all relevant regulatory requirements (if different to remediation contractor).

The notification and accompanying documents should be addressed to Council's Manager Development Control.

A copy of the Validation and Monitoring Report and Site Audit Statement from an EPA accredited auditor ~~if relevant~~ **(where one has been issued)** must be forwarded to Council within 30 days of the completion of remediation works. Council will not consider any subsequent development applications for the site until it is satisfied that the site is suitable for the proposed use.

**Figure 3 Council's Procedure for Considering Site Remediation Proposals**



*NB: Council may require an independent review by an EPA accredited auditor at any or all stages of the site investigation and remediation process.*

### 3.2 What Should be Included in a Remedial Action Plan?

As outlined in the previous sections, Category 1 remediation work requires a development application that includes the proposed remediation works. Category 2 remediation does not require consent, however a Remedial Action Plan must be submitted to Council 30 days before commencement of works. The Remedial Action Plan should be prepared and carried out by a suitably qualified **and experienced** consultant. It should incorporate an Environmental Management Plan (which is to be consistent with the EPA's *Guidelines for Consultants Reporting on Contaminated Sites*) and an occupational health and safety plan. If the remediation work is to be carried out by a subcontractor then the remedial action plan should incorporate the basic objectives, however the related plan may be developed by the subcontractor once contracted.

All remediation reports shall clearly conclude that, in the opinion of the author and based upon the evidence presented in the report, that the remediation activities recommended within the report will result in the site being rendered suitable for its intended use.

This section outlines the issues and provisions that should be addressed in the plan. These provisions have been formulated to ensure that remediation work does not adversely impact on the environment or public amenity. All remediation work must be consistent with the *Managing Land Contaminated Planning Guidelines* and be carried out in accordance with EPA guidelines made under the CLM Act.

Remediation work that does not comply with the requirements outlined in this Section will be classified as Category 1 remediation work and will require consent.

Development applications lodged for Category 1 remediation works should identify any areas of potential non-compliance with this section and identify 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 outlined below does not imply that all relevant environmental legislation and regulations have been complied with. Non-compliance with relevant environmental legislation and regulations 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 (or as amended by legislation).

#### 3.2.1 Hours of Operation

All remediation work shall be conducted within the following hours:

Monday – Friday	7am – 5.30pm
Saturday	8am – 12.00 noon
Sundays and Public Holidays	No work is permitted

### 3.2.2 Soil and Water Management

All remediation works shall be conducted in accordance with Council's (Water Management Development Control Plan (DCP 47). If any water is to be released to the stormwater system, techniques from "*Managing Urban Stormwater – Soils and Construction*" (New South Wales Department of Housing, 1998) should also be employed during dewatering activities.

A copy of the Soil and Water Management Plan or the Erosion and Sediment Control Plan (which may be incorporated into the RAP) shall be kept on-site and made available to Council officers on request. All erosion and sediment measures must be in place **prior** to the commencement of works and must also be **maintained** in a functional condition throughout the duration of all remediation works.

#### *Site Drainage*

It is an offence under the *Protection of the Environment Operations Act 1997* to cause water pollution. Water that runs over or leaches through contaminated soil may dissolve heavy metals or other contaminants, thereby contaminating the water. Where practicable, clean runoff should be diverted around the remediation site to minimise the volume of water requiring management. Monitoring should be undertaken to ensure that water leaving the site via the stormwater system or runoff is within **any EPA legislative requirements** and ANZECC standards for water quality.

All runoff and leachate from within a contaminated site must be captured in sediment basins and may be treated on site prior to disposal of clean supernatants and/or removed by a liquid waste transporter for treatment/disposal to an appropriate waste treatment/processing facility according to the EPA *Environmental Guidelines: Assessment, Classification and Management of Liquid or Non-Liquid Wastes*.

#### *Erosion & Sediment control and the Establishment of Stockpiles*

- Excavation of the site shall not commence until such time as all necessary approvals have been obtained;
- Any site materials cleared that are not contaminated (topsoil or other spoil, including subsoils, sands, vegetation, rock, etc), shall be stockpiled for re-use on-site (for example, to landscape the site) or to be otherwise re-used or recycled. Such stockpiles shall:
  - be located at least two metres from any hazard area (including surfaces with grades greater than 15 per cent, zones of concentrated stormwater flow, driveways and/or temporary vehicular access ways, footpaths, nature strips, kerblines, gutters, open swales and the drip zones of trees);
  - have sediment fencing installed on all downslopes; and

- be covered with geofabric or tarpaulin that is held down firmly at all corners and sides or otherwise located and protected in a position where erosion of stockpiled materials will not occur.
- All vegetation not in the immediate works area shall be retained.

**Note:** Vegetation is a very effective barrier against erosion, helping to absorb the impact of rain on the land, reducing the volume and rate of stormwater runoff, binding the soil with roots and protecting the soil from wind erosion.

- Waste (including skip bins), stockpiles of soil, construction materials, equipment or sediment barriers shall at no time be placed in public walkways, verges, Council roads or road reserves unless a permit has been obtained from Council and the prescribed fee has been paid to Council. Materials shall only be stored if subject to public liability insurance cover to the order of \$20 million.

**Note:** Under the *Roads General Regulation 2000*, significant fines apply to the placing on the road (including footpath) of any thing likely to restrict or endanger road use.

- Erosion and sediment control barriers shall:
  - Be in place prior to the commencement of any earth works at the site;
  - Where possible, be located within property boundaries;
  - Not consist of hay or straw bales unless wrapped completely in geotextile fabric and if used on a soft surface, are dug into the ground a minimum of 75 mm;
  - In the case of silt fences:
    - ◆ be installed such that stormwater flows are directed through them;
    - ◆ have the bottom edge buried at least 150mm into the soil and pegged tightly; and
    - ◆ be material specifically designed for sediment control;
  - be erected and maintained around drainage inlets such that sediment is prevented from entering the waterways;
  - be checked at least daily as well as immediately after storm events and shall be repaired or replaced such that barriers at the site are fully functional at all times;
  - be emptied when not more than 40% capacity has been reached; and
  - not be removed until such time as all permanent landscaping has been completed.

**Note:** Failure to effectively maintain sediment and erosion control devices may result in the responsible individual or corporation receiving an on-the-spot fine, clean-up notice or court action under the *Protection of the Environment Operations Act 1997*.

- At large excavation sites, all care shall be taken to ensure that stormwater is directed away from the excavation area at all times. However, in the event that the excavation site fills with water, water shall be removed in a manner that does not increase erosion, sedimentation, pollution of drainage systems (whether natural or not) or contamination of other soils or waterways.

**Note:** Water may **not** be pumped directly across disturbed soil, especially any areas of contaminated soil.

- Sediment removed from any trapping device shall be disposed of or relocated so as to prevent further erosion and pollution of waterways or other lands. Disposal/relocation of all sediments shall comply with all relevant legislation, including the *Contaminated Land Management Act 1997*.
- Any sediment spilled within the property or onto roadways shall be collected and removed with a spade and dry broom (without water) and disposed of so as to prevent further erosion and pollution of waterways. Spilled sediment should never be washed or swept into a watercourse or inlet to a stormwater system.
- Whenever there is potential for dust movement (and especially during periods of dry weather), a light spray of water shall be applied to the site at regular intervals to minimize the airborne transfer of sediment, however water shall not be applied in such a way as to create run-off. All stockpiles of soil or other materials which are likely to generate dust or odours shall be covered and/or kept moist (also see below under *Dust Control* for possible further requirements).
- A single stabilised vehicular access point be established prior to the commencement of any works, wherever works proposed will involve the entry and exit of vehicles to and from the site. The access way must connect to either the kerb and gutter or the dish crossing (if neither exists, one or the other, as appropriate, must be constructed).
- A shaker pad must be established as part of the vehicular access way, and shall be:
  - Established on suitably prepared and compacted material;
  - Constructed flush with the adjoining surfaces;
  - A minimum of 10 metres in length;
  - Designed with rungs spaced 200 -250mm apart and with a maximum width of 75mm each;



- 300mm clear of the finished sub-grade or base level below; and
- Maintained to all the above listed standards.
- Fencing shall be used to confine the passage of vehicles to the single stabilised entrance and any internal road.
- Runoff from access surfaces shall drain to an adjacent sediment-trapping device on the subject site.

**Note:** On larger sites, Council may require the establishment of a stabilized construction road in conjunction with the access way in order to define movement across or through the site.

- Vehicle loads of waste and construction material must be covered during transportation and must comply with the *Protection of the Environment Operations Act 1997* and the *Road Transport Act (NSW) 1999*.
- The stormwater disposal system shall be installed at the earliest stage possible.
- All stockpiles of contaminated soil shall be stored in a secure area and be covered and bunded if remaining more than 24 hours and earlier during wet or windy weather or if located on steep slopes (also see below under *Dust Control* for possible further requirements).
- Uncontaminated topsoils shall not be stockpiled at the site for any period greater than two weeks.
- Landscaping works or temporary stabilization with geotextile fabric shall be implemented at the earliest possible stage to ensure stabilisation of the soil.

#### *Site Access*

Vehicle access to the site shall be stabilized 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, shoveling, or a means other than washing, either on a daily basis or more frequently if required. These materials must not be washed into the stormwater system.

Soil washings from a designated washdown area shall be collected and disposed of in a manner that will neither pollute waters nor enter the stormwater system.

Council's requirements regarding the provision of vehicular access point(s), shaker pads and internal access road, the temporary storage of materials and wastes on public lands and the transportation of material and wastes are all described above, and/or within Council's Water Management Development Control Plan (DCP 47),

### *Groundwater*

If any groundwater is to be extracted, an approval and licence under the *Water Act 1912* (or the *Water Management Act 2000*, when fully implemented) will need to be obtained from the Department of Infrastructure, Planning and Natural Resources (DIPNR). All provisions of that licence shall be adhered to.

Groundwater shall also be analysed for pH and any contaminants of concern identified during the preliminary or detailed site investigation, prior to discharge to the stormwater system. The analytical results must comply with any EPA legislative requirements and ANZECC standards for water quality.

Other options for the disposal of groundwater may include disposal of 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.

### **3.2.3 Landscaping/Rehabilitation**

A landscape plan should be submitted to Council as part of the Remedial Action Plan. The plan should include specifications including, but not limited to; final soil levels; fill; contours; topsoil; plantings etc.

If topsoil is removed it should be replaced to ensure that the site can be revegetated to protect against erosion and ensure that future garden planting on the site is successful. Any change in soil levels should not impact on existing trees. The drainage and topography of the site should not be significantly affected by remediation.

Council has in force a Tree Preservation Order, which requires Council's consent for the removal, lopping or damage of any tree covered by the Order. The landscape plan should include a plan (scale 1:200) showing the accurate location of all trees greater than three (3) metres in height on-site and on adjoining boundaries and nature strips. The plan should include the following:

- Location of trees in relation to proposed excavation;
- Species name;
- Trunk diameter 1.5 metres above existing ground level;
- Soil level at base of trunk;
- Height and spread of canopy;
- Identify those trees to be removed for remediation works.

Regular tree inspections by a qualified arborist before, during and after any site works will ensure the survival of the existing trees. Protective tree fencing such as 1800mm star pickets using four strands of wire as well as chain mesh should be erected around the dripline of all trees remaining on the site and be inspected prior to the commencement of any works.

No activities, storage or disposal of material should take place beneath the canopy of any tree in the tree protection zones.

Where retention of original vegetation is not possible, then all exposed areas shall be progressively stabilized and revegetated as soon as possible after the completion of remediation works.

Revegetation of a site can be either temporary or permanent, depending on the speed of stabilization required and the intended future use of the site, and it is also possible to make use of both techniques at the same time.

Vegetation stabilization, where utilized, shall be undertaken in accordance with the following controls:

- a) before undertaking any revegetation works, any pre-existing causes of degradation shall be addressed.
- b) erosion and sediment control measures must be retained in good working condition until such time as the site is properly stabilized.
- c) All landscaping on disturbed areas shall be carried out in accordance with the approved landscape plans. Vegetation stabilisation shall not preclude the carrying out of works in accordance with the landscape plan.
- d) Non-indigenous plant species used for temporary vegetative stabilization shall be non-invasive and shall be of a form that will not deter the establishment of indigenous species.

**Note:** Temporary vegetation is generally undertaken using annual species as they tend to grow faster, however annual species are not appropriate for permanent vegetative stabilisation as they commonly cease to provide stabilization after 6 – 8 months.

- e) Revegetation undertaken in riparian zones shall be permanent revegetation only utilizing locally native vegetation species.

**Note:** Any development that includes an 'activity' being undertaken within 40 metres of the top of the bank or shore of 'protected water', with the exception of waters administered by the NSW Waterways Authority and in certain identified circumstances, is Integrated Development. Integrated Development requires consent from at least one public body other than Council. Contact Council prior to finalizing the location if the development or any works associated with that development are located within 40 metres of a waterbody.

- f) Plants used for permanent vegetation stabilisation shall consist of not less than 100% locally native tree species and 50% locally native understorey species. Any annual plant species used shall be native.
- g) Where permanent vegetative stabilisation is undertaken in bushland, the ground shall be further protected against erosion by the placement of mulch or a biodegradable blanket.
- h) If degradation has altered conditions such that revegetation to pre-development standards is not possible, rehabilitation must be designed to suit the changed conditions.
- i) All disturbed areas shall be rehabilitated (landscaped) within twenty (20) days of completion of remediation or building works, or provided with interim control treatment.

#### *Importation of Fill Materials*

All fill imported on to a site must comply with relevant EPA requirements. Fill imported on to the site shall also be compatible with the existing soil characteristics for site drainage purposes. Validation is required to ensure the imported fill is suitable for the proposed land use from a contamination perspective.

The following information on imported fill should be provided in the Validation and Monitoring Report:

1. all reports that may have been used to validate and/or verify contamination status of any imported material;
2. the address of the site that the imported material originated from;
3. the names of all persons/companies involved with the importation of fill;
4. tonnage/cubic metres of imported material;
5. the date and time of arrival of the material on site; and
6. the registration number of the vehicle delivering the material.

This information will ensure that Council is able to provide accurate information on future Planning Certificates with regard to what the land is suitable for.

### *Bioremediation*

Bioremediation, or landfarming, is the removal of contaminants from soil using natural biological processes (similar to **the natural biological process that occur during** composting, **and is not simply the volatilization of contaminants to the atmosphere**). All bioremediation areas for hydrocarbon contaminated soils shall be placed in an impermeable bunded area to contain surface water runoff from the landfarm 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 Total Petroleum Hydrocarbons (TPH) or BTEX. It is the proponent's responsibility to have this analysed prior to discharge. Non-compliance may lead to fines under the *Protection of the Environment Operations Act 1997*.

### **3.2.4 Air Quality**

#### *Noise*

In addition, to comply with Ku-ring-gai Council's "Code for the Control and Regulation of Noise on Building Sites", remediation work shall comply with the ~~Department of Environment and Conservation~~ **Environment Protection Authority's** *Environmental Noise Manual* for the control of construction site noise. The *Manual* specifies the following:

- 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 LA90 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 10dBA.
- 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 5dBA.
- All equipment and machinery shall be operated in an efficient manner to minimize the emission of noise.

#### *Vibration*

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

#### *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 40% porous, open-weave barrier fence around the perimeter of the site;

- Securely covering all loads entering or exiting the site;
- Covering of all stockpiles of contaminated soil remaining more than 24 hours;
- Keeping excavation surfaces moist, use of water sprays across the site may assist;
- Limiting traffic movement; and
- The use of protective groundcovers such as mulches, hydroseeding etc immediately following completion of earthworks.

### *Odour Control*

No odours shall be detected at any boundary of the site during remediation works by a Council officer who is authorized under the POEO Act and who is relying solely on their sense of smell. 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 hydrocarbon mitigating agent on the impacted areas/materials; and
- Adequate maintenance of equipment and machinery to minimize exhaust emissions.

Volatile or semi-volatile compounds that could generate odours include monocyclic aromatic hydrocarbons (styrene, benzene, toluene, xylene, ethyl benzene, butyl benzene), polycyclic aromatic hydrocarbons (PAHs), hydrogen sulfide, hydrogen cyanide, pesticides, polychlorinated biphenyls (PCBs) and herbicides.

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 offgas shall be put in place prior to the commissioning of the soil vapour extraction systems. All discharge vents from soil vapour extraction systems shall be located a minimum of 50 metres from any residential property boundary, road or recreational area. No material shall be burnt on-site.

### **3.2.5 Transport**

A licence under the *Protection of the Environment Operations Act 1997* (issued by the ~~Department of Environment and Conservation~~ **NSW Environment Protection Authority**) may be required for the transport of any contaminated waste. Relevant requirements under the EPA's *Environmental Guidelines: Assessment, Classification and Management of Non-Liquid Wastes* (1997) shall also be adhered to.

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

- Comply with all road traffic rules;
- Minimize noise, vibration and odour to adjacent premises; and
- Utilize State Road and minimize use of local road (see Figure 4).

Remediation work shall ensure that all site vehicles:

- Conduct deliveries of soil, materials, equipment or machinery during the hours of remediation work identified in Section 3.2.1;
- Securely cover all loads to prevent any dust or odour emissions during transportation;
- Exit the site in a forward direction; and
- Do not track soil, mud or sediment onto the road.

Control of all traffic and related issues (ie numbers, tonnage/cubic metres of waste exported from the site, routes, hours, truck types, spillage on roads, cleaning etc) would be logically and conveniently contained in a “Transport Management Plan” to be provided to Council prior to the commencement of the earthworks. Transport and related matters are likely to be some of the most publicly visible aspects of the proposed works. Accordingly, having this co-ordinated plan/strategy will be invaluable to base community consultation activities upon, and to also be a valuable source document in the event of complaints, Councillor questions, etc during the process.

If there is a significant risk that road damage will occur as a result of remedial action measures, Council may require the lodgment of a bond to compensate for any such damage.

### **3.2.6 Waste Management**

Hazardous and/or intractable wastes arising from the remediation work shall be removed and disposed of in accordance with the requirements of both the EPA and the WorkCover Authority, together with any other relevant legislation and accepted guidelines, including:

- a) *New South Wales Occupational Health and Safety Act 2000 and Regulations 2001;*
- b) *Regulation 84A-J “Construction Work Involving Asbestos or Asbestos Cement” 1983, as amended 1984, 1986, 1990 and 1996 of the New South Wales construction Safety Act 1912;*
- c) *Contaminated Land Management Act 1997 and Regulations 1998;*

- d) *Environmentally Hazardous Chemicals Act 1985 and Regulations 1999;*
- e) National Occupational Health and Safety Council's (NOHSC) *Guide to the Control of Asbestos Hazards in Buildings and Structures;*
- f) NOHSC's *Code of Practice for the Safe Removal of Asbestos.*

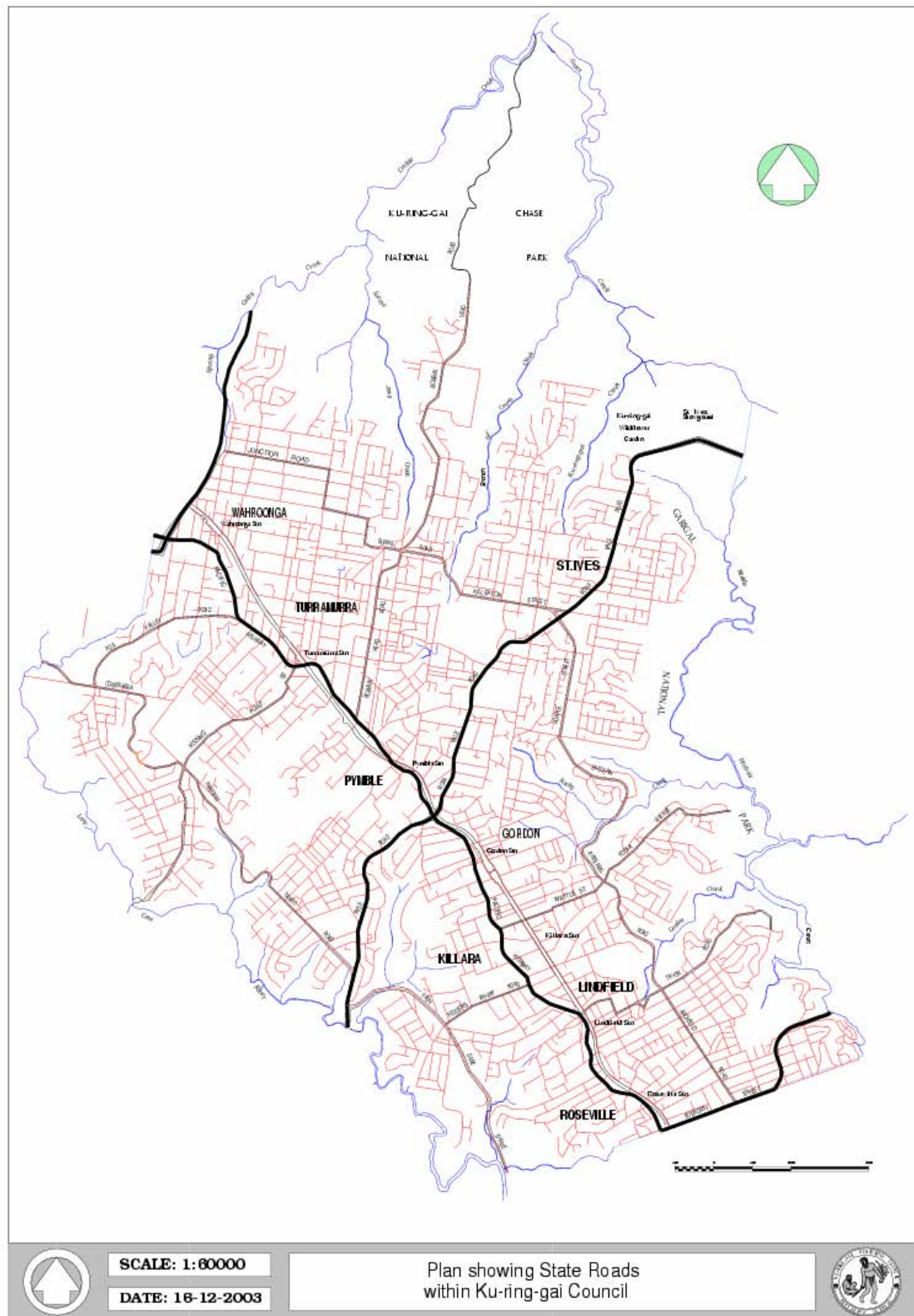
Under the *Protection of the Environment Operations Act 1997* the transportation of Schedule 1 Hazardous Waste is a scheduled activity and must be carried out by a transporter licensed by the NSW Department of Environment and Conservation **Environment Protection Authority.**

The disposal of contaminated soil shall have regard to the provisions of both the *Protection of the Environment Operations Act 1997 and Regulations* and any relevant EPA guidelines such as the EPA's *Environmental Guidelines: Assessment, Classification and Management of Non-Liquid Wastes (1997)*.

Any queries associated with the off-site disposal of waste from a contaminated site should be referred to the EPA's Hazardous Materials Advice Unit. If contaminated soil or other waste is transported to a site unlawfully, then owners of the site and the waste, as well as the transporter are all guilty of an offence.



**Figure 4 State roads within Ku-ring-gai Local Government Area**



### 3.2.7 Communication Plan

Whenever remediation works are conducted, Ku-ring-gai Council also requires that both the immediately affected and wider communities are communicated with appropriately, and in a simple and non-alarmist manner. A communication plan should be prepared, which is appropriate to the level of works proposed, and which also provides for all the following:

- A “facts” sheet (or similar): A facts sheet offers a simple and frank explanation of the situation, including the nature and extent of the contamination and the remediation work to be done, a list of answers to commonly asked questions, as well as a timetable for the proposed work and offering a “freecall” (1800 number or similar) contact number for further information. The communication plan should include a brief strategy for making these facts sheets freely accessible to any interested parties, whether this be by a mail-out or other method of pamphlet distribution, published on the Internet, other methods or a combination of other methods (the strategy should not, however, rely solely on the assumption that all interested parties will have access to, or be willing to use, the Internet).
- Signage: Appropriate signage would be simple and clearly understandable, would display appropriate contact details for the remediation contractor and be erected in prominent locations, at least in areas immediately adjacent to the site access. All signage shall be appropriately maintained and displayed throughout the duration of the remediation works.
- Publicity: Media releases to appropriate local journalists promoting positive and responsible handling of the issue.
- Leaflet drops in the surrounding area, consistent with Council’s Notification Policy, with the facts sheet and a letter from the responsible party.

It should be noted that Category 1 remediation works will require advertisement and will invite community submissions through the development application process.

Council shall be notified 40 days prior to commencement of Category 2 remediation work. Section 3.1.2 details what should be included in the notification. Owners and occupiers of premises adjoining, and across the road, from the site shall be notified at least 7 days prior to the commencement of Category 2 remediation works.

### 3.2.8 Site Security

The site shall be secured to protect against unauthorized access by means of an appropriate fence and lockable gates which, when locked, provide continuous perimeter security around the entire site.

### **3.2.9 Removal of Underground Storage Tanks**

The removal of underground storage tanks shall be undertaken in accordance with NSW WorkCover requirements. Requirements include the issue of written notification to the Chief Inspector of Dangerous Goods and compliance with all conditions imposed. The contents of the Australian Institute of Petroleum's Code of Practice entitled "*The Removal and Disposal of Underground Petroleum Storage Tanks*" (AIP CP22-194) shall also be actively considered in the development of any plans for the removal and/or disposal of such tanks.

### **3.2.10 Occupational Health and Safety**

All site remediation works shall comply with all Occupational Health and Safety and Construction Safety Regulations of the NSW Work Cover Authority. Safety monitoring for hydrocarbon emissions should be undertaken in accordance with "*Worksafe Time Weighted Averages Guidelines*", 1991.

## 4. INDEPENDENT SITE AUDITING

Site Auditors are experts who can provide an independent review of the work of a primary consultant for all types of contaminated sites. The *Contaminated Land Management Act 1997* allows for the EPA to accredit suitably qualified and experienced individuals as site auditors.

Council can request an independent review by a site auditor at any stage during contamination investigations at the cost of the proponent. All Council requests for an independent review of a site audit must be performed by an EPA accredited auditor for contaminated land. An up-to-date list of EPA accredited auditors can be obtained on the EPA's webpage at: <http://www.environment.nsw.gov.au>

### 4.1 What is a Site Audit?

The *Contaminated Land Management Act 1997* 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.*
  - (iv) *the suitability and appropriateness of a plan of remediation, a long-term management plan, a voluntary investigation proposal or a remediation proposal.*

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

### What is a Site Audit Statement?

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 form **approved by the EPA** (see EPA's website, [www.environment.nsw.gov.au](http://www.environment.nsw.gov.au)) When an accredited auditor for contaminated land is requested to conduct a site audit, they must also prepare a site audit statement.

A statutory Site Audit Statement can only be issued by an EPA accredited auditor for contaminated land. A copy of all statutory site audit statements must be given to the EPA and Council.

## **4.2 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 or the planning of remediation of Category 1 or 2 remediation. Council, in accordance with the *Managing Land Contamination Planning Guidelines*, will require a site audit prepared by an EPA accredited 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 control its own technical review.”*

Council will inform the proponent in writing if a site audit is required. The proponent is responsible for engaging an EPA accredited auditor for contaminated land to perform a site audit. An up-to-date list of accredited auditors is available on the EPA’s website, [www.environment.nsw.gov.au](http://www.environment.nsw.gov.au)

The proponent is responsible for all costs borne for the site audit.

It is recommended that an EPA accredited auditor is engaged early on in the site assessment process to ensure that the consultant does the work to the auditor’s satisfaction to avoid lengthy delays.

### **4.2.1 What Will the Site Audit Cover?**

The EPA *Guidelines for the NSW Site Auditor Scheme* outline what should be included in a site audit, however in some situations Council may also contribute to define the scope of the site audit.

When Council requests a site audit, Council will also specify any issues that shall be included within the scope of the site audit. As well as requiring a site audit to address the issues in Section 4.1, the following are examples of issues that Council may request an EPA accredited auditor for contaminated land to address when conducting a site audit:

- To determine if the contaminated land consultant complied with all appropriate standards, procedures and relevant EPA guidelines.
- To determine if further investigations or remediation is required before the land is suitable for any specified use or range of uses.

- To determine if the proposed remediation is adequate and, if undertaken, will render the site to be suitable for the proposed use.
- To determine if there is any unacceptable off-site migration of contaminants, particularly via ground water.
- To determine if the contamination conditions at the site are suitable for in-ground absorption of stormwater.

Either the proponent or the appointed EPA accredited auditor for contaminated land shall liaise with Council during the preparation of the site audit to ensure that the scope of the site audit addresses the concerns raised by Council.

Before issuing a site audit statement, the site auditor must prepare summary site audit report, which contains the information that supports the site audit statement. The EPA *Guidelines for the NSW Site Auditor Scheme* provides detailed guidance on the content of the statement and audit report.

## 5. COUNCIL RECORDS AND COMMUNITY INFORMATION

Council has a responsibility to provide information regarding land use history, land contamination and remediation. The *Managing Land Contamination Planning Guidelines* emphasise the importance of local government information systems in ensuring that adequate information is available to Council staff and the community in relation to both actual and potential land contamination. 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. The process of information collection about land contamination will be ongoing as new information becomes available, particularly as investigation or remediation is carried out.

### 5.1 How Does Council Manage Contaminated Land Information?

Council does not hold a “register” of contaminated sites. Council’s records regarding contamination issues 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 the property information system has involved consideration of “activities that may cause contamination” (Table 1 of the *Managing Land Contamination Planning Guidelines*, reproduced in Appendix 1 of this Policy) consultation with staff of the Council and affected property owners, and review of selection Council property files. Council will consult confidentially with property owners about the information regarding contamination to be recorded on the property information system (Appendix 2).

The files accessed in connection with relevant land use and development inquiries (such as planning correspondence, preparation of Planning Certification and processing of a development application) are routinely reviewed for any relevant file history.

Existing records in relation to site contamination issues are kept on individual property files for each parcel of land. To assist Council in the management of land contamination issues the following information is recorded for individual parcels of land (where available/known):

- Site contamination reports submitted to Council (ie Preliminary Investigation, Detailed Investigation, Remedial Action Plans, Validation and Monitoring Reports).
- Site Audit Statements received by Council.
- EPA declarations and orders issued under the CLM Act (including voluntary investigation & remediation proposals agreed by the EPA).
- Development applications for Category 1 remediation works.
- Prior notification to Council of Category 2 remediation works.

- Notification to Council of completion of Category 1 and Category 2 remediation work.
- Information regarding previous or current land uses which may have resulted in soil contamination.

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. This can only be determined as a result of a sampling and analysis program.

For example, prior to urban settlement sizeable areas of Ku-ring-gai were covered by agricultural and horticultural land uses, which are listed in the *Managing Land Contamination Planning Guidelines* as activities that may cause contamination. Council has not attempted to identify all areas of agricultural and horticultural uses. Instead intensive uses, such as market gardens, identified through the initial evaluation for development assessment and rezoning proposals will be identified on the information system.

Notations may 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. A form for Council staff to advise revision of information on the property information system is provided in Appendix 3.

Some properties listed on the information system may be subject to legal notices under legislation administered by the NSW Environmental Protection Authority. The public should consult with the Environment Protection Authority for up-to-date information on any such land in the local government area.

## 5.2 How do Potential Purchases Know if Land is Potentially Contaminated?

Under Section 149 of the *Environmental Planning & Assessment Act 1979*, a person may request from Council a Planning Certificate that contains advice on matters about a property. For example, the existence of a council policy to restrict the use of land would be shown on a Planning Certificate, **however, in order to ensure that the most up-to-date information is accessed, please also refer to the NSW Department of Environment and Conservation's public register of contaminated sites, which is available on the Department's website, [www.environment.nsw.gov.au](http://www.environment.nsw.gov.au), or otherwise directly with the Department.** Council's Planning Certificates **may** include the following questions **notations** in relation to contaminated land.

### 5.2.1 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 there is an <investigation order under Section 17> of the Contaminated Land Management Act 1997 in relation to this property.*

~~*Requests for further advice in relation to this matter should be directed to the NSW Environment Protection Authority*~~ *Some further information in relation to this matter may also be available from the NSW Environment Protection Authority.*

*<remediation site under section 21>*

*<investigation area under section 15>*

*<remediation order under section 23>*

*<voluntary investigation proposal has been the subject of an EPA agreements under section 19>*

*Voluntary remediation proposal has been the subject of an EPA agreement under section 26>*

**OR**

*YES. Council is aware that there is a site audit statement under Part 4 of the Contaminated Land Management Act 1997 in relation to this property.*

**OR**

**NO.**

***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 which may restrict the development of the land. This policy is implemented when zoning or land use changes are proposed on land 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.*

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 which may restrict the development of land. This policy is implemented when zoning of 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.*

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.*

4. **No** notation would be necessary under this question on a Section 149(2) of the EP&A Act 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 149(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.

### **5.2.2 How can Property Owners change the Notation on the Planning Certificate for their Property?**

Council will take into consideration any information that the property owner can provide in relation to contamination or land use. However, Council will take a precautionary approach when considering information and may consult the EPA when necessary in order to make a decision.

Council may require further information when:

- Believes on reasonable ground that the information provided by the proponent is incorrect or incomplete;
- Wishes to verify the information provided by the proponent adheres to appropriate standards, procedures and guidelines;
- Does not have the internal resources to conduct its own technical review.

Other considerations that may be taken into account when deciding what information to include on a planning certificate, include site consideration such as topography.

No notation would 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 to under the Legislation.

### 5.3 Access to Council Information

#### 5.3.1 Information available to Property Owners or their Agents

Property owners, or persons authorized by them in writing, may be provided with information (if any) from the Council's property information system in relation to their own property.

#### 5.3.2 Information available to all Inquirers

~~Details of sites which are subject to legal notices by the DEC can be provided to any inquirer by the DEC (phone 13 1555) and are a matter of public record.~~ **Council is formally advised whenever a notice is issued under the *Contaminated Land Management Act 1997* and annotates its section 149 certificates accordingly.** All other inquiries in relation to potentially contaminated land should follow the following process:

Type of Information	How to Obtain Information
Current and past development, building, subdivision and rezoning applications.	Written request to the General Manager in accordance with Council's schedule of fees and charges.
Information on reports held by Council in relation to site contamination issues.	Written request to General Manager in accordance with Council's schedule of fees and charges. The written request shall specify what information is requested, who is requesting the information and what is the intended use of the information.
Information on any restrictions placed on the land	Planning Certificate in accordance with Council's schedule of fees and charges.
Information on whether any declarations or orders made or voluntary proposals agreed to under <i>CLM Act</i> have been provided to Council by the EPA or whether Council has received any Site Audit Statements	Planning Certificate in accordance with Council's schedule of fees and charges.
Copies of any Site Audit Statements	Written request to General Manager in accordance with Council's schedule of fees and charges.

Any other information held by Council (other than stated above) in relation to site contamination issues	Written request to General Manager in accordance with Council's schedule of fees and charges. The written request shall specify what information is requested, who is requesting the information and what is the intended use of the information.
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In some circumstances Council may not be able to provide full access to its records held on land contamination issues. These circumstances may include:

- when the information held by Council is subject to legal privilege,
- when the prioritisation of the information is contrary to the provisions of an Act, or
- when the information requested might be published without prior permission of Council, the current site owner or author of the contamination reports.

## 6. GLOSSARY

**ANZECC:** Australian and New Zealand Environment and Conservation Council (for further information refer to [www.deh.gov.au/cooperation/anzecc/](http://www.deh.gov.au/cooperation/anzecc/))

**Complying Development:** is development which must comply with a set of standards set by Council, and identified in Schedule 2 of Council's Exempt and Complying Development DCP (DCP 46).

**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.

**DEC:** Department of Environment and Conservation (incorporating the former Environment Protection Authority or "EPA" – (for further information refer to [www.environment.nsw.gov.au](http://www.environment.nsw.gov.au))

**DIPNR:** Department of Infrastructure Planning and Natural Resources (incorporating the former Department of Urban Affairs and Planning or "DUAP", also previously known as "PlanningNSW" – (for further information refer to [www.dipnr.nsw.gov.au](http://www.dipnr.nsw.gov.au))

**Designated development:** is a particular type of development that is likely to significantly affect the environment. These are set out in Schedule 3 of the *Environmental Planning and Assessment Regulation 1994*. For example: contaminated soil treatment works, extractive industries, or waste management facilities or works.

**Detailed investigation:** required where a preliminary investigation indicates that the land is contaminated or that is, or was, formerly used for an activity listed in Appendix 1 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; assess potential risk posed by the contamination, and to obtain sufficient information to develop a residential action plan (RAP), if required.

**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.

**EP&A Act:** *Environmental Planning and Assessment Act 1979*

**EPA:** The former Environment Protection Authority (now **part of known as** the Department of Environment & Conservation or "DEC" – see definition, above)

**Exempt Development:** is development that does not require any approval, if the work is carried out within the limitations set out in Schedule 1 of the Exempt and Complying Development DCP (DCP 46). It relates to minor works such as awnings, barbeques, fences, garden sheds, and the like, which are of limited size and satisfy Council's exemption requirements.

**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 use or the current use.

**Investigation area:** land declared to be an investigation area under Division 2 of Part 3. 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. Council does not declare investigation areas.

**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

*(Environmental Planning and Assessment Act 1979)*

**Leachate:** A polluted liquid or other solution that leaks or "leaches" from an area as groundwater passes through, primarily with respect to contaminated site or to a former landfill site.

**Preliminary investigation:** carried out by a suitably qualified **and experienced** consultant on behalf of the proponent to identify any past or present potentially contaminating activities, provide a preliminary assessment of any site contamination. A preliminary investigation will only be asked for where, after an initial investigation, there are indications that contamination is, or may be, present.

**Remedial Action Plan:** 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.

**Remediation:** (a) remove, 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 preventing the entry of person or animals on the land).

**SEPP 55:** *State Environmental Planning Policy No 55 – Remediation of Land.*



## Appendix 1     Schedule of potentially contaminating activities

**Source:** *Managing Land Contamination Planning Guidelines SEPP 55 - Remediation of Land*, 1998, Department of Urban Affairs and Planning & NSW Environment Protection Authority

- 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

For that purpose, the contamination may be within a structure/building or other structure on the land, rather than only within the soil of that land or in any water on or below the surface of that land and the bed of such water.

Note: It is not sufficient to rely solely on the contents of this table to determine whether a site is likely to be contaminated or not. The Table is a guide only. A conclusive status can only be determined after a review of the site history and, if necessary, sampling and analysis.

## **Appendix 2 Letter to be used when details regarding contamination need to be added to Council's property information system**

Address

Dear <>

### **PROPERTY AT <> AND COUNCIL'S CONTAMINATED LAND POLICY**

The State Government requires all councils to prepare a policy to manage contaminated land. Council has prepared a Contaminated Land Policy and conducted an initial review of its records to determine what land will be affected. The above-mentioned property has been identified as potentially contaminated land.

*What does "potentially contaminated" land mean?*

Council has identified land with the assistance of a list of "activities that may cause contamination" prepared by the NSW Environment Protection Authority. This list includes activities such as horticulture, dry cleaning, engine works, and service stations. The above-mentioned property has a history of one of the listed activities and is therefore considered "potentially contaminated".

*What does this mean for my property?*

Because of State Government requirements it is now necessary that information relating to potential land contamination will be available to prospective buyers of the property when they purchase a Planning Certificate<sup>1</sup> from Council.

The Planning Certificate for the above property will contain the following information:

*«Section\_1495\_notation»*

This does not necessarily mean the property is contaminated. You may have information or you may wish to undertake investigation to clarify the extent of any contamination of the property.

Under the draft Policy, any future development of the property may require further investigation or remediation, at the cost of the property owner.

*How can I find out more information?*

A copy of the Policy is available for viewing at the Council Chambers or at Ku-ring-gai's local libraries. It is also available for purchase from the Council. Please contact Council's Manager Environmental Policy on **9424 0888** if you would like to discuss the issues raised in this letter.

Yours sincerely

L Webb  
DIRECTOR  
PLANNING & ENVIRONMENT