



Contaminated Land

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REGIONAL VISION

Healthy environments are an essential foundation for the development of healthy and thriving communities. The Mid North Coast Regional Organisation of Councils, and Bellingen Shire Council, are committed to protecting and restoring the quality of environments through informed planning decisions and the implementation of effective land management practices. In dealing with contaminated land matters a consistent regional approach will be followed when conducting Council's functions for identifying, assessing and managing contamination for the benefit of the community and local environment.

The Bellingen Shire Council Draft Contaminated Land Policy Guidelines are based upon the Model Contaminated Land Policy Guidelines prepared for members of the Mid North Coast Regional Organisation of Councils (MIDROC) as part of the MIDROC Contaminated Land Program. This program has been assisted by the NSW Environmental Protection Authorities (EPA) Contaminated Land Management Program under funding provided by the NSW Environmental Trust.

Acknowledgments



FOREWORD

Bellingen Shire Council recognises that the appropriate assessment and management of contaminated land matters is an important function of local government.

These Draft Policy Guidelines are based upon a Model Contaminated Land Policy, and a suite of regional contaminated land management resources and tools that have been developed by the Mid North Coast Regional Organisation of Councils (MIDROC). This Policy outlines the Councils commitments and practices used in dealing with land contamination matters.

Council would like to acknowledge the MIDROC Contaminated Land Program, which has been developed to provide MIDROC members with the technical training and resources needed to appropriately respond to these issues.

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COUNCIL DISCLAIMER

Whilst every effort has been made to ensure the accuracy of the information in this publication, Bellingen Shire Council disclaims any liability to any person in respect of anything done or not done as a result of the contents of these Policy Guidelines.

The Policy Guidelines should be read in conjunction with relevant legislation, guidelines and codes of practice. Where inconsistencies exist the most recent legislation should prevail.

These Policy Guidelines do not constitute legal advice and should not be relied on. Legal advice should be sought in relation to particular circumstances, and liability will not be accepted by Bellingen Shire Council for losses incurred or damage suffered as a result of reliance on these Policy Guidelines.

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1. BACKGROUND

1.1. What is Land Contamination?

Land contamination is the condition where either directly or indirectly human activities have caused a substance to be incorporated into the landscape at concentrations that have the potential to harm human health or the environment. This is typically found on sites where hazardous substances have been used, stored or manufactured over prolonged periods of time such as those listed in Appendix C of the Bellingen Shire Council Contaminated Land Policy (the 'Policy'). Land contamination is often dynamic, changing over time, and can exist in vastly different forms depending on its source and setting. In many cases contamination and its effects can remain unnoticed within the landscape for long periods of time, and can have serious implications on a site's ability to sustain healthy ecosystems and communities.

The *Contaminated Land Management Act 1997* (CLM Act) defines contamination of land as:

'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 other aspect of the environment.'

The *Environmental Planning and Assessment Act 1979* similarly defines contaminated land as:

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

The presence of contamination can often have significant economic, planning and legal implications for a site and how it is used. Where Council are aware of potential or known contaminated sites, relevant information will be stored within Council's records.

Council should be informed of sites that are suspected or have the potential to be contaminated.

1.2. Purpose of the Policy Guidelines

Land contamination has the potential to occur anywhere within the Bellingen Shire Council local government area. To limit the potential impacts of land contamination on the community and environment, these guidelines outline a series of best practice processes for considering and dealing with land contamination matters when undertaking Council planning, regulatory and land management functions. This document has been developed to provide a practical framework for achieving the standards set out in the 'Policy' as well as to provide context to contaminated land matters.

The Policy Guidelines provide general information on:

-) Roles and responsibilities of local government in dealing with land contamination
-) Relevant stakeholder groups that are involved in managing contamination
-) Processes and standards to be followed when undertaking contaminated land investigations and site management actions
-) Considerations for Council in undertaking decision making processes in relation to land contamination

1.3. Scope of the Policy Guidelines

The Policy Guidelines apply to all lands within the Bellingen Shire Council Local Government Area.

This document should be read in conjunction with the:

- Bellingen Shire Council Contaminated Land Policy
- Managing Land Contamination Planning Guidelines SEPP 55–Remediation of Land (SEPP 55 Planning Guidelines), with reference to Part 7A of the *Environmental Planning and Assessment Act 1979* (EP&A Act)
- Other relevant legislation, guidelines and codes of practices listed in Appendix C.

This Policy covers information that is relevant to the following groups:

- The general public
- Local Government staff
- Property developers
- Land managers
- Contaminated land management practitioners.

2. LOCAL GOVERNMENT ROLES AND RESPONSIBILITIES

Councils play a variety of different roles in dealing with land contamination issues. This section of the Policy Guidelines provides an overview of the key duties and responsibilities of local government in carrying out their planning, regulatory and land/asset management functions in good faith.

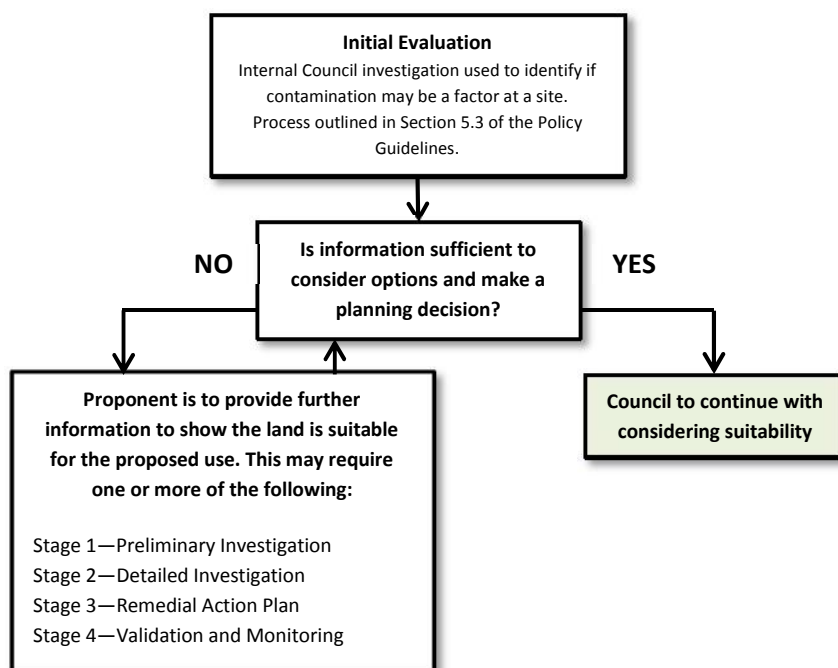
2.1. Reviewing contamination whilst undertaking planning and development control functions

Whilst executing planning and development control functions under the provisions of the EP&A Act, it is the duty of Council to consider the possibility that a previous land use or activity may have left the site in a contaminated state. The State Environmental Planning Policy 55 – Remediation of Lands (SEPP 55) requires that Council cannot approve a land use change or grant development consent unless it has considered whether contamination may be a factor at the site and, if so, is satisfied with respect to specified matters regarding the suitability of the land for the proposed development.

Clause 6 of SEPP 55 also has the effect of requiring Council to consider contamination before preparing a planning proposal that would have the effect of zoning or rezoning land.

The process used by Council to identify, assess and appropriately manage contamination when executing planning and development control functions is outlined in Figure 1.

Figure 1: Councils decision making process for land use changes



2.2. Regulatory responsibilities and tools

Council has regulatory responsibilities in relation to contamination under the following legislation, policies and standards in situations where council is the appropriate regulatory authority or planning authority:

- Contaminated Land Management Act 1997 (NSW)
- Environmental Planning and Assessment Act 1979 (NSW)
- Environmental Planning and Assessment Regulation 2000 (NSW)
- Local Government Act 1993 (NSW)
- Protection of the Environment Operations Act 1997 (NSW)
- Protection of the Environment Operations (General) Regulation 2009 (NSW)
- Protection of the Environment Operations (Waste) Regulation 2014 (NSW)
- State Environmental Planning Policy (Exempt and Complying Development Codes) 2008
- State Environmental Planning Policy No. 55 – Remediation of Land
- Demolition work code of practice 2015 (catalogue no. WC03841).

Additional legislation, policies and standards relating to the safe management of contamination are listed in Appendix C of these guidelines or Appendix C of the Policy.

2.3. Contaminated land information management

Keeping an accurate, reliable and up-to-date record of information on contaminated land matters can be a valuable resource for Council when performing planning and land management functions. In accordance with the requirements of the Policy, Bellingen Shire Council will endeavour to maintain accurate information (i.e. reports, notices, correspondence), where practical, on known contaminated sites that have been formally identified in a Council or other contaminated land register, has been previously assessed for contamination or has undergone management actions. All such information provided to or produced by Council should be catalogued within the property files.

Sites that Council consider to have the potential of being contaminated but have not undergone a contaminated land assessment, are to be recorded as potentially contaminated in corresponding property files. When undertaking future planning functions and/or land management activities at sites that have been identified as potentially contaminated, Council must ensure that appropriate assessments are performed to determine if contamination may be a factor at the site.

Information stored within council's records in relation to contamination is to be readily available to the general public as advice and incorporated into Planning Certificates issued under Section 149 of the EP&A Act. More information on planning certificates and the correct presentation of information can be found in Section 9 of these Policy Guidelines.

2.4. Management of public lands and assets

Councils are responsible for managing a diverse range of public lands and assets that have the potential to be impacted by contamination. Whilst performing land management duties Council shall consider the potential for contamination to be a factor at a site. If a site managed by Council is considered or found to be in a contaminated state then Council shall ensure that lands are appropriately assessed, remediated and managed in accordance with the requirements of these Policy Guidelines and relevant legislation, guidelines and standards (See Appendix C).

Note: In instances where Council intend to release or sell Council-owned or managed land, Council should consider whether an Initial Evaluation should be performed by an appropriate person in Council to identify if further site investigations are warranted. Where Council identifies or suspects that contamination is present on lands that it owns or manages and that contamination presents a risk of harm to people of the environment, potentially affected community users should be informed as soon as practicable.

2.5. Responsibilities to staff and community health

Council are committed to promoting a safe and healthy working environment, ensuring that any risks of exposure to land contamination is appropriately considered and managed prior to undertaking operational works. This commitment is extended to ensuring that council operations for the management or contaminated lands do not unduly impact on the health of the environment or community.

Council are committed to complying with Work Health and Safety Act 2011, the Work Health and Safety Regulation 2011, and applicable Standards, Guidelines and Codes of Practice. For further information please refer to Council Work Health and Safety Policy

3. CONTAMINATED LAND MANAGEMENT STAKEHOLDER GROUPS

The appropriate management of contaminated land issues can require interactions between a variety of different government agencies and stakeholder groups. This section provides an overview of various stakeholder groups, the scope of their responsibilities, and triggers for their engagement in contaminated land matters.

3.1. NSW Environmental Protection Authority

Under the CLM Act the EPA is provided with powers to regulate contaminated land. Under Section 11 of the CLM Act, the EPA may declare land to be significantly contaminated land if the EPA has reason to believe that the land is contaminated and the contamination is significant enough to warrant regulation. The matters that

the EPA must take into account before declaring land to be 'significantly contaminated land' are outlined in section 12 of the CLM Act.

Under section 60 of the CLM Act a person whose activities have contaminated land and an owner of land that has been contaminated, has a duty to notify in circumstances specified in section 60, as soon as practicable after the person becomes aware of the contamination.

If the contamination is considered to not warrant regulation under the CLM Act then the EPA will inform Council of the matter and Council will deal with the issue under its regulatory, planning or land management functions.

Contaminated sites are primarily regulated by the EPA under the CLM Act through the following:

a) Preliminary Investigation Order

Written order directing a person to conduct a preliminary investigation on a site to facilitate a better understanding of the nature and extent of contaminants, if present.

b) Management Order

Written order directing a person to carry out management actions and to provide a suitable plan of management for addressing contamination at the site.

c) Voluntary management proposal

Any person or company can put forward a voluntary management proposal to the EPA that outlines a plan for the management of significantly contaminated land. The EPA may approve the proposal with or without conditions.

d) Ongoing Maintenance Order

Where land has been the subject of a management order or voluntary management proposal, the EPA can direct that a person undertake certain ongoing actions that may involve managing, monitoring or restricting land uses at a site, and report information back to the EPA.

The EPA may issue a preliminary investigation order or a management order on:

1. A person/s responsible for the contamination
2. The owner/s of the contaminated land
3. The notional owner/s of the contaminated land.

The EPA may also issue a preliminary investigation order or a management order to a public authority such as Council.

When issuing a management order the EPA must issue the order in accordance with the hierarchy set out above, unless it is not practicable to do so (e.g. if the person responsible for contamination is insolvent, the EPA can then issue the order on the owner of the land).

The EPA also administers the Site Auditor Scheme under Part 4 of the CLM Act. This scheme accredits industry practitioners with considerable experience and expertise as Site Auditors who are able to independently review the works of other contaminated land practitioners.

3.2. SafeWork NSW

SafeWork NSW is the government regulatory body responsible for investigating workplace incidents and enforcing work health and safety laws. SafeWork NSW is to be notified of any instances where a worker has become ill or was exposed to hazardous substances whilst undertaking work duties, due to the presence of contaminants on a worksite.

SafeWork NSW must be informed of all instances where Asbestos has become uncovered or disturbed in a workplace. Council owned or managed lands should be considered a workplace in instances where a Council worker or contractors are present on the lands for the purposes or performing their role.

3.3. Department of Primary Industry

The Department of Primary Industry (DPI) falls under a number of different divisions including:

- Agriculture
- Biosecurity
- Fisheries
- Food Authority
- Lands

If land contamination is or has the potential to interfere with the regulatory objectives of the Department then Council should consider whether to inform the corresponding division of DPI.

3.4. Department of Planning and Environment

Some development types are declared to be State significant under section 89C of the EP&A Act due to factors including the size, economic value or potential impacts that they may incur. State significant development applications are assessed by the Department of Planning and Environment, not by local government.

In considering State significant development applications the Department will generally seek feedback from local government in regards to certain aspects of the development. If contamination is believed to be a factor at these sites then Council will need to ensure that appropriate information is passed on during this consultation process.

3.5. NSW Health – Public Health Unit

The role of NSW Health Public Health Units are to identify, prevent and minimise health risk that may adversely affect the community. Where land contamination is having offsite impacts that have the potential to cause harm to human health (i.e. vapour, dust or subsurface plumes of toxic chemicals), the applicable Public Health Unit should be notified as early as possible to assist, where practical, in any investigations, deliberations, and planning for management responses.

3.6. Community Stakeholders

Council should notify the community of land contamination issues that it is aware of where the notification is considered to be within public interests. This could be due to potential harm that contamination may cause to human health or the environment.

Community notification methods may include:

- Warning signage
- Public announcements
- Informational publications distributed to the community.

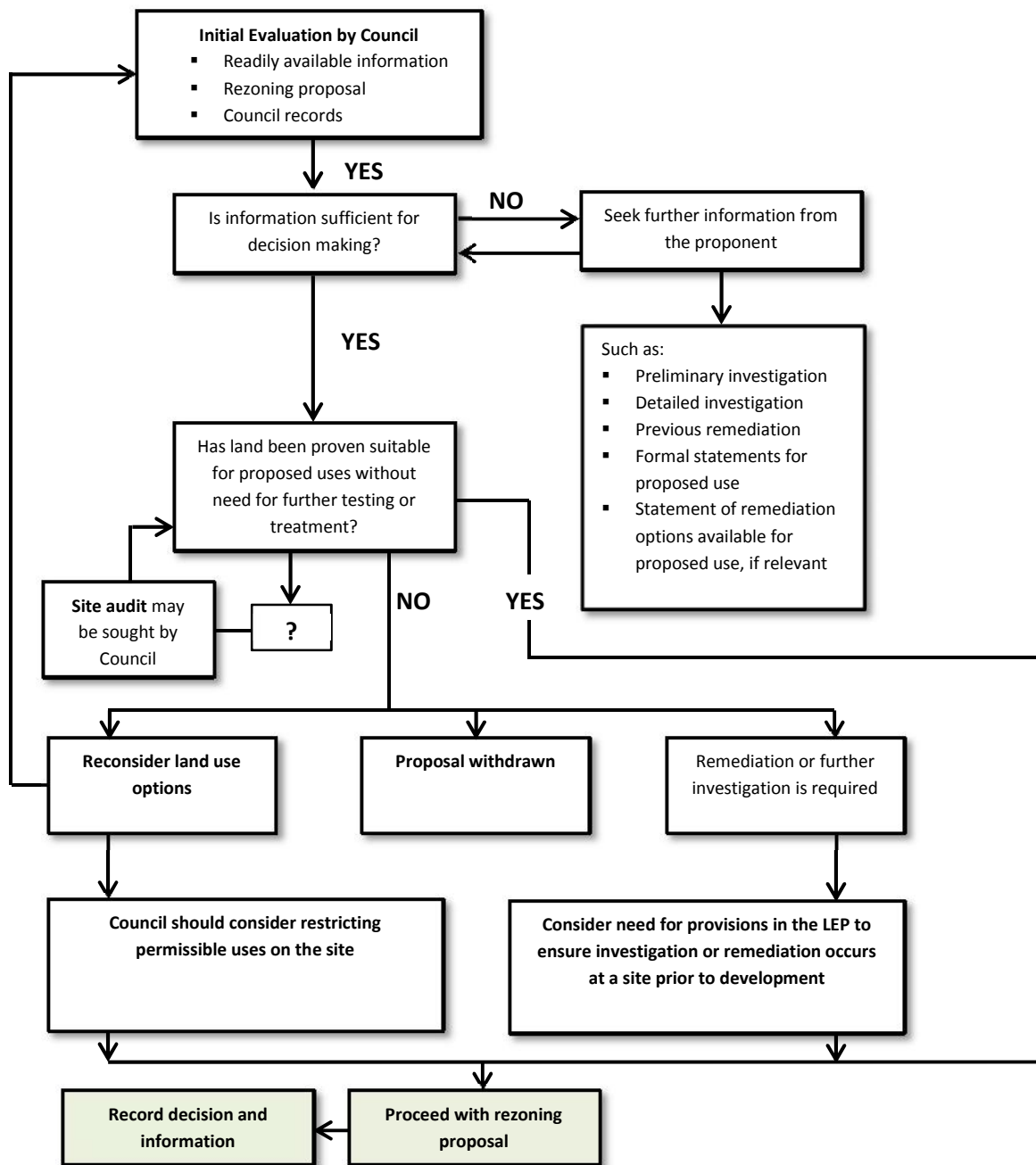
4. Council Planning and Development Control Process

4.1. Development and Planning Approvals

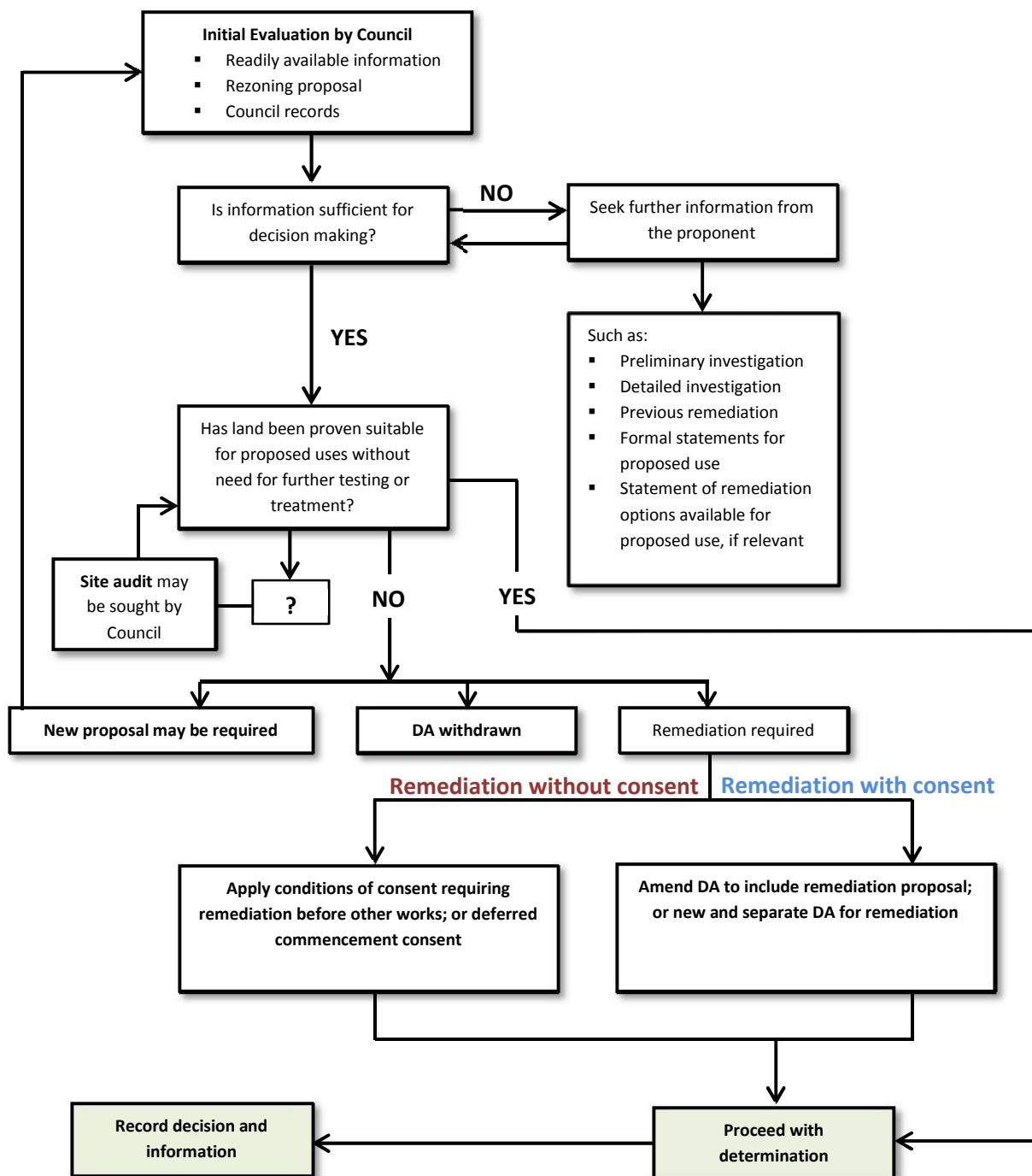
Through the planning and development control functions performed by Council under the EP&A Act, Council plays an important role in assessing and managing land contamination issues. In all circumstances where a site is being considered for a planning proposal or development application Council must consider whether contamination may influence the suitability of the site for its proposed use. In instances where Council considers contamination has the potential to exist on a site due to Council having knowledge of a potentially contaminating land use having occurred on that site or Council otherwise having reasonable grounds for suspecting that the site may be contaminated, Council will require the proponent to undertake investigations to satisfy a certain standard of proof that the contamination does not make the site unsuitable for its approved or proposed uses, or can alternatively be made suitable through remedial actions.

Clause 6 of SEPP 55 has the effect of requiring the consideration of contamination before preparing a planning proposal that would have the effect of zoning or rezoning land.

As outlined in the SEPP 55 Planning Guidelines the process for considering land contamination issues when assessing planning proposals are:



Clause 7(1) of SEPP 55 requires that land contamination be considered upon the receipt of a development application in respect of any land. As outlined in the SEPP 55 Planning Guidelines the process for considering land contamination issues when assessing development applications are:



4.2. Conditions of Consent

Council may grant development consent subject to conditions that require certain actions in respect of contamination to be undertaken. Such actions may be required to be undertaken prior to the issuing of a construction certificate. In instances where Council considers that contamination may potentially exist at a site, conditions of consent may be imposed that will require that appropriate site investigations and management actions be undertaken (process outlined in Figure 2 in section 5.2 below).

Through these measures Council must be satisfied that the site will be suitable for the purpose for which development is proposed to be carried out. That is, that contamination at the site will not present an unacceptable risk of harm to human health and the environment. For further information on site investigation and management stages that may be included in conditions of consent see Sections 5 and 6.

A set of standard conditions of consent are provided in Appendix K: Standard Conditions of Consent.

4.3. Councils exemption from liability

Under the provisions of Part 7A of the EP&A Act Council does not incur any liability for things done or omitted to be done in 'good faith' whilst performing planning functions specified in section 145B(2) of the EP&A Act, in so far as it relates to contaminated land (including the likelihood of land being contaminated land) or to the nature or extent of contamination of land. The specific planning functions that are afforded such protection are specified in section 145B(2) of the EP&A Act to include:

- Preparing a planning proposal for a proposed environmental planning instrument
- Preparing a development control plan
- Processing and determining development applications
- Modifying a development consent
- Processing and determining applications for a complying development certificate
- Furnishing advice in a certificate under section 149
- Anything incidental or ancillary to carrying out planning functions listed above

Without limiting any other circumstance in which Council may have acted in 'good faith', Council are expressly taken to have acted in 'good faith' if the thing was done or omitted to be done by Council substantially in accordance with the SEPP 55 Planning Guidelines.

Whether or not something done or omitted to be done by Council is 'substantially in accordance with' the SEPP 55 Planning Guidelines will not always be clear, particularly given that:

- in places the SEPP 55 Planning Guidelines uses non-directive language such as 'should' or 'may';
- as a guideline, the SEPP 55 Planning Guidelines are inherently not as prescriptive as legislative requirements; and
- in section 1.1 of the SEPP 55 Planning Guidelines it states that: 'Obviously they cannot provide a definitive answer in all cases, so planning authorities will also need to exercise their judgement'.

However, in section 1.4 of the SEPP 55 Planning Guidelines it states that: 'Any significant departure from the Guidelines should be justified by demonstrating that the overall aims and principles have been met.'

Also, in *Australians for Sustainable Development Inc v Minister for Planning* [2011] NSWLEC 33, Biscoe J cautions that the following principle of statutory construction should be applied to the SEPP 55 Planning Guidelines: 'legislative provisions that exempt government bodies from legal liability as a result of the exercise of statutory power should be narrowly construed and should not "be carried further than a jealous interpretation will allow"'.

This means that where suggestive rather than directive language is used in the SEPP Planning Guidelines:

- Council should be cautious in departing from the suggested actions; and
- where it does choose to depart, Council should demonstrate that the overall aims and principles of the SEPP 55 Planning Guidelines will still be met (noting that the stated purpose of the SEPP Planning Guidelines 'is to establish "best practice" for managing land contamination through the planning and development control process').

5. Site Assessment and Remediation Processes

5.1. Site Assessment Process

The purpose of a site assessment during planning and development processes is to determine whether contamination at a site may be significant enough to warrant management actions to make the site suitable for its current or proposed uses, and whether sufficient information is available to carry out the planning function in 'good faith'.

The SEPP 55 Planning Guidelines prescribes three key segments for site assessment in this context. These include:

a) Initial Evaluation

When considering all planning proposals or development applications an internal evaluation is undertaken by Council to identify whether Contamination has the potential to exist at a site, and whether further information is required from the proponent. See 5.3 for outline of process and considerations.

b) Preliminary Investigation

A Preliminary Investigation is a site assessment undertaken by a contaminated land specialist on behalf of the proponent. These site assessments generally comprise a review of a sites land use history and characteristics to identify whether there are indications of contamination at a site and if further investigation is warranted. See 5.4 for outline of process and considerations.

c) Detailed Investigation

This phase of investigation is also undertaken by a suitable contaminated land specialist on behalf of the proponent, to identify the nature, extent and level of contamination that may exist at the site. Where contamination is considered likely to have occurred at a site the proponent may forgo the preliminary investigation phase and chose to just do a Detailed Investigation. See 5.5 for outline of processes and considerations.

5.2. Site Remediation Process

Where contamination is found to make a site unsuitable for its current or proposed uses remediation works may be required to make the site suitable. Remediation works will often include a series of measures performed by suitably qualified practitioners to either isolate, ameliorate or remove contaminants from the site. Further information on finding a suitably qualified practitioner can be found in Section 7 of these Policy Guidelines.

Remediation Categories

SEPP 55 groups remediation works into two key categories;

- **category 1 remediation work** is a remediation work that requires development consent
- **category 2 remediation work** is a remediation work that does not require development consent, but which still must be notified to Council prior to the work commencing.

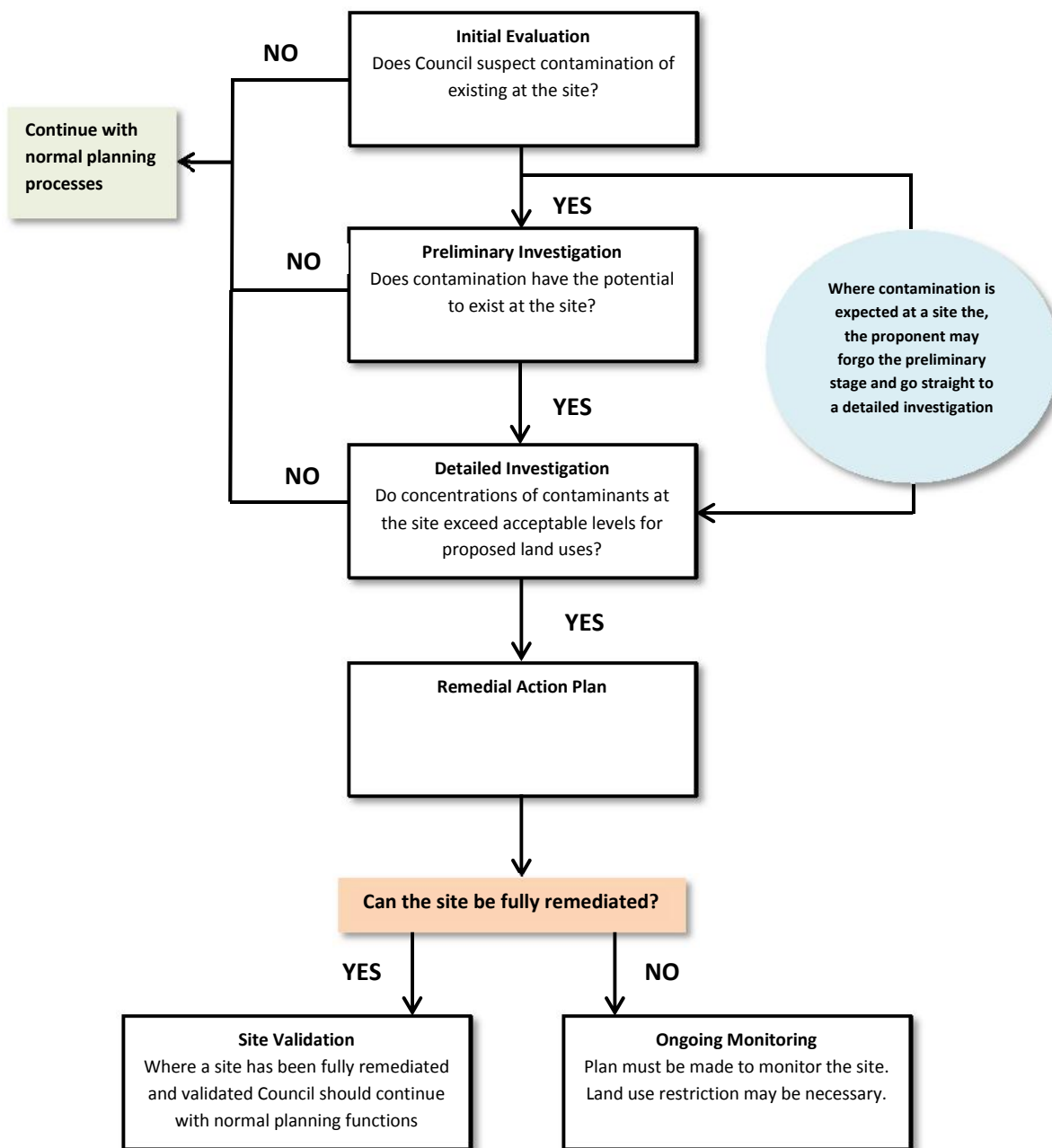
Category 1 Remediation Works

Clause 9 of SEPP 55 specifies the criteria for remediation work that is category 1 remediation work. A summary of the types of remediation works that classify as a category 1 remediation work are provided in Section 5.13 of the Policy.

Category 2 Remediation Works

All remediation works that do not qualify as Category 1 remediation work are classified as Category 2 remediation work. Category 2 remediation works do not require consent from a planning authority (see Clause 14 of SEPP 55 for further information and applicability). When undertaking Category 2 remediation works the proponent must, subject to limited exceptions, inform Council of their plans to perform the works at least 30 days prior to its commencement, and upon finishing the works a notice must be provided within 30 days of its conclusion. Further information on Notices that must be provided to Council for Category 2 remediation works can be located in Clause 16-18 of SEPP 55.

Figure 2: Contaminated Land Site Assessment Process used during the planning and development control process.



5.3. Initial Evaluation Process

Prior to exercising all planning and development control functions Council will perform an Initial Evaluation of site contamination to identify whether contamination has the potential to exist at a site and if further more detailed site assessments may be warranted. During the Initial Evaluation process Council will perform an assessment of various forms of factual and reliable information that are readily available to it. This may include a review of:

- Councils property files and land use records
- Knowledge of staff and local residents

- Factual evidence provided by the proponent (See 8.3 for further information)
- Observable conditions of the site and its surroundings

Appendix D outlines the procedure that Council follow whilst performing an Initial Evaluation of contamination.

5.4. Preliminary Investigation Review Process

Where an Initial Evaluation identifies that a site has the potential to be contaminated and Council considers that further information is required in order to carry out its planning functions in 'good faith', further site investigations are to be undertaken by the proponent to assess whether contamination may influence the suitability of current and proposed land uses at the site. A Preliminary Investigation is often referred to as a Phase 1 Site Investigation and examines a site's existing conditions and land use history to determine whether contamination could exist and if a more comprehensive site investigation, including sampling, is warranted. This investigation stage must only be undertaken by a suitably qualified contaminated land practitioner (see Clause 5.12 of the Policy for practitioner standards).

A report on the findings of a Preliminary Investigation should include:

- Appraisal of the site history to identify if the site has been used for contaminating land uses or activities
- Potential contamination types that may exist at the site
- Discussion on site conditions and characteristics
- Preliminary assessment on whether site contamination does or could exist
- Recommendations on whether further investigations are warranted

Appendix E outlines the procedure that Council follow whilst performing a review of the suitability of a Preliminary Investigation report.

5.5. Detailed Investigation Review Process

Where contamination is known or considered by Council to likely exist at a site a Detailed Investigation is to be undertaken by the proponent to confirm the presence or absence of contamination. This level of site assessment involves the collection of samples from site soils, air/vapour, groundwater, and other water sources to identify the nature, type and extent of contamination at the site. Information gained from the findings of this investigation can form the basis for remedial actions at this site. This investigation stage must only be undertaken by a suitably qualified contaminated land practitioner as they are defined in the Policy.

A report on the findings of a Detailed Investigation will include:

- Outline of sampling regime used at the site
- Analysis of material sampling results against approved threshold levels
- Summary of the type and extent of contamination found at the site
- Risks posed by contaminants to human health or the environment
- Offsite impacts (where applicable)

Appendix F outlines the procedure that Council follow when reviewing the suitability of a Detailed Investigation.

5.6. Remedial Action Plan (RAP) Review Process

If the results of a site assessment indicate that the site poses a risk to human health or the environment if development is carried out for a purpose that is currently or proposed to be permitted on the site, then in

determining whether to grant development consent or prepare or make a planning proposal, Council will impose a condition requiring that remediation works must be undertaken to make the site suitable for the proposed uses. Where remediation works are being performed at a site, a condition will require that a RAP must be prepared and implemented.

A RAP is a document that sets out clear strategies for the remediation of land in line with the findings of previous site investigations and any requirements for proposed land uses. A RAP can only be developed by a suitably qualified contaminated land practitioner as they are defined in the Policy.

A RAP will include:

- Identification of key stakeholders and responsibilities
- Outline of remediation objectives that ensure land is left in a state that is suitable for proposed land uses
- Review of remediation options and determination of preferred approach
- Summary of all procedures and plans to be executed during the remediation processes
- Establishment of validation program to be used to demonstrate successful completion of remedial works
- Inclusion of all necessary statutory approvals and licences required to be obtained to carry out the remediation work
- Protocol for managing unexpected findings

Appendix G outlines the procedure that Council will follow when reviewing the suitability of a RAP.

Where remediation involves the clean-up of Asbestos relevant legislation should be adhered to.

Note: Schedule B1 of the National Environmental Protection Measures (NEPM) specify concentrations of chemical substances that may exist in the landscape before an investigation is triggered. Depending on the land use type these concentrations may differ, for instance arsenic may exist on residential sites at concentrations of up to 100ppm, whereas on commercial or industrial sites arsenic may be present at levels of up to 3000ppm. When remediating a site a contaminated land practitioner will typically aim to reduce the concentrations of relevant contaminants to concentrations below the NEPM levels.

Typically when assessing the suitability of a new land use, or when setting site remediation objectives, the contaminated land practitioner will aim to bring contaminant levels to below thresholds specified in the NEPM. However in some environments a practitioner may judge that due to the way a site is used levels can exceed what is outlined in the NEPM without placing undue risk on human health or the environment. In these circumstances Council must make sure that principals and reasoning behind variations are suitable. Land use restrictions may be considered for sites that have been granted adjusted thresholds, to limit future uses that may increase exposure.

5.7. Validation Report Review Process

All remediation works must be validated to demonstrate that the RAP objectives have been achieved. During the site validation process, post-remediation sampling will be undertaken at the site, and the results analysed to statistically confirm remedial outcomes. In cases where the remediation objectives have not been achieved through the remedial actions performed at the site, the validation report will provide an overview of the reasons why and will propose additional site works that should be undertaken to achieve the original RAP objectives. Site validation can only be conducted by a suitably qualified contaminated land practitioner as they are defined in the Policy.

The validation report should also include information confirming that relevant licence conditions and approvals have been met. In particular, documentary evidence is needed to confirm that any disposal of contaminated materials off-site is done in accordance with the RAP and with law.

Appendix H outlines the procedure that Council follow when reviewing the suitability of a Validation Report.

5.8. Ongoing Site Monitoring

Where it is not feasible to achieve a complete clean-up of a site, or contamination is managed through isolation and containment, an ongoing Site Monitoring Plan may be required to monitor the risks of contamination spreading or impacting upon the site.

Ongoing monitoring plans should include:

- Proposed monitoring strategies
- Parameters to be monitored
- Monitoring Locations
- Frequency of monitoring
- Reporting requirements.

Appendix I outlines the procedure that Council follow when reviewing the suitability of a Site Monitoring Plan.

5.9. Site Management Plans

A Site Management Plan (SMP) is required when contamination is to remain on site. The SMP should be developed in consultation with Council to determine that it can be reasonably complied with and enforced. It should make provisions for Council to carry out checks of relevant compliance.

Further information of the use and need for an SMP can be found in section 3.4.6 Environmental management plans in the *Guidelines for the NSW Site Auditor Scheme (2nd edition)* (DEC NSW 2006).

Council may charge a fee for inspections or other services in relation to the monitoring of compliance of the SMP in accordance with provisions of the *Local Government Act 1993*.

Any SMP should be provided to Council along with any other report that recommends such a plan. The existence of an SMP that has been provided to Council will be noted on s149 planning certificates and included in relevant Council records.

Where there is an SMP, and where Council is able to do so, a standard condition of consent will require the registration of a covenant on title requiring compliance with the SMP. This shall be a standard condition of consent for all development applications and Category 1 remediation where there is an SMP. It is a requirement relating to the conduct of Category 2 remediation under this policy.

Council will endeavour to have any SMP that Council is aware of, or relating to a consent condition predating this policy, registered on title by the land owner or relevant party.

This may be by explaining to the owner the benefits of registering on title (eg the ability to limit the current owner's exposure to future liability if remediation measures are not maintained) or through a development consent condition on a subsequent DA where the SMP has been considered during assessment of the DA under SEPP 55

6. Site Assessment and Remediation Processes

6.1. What is a Site Audit?

The EPA administered Site Auditor Scheme has been developed to improve access to competent technical advice and increase certainty in the assessment and remediation of contaminated sites. Accredited Site Auditors are able to independently review any or all stages of the site investigation process, remediation and validation works performed by contaminated land practitioners to ensure that they meet relevant legislation and guidelines. Council will request a site audit by an accredited Site Auditor in all circumstances where Clause 5.10 of the Policy applies.

The key products of a site audit are a site audit statement and site audit report. The site audit statement is the written opinion of a Site Auditor on the essential findings of the audit. Depending on the kind of site audit statement that is sought, this may include a statement on the suitability of a practitioner's works and whether a site is appropriate for its current or proposed uses. A site audit report forms the basis of the site audit statement and is a comprehensive report outlining all of the site auditor's assessments, rationale, and conclusions.

Site audits can be classified as either statutory or non-statutory. In cases where a site audit is required by Council or another government agency as a condition of development consent or as a requirement imposed by or under an Act, the site audit is considered statutory. Where a proponent chooses to undertake a site audit without a legal requirement to do so, (eg. at the request of a developer on a consultants work) the site audit is considered non-statutory. For all statutory site audits, or where a site audit statement is required, an accredited Site Auditor must be used. Where a non-statutory site audit has been undertaken a copy of the site audit report must be provided to Council upon request.

A site audit statement must be provided to Council in all instances where a statutory site audit has been performed.

6.2. Enacting a Site Audit

Where Council determine that a site audit is necessary the proponent will be provided with an official notice from Council stating that a site audit must be undertaken in accordance with Section 5.10 of the Policy. This notice will provide the audits scope, rationale of why it is being requested, and if applicable the timeframe that it is to be commissioned within by the proponent.

Alternatively, in certain circumstances Council may grant development consent with conditions of consent outlining a requirement that a site auditor be engaged to review any or all stages of the contaminated land site assessment and remediation process.

A list of accredited Site Auditors is provided on the EPA's Site Auditor Webpage.

6.3. Review of Works by Other Suitably Qualified Contaminated Land Practitioner

In some instances a suitably qualified contaminated land practitioner may be used to independently review and verify a practitioner's works. These reviews may only be undertaken in place of a site audit where a statutory site audit is not required.

Council may request this review at any stage during the assessment, remediation or validation process where a contaminated land practitioner's work needs to be confirmed.

Where Council identify that a practitioner used by the proponent does not adhere to Section 5.11 of Policy 'Contaminated Land Practitioner Standards', an independent review may be undertaken by another suitably qualified practitioner to validate works that have been performed.

7. Contaminated Land Practitioners

7.1. Contaminated land practitioners and accreditation standards

Contaminated land practitioners are specialist professionals that have competencies and skills in assessing and managing contamination issues. As contaminated sites can exist in a diverse variety of forms, and at varying levels of technical complexity, it is essential that the practitioner has the appropriate competencies needed to undertake the works. No one practitioner should be considered suitable for every job in this field and practitioners should be chosen with care. Section 5.11 of the Policy provides an outline of practitioner qualification standards required by Bellingen Shire Council.

To promote sound industry practice various EPA supported professional accreditation schemes have been developed over recent years to distinguish ethically and professionally competent contaminated land practitioners. These schemes require members to have high standards of experience, tertiary qualifications and a sustained regime of professional development to stay up to date with changes within the industry. In accordance with Section 5.12 of the Policy all contaminated land practitioners performing work for Council's consideration must be accredited under an EPA supported professional accreditation scheme as of 1 April 2018.

Professional accreditation schemes currently include:

- **Site Contamination Practitioners Australia (SCPA)**
Practitioner must have a degree in the field, at least 5 years of experience in the specific area of works, and 50hrs per year of professional development
- **Contaminated Land Assessment Specialist - Certified Environmental Practitioners (CEnvP)**
Practitioner must have a degree in the field, three industry references, 10 years of full time professional experience in the field over the past 15 years, be classified as an ethical practitioner, and committed to ongoing training.

7.2. Finding a suitable contaminated land practitioner

To find suitable practitioners the following method may be used:

- Conduct an online search for contaminated land practitioners in your area or region
 - Search term 'contaminated land consultant' – (insert area name); or
 - Search term 'Occupational Hygienist' for matters involving asbestos or clan labs – (insert area name)
- Conduct a search of published business directory listing service such as Local Search or the Yellow Pages for environmental consultants
- Contact professional association for details on suitable members. Associations include:
 - Australian Contaminated Land Association
 - Australian Institute of Geoscientists
 - Australasian Land and Groundwater Association
 - Australian Society of Soil Science
 - Environment Institute of Australia and New Zealand
 - International Association of Hydrogeologists (Australian Chapter)
 - Consult Australia

- Engineers Australia
- Refer to SCPA and CEnvP webpage for list of practitioners accredited under these schemes
- Consult other entities, or people who may have undergone similar works
- Undertake an expression of interest.

8. Reporting and Submission Standards

8.1. Submitting contaminated land reports, plans and formal advice

All contaminated land reports, plans or formal advice provided to Council for consideration when undertaking planning, land management and regulatory functions, must adhere to the processes and standards of these Policy Guidelines, as well as the:

- Bellingen Shire Council Contaminated Land Policy
- SEPP 55 Remediation of Lands
- SEPP 55 Planning Guidelines
- EPA Guidelines for Reporting on Contaminated Sites
- Other key Legislation, Regulation, Policy and Guidelines (see Appendix C).

All contaminated land reports provided to Council must not have liability exclusions that prevent Council from relying on the information provided for carrying out its functions including maintaining and sharing information in accordance with the Policy or the Policy Guidelines.

Reports provided to Council should contain factual information and avoid subjective opinion, language or analysis that has the potential to mislead Council or a third party to whom the report may be disclosed under s149(5) of the EP&A Act.

8.2. Cover letters to accompany submissions

In accordance with Section 5.13 of the Policy all submissions provided to Council must be accompanied by a cover letter providing the contact details, relatable experience and professional references of the contaminated land practitioners who undertook the works. All submissions that are not accompanied by an appropriate cover letter will be refused by Council.

8.3. Standards of information that can be accepted by Council from proponents?

Council will only accept information or evidence provided by a proponent that is considered factual and reliable. This may include:

- Formal reports, plans or statements undertaken by a contaminated land practitioner at the site, current or historic.
- Official correspondence between proponent and NSW government agencies regarding contamination or absence thereof at the site.
- A statutory declaration from a reliable source that has direct and extensive knowledge of the site's history.
- Site images, topographic maps and other illustrative evidence that can be accurately dated.

9. Contaminated Land Information Management

9.1. Recording and management of contaminated lands information

Information kept by local government on land contamination can be an important resource for Council when performing planning, land management and regulatory activities, to ensure that Council identifies and responds to contamination at the earliest possible instance. To ensure the effectiveness of these records Council strive to maintain accurate, reliable and up-to date information on potential and known sites, in accordance with the MIDROC Contaminated Land Information Management Strategy 2016 and the Policy. A list of the types of information that Council will retain in its information system are outlined in Clause 5.14 of the Policy.

9.2. Section 149 Planning Certificates

Section 149 Planning Certificates are documents issued under Section 149 of the EP&A Act that contain information in relation to a property's zoning, planning controls and restrictions on development.

Council is obliged to provide certain information on the Section 149 Planning Certificate as specified in Schedule 4 of the *Environmental Planning and Assessment Regulations 2000* (NSW) and section 59 of the CLM Act. That is:

- a) clause 7, Schedule 4 of the *Environmental Planning and Assessment Regulations 2000* (NSW) requires that the certificate identify whether or not the land is affected by any policy (adopted by Council or by a public authority for the express purpose of its adoption being referred to in Section 149 Planning Certificates issued by Council) that restricts the development of land because of the likelihood of any risk; and
- b) section 59 of the CLM Act requires that the certificate address the specific matters relating to the management of contaminated land set out in that section.

Contaminated land information kept by Council shall be provided in s149 Planning Certificates requested pursuant to section 149(2) and section 149(5) of the EP&A Act in accordance with the standards outlined in Section 5.14.1 of the Policy.

Appendix J provides a set of standard Section 149 planning certificate notations that Council may use.

10. Preventing Contamination

Measures to prevent contamination at its source can help to reduce future contamination and the need for remedial actions. Once contamination has been detected, environmental damage may have occurred and clean-up bills could be high. Therefore, future economic consequences of contamination play a part in the current motivation for prevention.

A pro-active approach which ensures that the potential for contamination is reduced or that it does not occur must be linked to the nature of an activity on a particular site. Contamination of land may often be associated with new developments involving potentially contaminating activities. Such activities may result in accidental releases of chemicals to land which in turn will render the land contaminated. When assessing the suitability of a land use change Council will consider the following:

1. Does the proposal include a land use where a hazardous substance will be applied, stored, handled or disposed of on the site?
2. Can the land use or process be altered to eliminate the potential for land contamination to develop?

3. Are the management controls and responsibilities outlined in sufficient detail in the proposal and are they appropriate?
4. Is an Environmental Management Plan required?
5. For development applications, are appropriate conditions of consent able to be imposed to ensure potentially contaminating land uses are being monitored and managed over time?

Appendix A: Abbreviations

ANZECC	Australian and New Zealand Environment and Conservation Council
CLM Act	Contaminated Land Management Act 1997
DA	Development Application
DCP	Development Control Plan
DP&E	Department of Planning & Environment
EPA	Environment Protection Authority
EP&A Act	Environmental Planning and Assessment Act 1979
ESD	Ecological Sustainable Development
LEP	Local Environment Plan
NEHF	National Environmental Health Forum
POEO Act	Protection of the Environment Operations Act 1997
RAP	Remedial Action Plan
SEPP 55	State Environmental Planning Policy No. 55 – Remediation of Land
Table 1	Table 1 - Some Activities that May Cause Contamination
UST	Underground Storage Tanks
UPSS	Underground Petroleum Storage Tanks

Appendix B: Definitions

Category 1 remediation work	has the same meaning as in SEPP55, and is remediation work that needs development consent
Category 2 remediation work	has the same meaning as in SEPP55, and is remediation work that does not need development consent
CLM Act	means the <i>Contaminated Land Management Act 1997</i> (NSW) as amended from time to time.
Contamination of land	<p>depending on the context:</p> <p>has the same meaning as in section 5(1) of the CLM Act, being the presence in, on or under the land of a substance at a concentration above that normally present in, on or under the land in the same locality, being a presence that presents a risk of harm to human health or any other aspect of the environment, and “Contaminate” and “Contaminated” are to be construed accordingly. The words “land”, “harm” and “environment” are defined as in the CLM Act.</p> <p>OR</p> <p>has the same meaning as in section 145A of the EP&A Act, being land in, on or under which any substance is present at a concentration above the concentration at which the substance is normally present in, on or under (respectively) land in the same locality, being a presence that presents a risk of harm to human health or any other aspect of the environment. The words “land” and “environment” are defined as in the EP&A Act.</p>
Detailed investigation	means an investigation to define the extent and degree of contamination, to assess potential risk posed by contaminants to health and the environment, and to obtain sufficient information for the development of a remedial action plan if required.
EP&A Act	means the <i>Environmental Planning and Assessment Act 1997</i> (NSW) as amended from time to time.
Independent review	means an evaluation by an independent expert required by a planning authority of any information submitted by a proponent, conducted at the proponent’s expense.
Initial evaluation	means an assessment of readily available factual information to determine whether contamination may be an issue relevant to the decision being made.
Preliminary investigation order	means a preliminary investigation order issued by the EPA under s 10 of the CLM Act to investigate whether specified land is Contaminated, and the nature and extent of any such Contamination.
Notice of completion	means a notice to the Council (or Minister for Planning

	where the Minister is the consent authority) in accordance with SEPP 55 that remediation work has been completed.
Notification of remediation	means prior notice of a category 2 remediation work given to the Council in accordance with SEPP 55.
Planning authority	means a public authority or other person responsible for exercising a planning function.
Planning Certificate	means a planning certificate issued under s149 of the EP&A Act.
Planning function	means a function exercised by the Council as a planning authority under the EP&A Act, including the functions listed in s145B EP&A Act such as the preparation or making of an environmental planning instrument and the determination of a development application.
Preliminary investigation	means an investigation to identify any past or present potentially contaminating activities and to provide a preliminary assessment of any site contamination.
Remedial Action Plan	means a plan which sets remediation goals and documents the process to remediate a site.
Management Order	means a management order issued by the EPA under section 14 of the CLM Act, requiring the carrying out of specified actions in relation to the management of contaminated land (including remediation).
Significantly Contaminated Land	means a site declared by the EPA under section 11 of the CLM Act to be significantly contaminated land.
Remediation	has the same meaning as in the CLM Act and includes: <ul style="list-style-type: none"> (a) preparing a long-term management plan (if any) for the land; (b) removing, dispersing, destroying, reducing, mitigating or containing the contamination of the land; and (c) eliminating or reducing any hazard arising from the contamination of the land (including by preventing the entry of persons or animals on the land).
SEPP 55	means the <i>State Environmental Planning Policy No 55 – Remediation of Land</i>
Site audit	has the same meaning as in the CLM Act, being a review: <ul style="list-style-type: none"> (a) that relates to management (whether under this Act or otherwise) 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 any management of actual or possible contamination of the land,
- iii. whether the land is suitable for any specified use or range of uses,
- iv. what management remains necessary before the land is suitable for any specified use or range of uses,
- v. the suitability and appropriateness of a plan of management, long-term management plan or a voluntary management proposal.

Site auditor	has the same meaning as in the CLM Act, being a person accredited by the EPA under the CLM Act to conduct site audits.
Site audit statement	means a site audit statement issued by a site auditor in accordance with Part 4 of the CLM Act.
Site audit report	means a report prepared by a site auditor containing the key information and the basis of consideration which leads to the issue of a site audit statement.
Site history	means a land use history of a site which identifies activities or land uses which may have contaminated the site, establishes the geographical location of particular processes within the site, and determines the approximate time periods over which these activities took place. See (Edwards et al 1994)
Site investigation process	means the process of investigating land which may be, or is, contaminated, for the purpose of providing information to a planning authority.
Validation	means the process of determining whether the objectives for remediation and any conditions of development consent in relation to the remediation have been achieved.

Appendix C: Legislation, Regulation, Policy and Guidelines Relevant to the Management of Contaminated Land Matters

Acts

- *Environmental Planning and Assessment Act 1979*
- *Contaminated Land Management Act 1997*
- *Protection of Environmental Operations Act 1997*
- *Local Government Act 1993*
- *NSW Health and Safety Act 2011*

Regulation

- *Environmental Planning and Assessment Regulation 2000*
- *Protection of the Environment Operations (General) Regulation 2009*
- *Protection of the Environment Operations (Waste) Regulation 2014*
- *Protection of the Environment Operations (Clean Air) Regulation 2010*
- *Protection of the Environment Operations (Underground Petroleum Storage Systems) Regulation 2014*
- *NSW Health and Safety Regulation 2011*

Policy

- *State Environmental Planning Policy No. 55 – Remediation of Land*
- *State Environmental Planning Policy No. 55 – Planning Guidelines 1998*
- *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*

Others

- *Bellingen Shire Council Local Environmental Plan 2010*
- *Bellingen Shire Council Development Control Plan 2010*
- *EPA guidelines*

Appendix D: Initial Evaluation Procedure

The process that Council employs to undertake an Initial Evaluation should include:

1. Review of previous contaminated land investigations
 - a. Are Council aware of previous contaminated land investigations undertaken at the site? *This may include site investigations undertaken outside of the planning and development process that have been provided to Council as part of the planning applications.*
 - i. No – Go to question 2
 - ii. Yes – Go to 1b
 - b. Were the investigations undertaken by a suitably qualified contaminated land specialist?
 - i. No – Investigation and its findings should be considered as not suitable to base planning decisions.
If contamination was identified during the assessment then further investigation is warranted and conditions of consent must be put in the determination requiring further investigation of contamination at the site.
If no contamination was found then go to question 2.
 - ii. Yes – Go to 1c
 - c. Did the investigation find contamination that has the potential to make the site unsuitable for its proposed uses?
 - i. No – Go to question 1d
 - ii. Yes – Conditions of consent must be put in the determination requiring further investigation of contamination at the site.
 - d. Are Council aware of land use activities that have been undertaken at the site since the investigation that have the potential to cause contamination (eg. storage, dumping, manufacturing or application of hazardous substances? *See Appendix D of the Policy for a list of contaminating land uses*)?
 - i. No – Go to question 2
 - ii. Yes - Conditions of consent must be put in the determination requiring further investigation of contamination at the site.
2. Review of Council land use records
 - a. Are there thorough records kept by Council on the site's previous land uses?
 - i. No – Conditions of consent must be put in the determination requiring further investigation of contamination at the site.
 - ii. Yes – Go to question 2b.
 - b. Has the site been used for a potentially contaminating land use? *See Appendix D of the Policy for list of potentially contaminating land uses.*
 - i. No – Go to question 3
 - ii. Yes - Conditions of consent must be put in the determination requiring further investigation of contamination at the site.
3. Consideration of zoning
 - a. Was the site ever zoned for industrial, agricultural or defence purposes?
 - i. No – Go to question 4
 - ii. Yes – Conditions of consent must be put in the determination requiring further investigation of contamination at the site.
4. Current use of land in and around the site
 - a. Is the site currently used for an activity or land use that is listed in Appendix D of the Policy?
 - i. No – Go to question 4b
 - ii. Yes – Conditions of consent must be put in the determination requiring further investigation of contamination at the site.

- b. Is there an Underground Petroleum Storage System within 50m of the site?
 - i. No – Go to question 4c
 - ii. Yes – Conditions of consent must be put in the determination requiring further investigation of contamination at the site.
 - c. Is the land neighbouring the site used for land uses listed in Appendix D of the Policy
 - i. No – Go to question 5
 - ii. Yes – A visual site inspection should be undertaken at the site to identify whether contamination sources have the potential to impact upon the site. See site inspection checklist for further information.
 - iii. Where the reviewer is unsure or considers contamination to be present appropriate conditions of consent must be put in the determination requiring further investigation of contamination at the site.
5. Regulations on land uses or activities at the site
- a. Are Council aware of any current or past land uses restrictions placed on the site due to the presence of contamination? This may include sites that have been restricted for use by the EPA or other government agencies?
 - i. No – Go to question 6
 - ii. Yes – Council should contact the relevant government agency to discuss the suitability of the planning proposal or development application. Conditions of consent must be put in the determination requiring further investigation of contamination at the site.
6. Site inspection to identify potential land contamination matters at a site
- a. A visual site inspection should be undertaken by Council where:
 - i. Information provided by a proponent about the presence or absence of contamination is able to be confirmed by a visual inspection.
 - ii. The site is used for a land use type that may be associated with the application, storage and handling of hazardous substances.
 - iii. Unapproved development has taken place, to review whether certain contaminating activities have taken place (*eg use of uncertified fill materials, unapproved removal of asbestos structures, releases of hazardous materials on site*).
 - iv. Pathways exist between contamination on surrounding lands and the site.
 - v. All other instances where Council suspect contamination may be a factor at a site
 - b. Where a site contains observable indicators of contamination or is seen to be used for activities that have the potential cause contamination, then appropriate conditions of consent must be put in the determination requiring further investigation of contamination at the site.

If after carrying out an initial evaluation of a site there is no indications that the site may be contaminated then the planning process is to proceed in the normal way.

Appendix E: Preliminary Investigation Report Review Procedure

When reviewing a Preliminary Investigation Report Council should follow the below process:

1. Was the investigation and report undertaken/overseen by an appropriate Contaminated Land Practitioner in accordance with the requirements of the Bellingen Shire Council Contaminated Land Policy?
 - a. No - Report is to be disregarded.

The proponent may choose to have the investigation and report independently reviewed and verified by a suitably qualified Contaminated Land Practitioner or accredited Site Auditor. Council will accept reports that have been independently reviewed and verified.
 - b. Yes - Go to question 2
2. Review of site history
 - a. Does the report include
 - A section on site history
 - Verifiable information that was gained from reliable sources
 - Detailed information on land uses that is clear and comprehensive
 - i. No – The report is to be refused. The proponent may request that the contaminated land practitioner make updates in line with Council’s comments.
 - ii. Yes – Go to question 3
3. Review of Site characteristics
 - a. Does this report include
 - Information on a sites current conditions and settings
 - Geological and hydrological characteristics of the site
 - Assessment of surrounding environment
 - Outline of material sampling results if undertaken
 - i. No – The report is to be refused. The proponent may request that the contaminated land practitioner make updates in line with Council’s comments.
 - ii. Yes – Go to question 4
4. Conclusion and recommendations
 - a. Does this report include
 - Summary of the findings of the investigation
 - Statement of limitations and uncertainties
 - Clear statement on the conclusion of the investigation
 - Recommendations section stating further works that should be undertaken, if applicable
 - i. No – The report is to be refused. The proponent may request that the contaminated land practitioner make updates in line with Council’s comments.
 - ii. Yes – Report should be accepted by Council.

Further information on the scope and type of information that should be provided in a preliminary investigation can be found in the EPA Guidelines for Reporting on Contaminated Sites as well as in the SEPP 55 Planning Guidelines.

Appendix F: Detailed Investigation Report Review Procedure

When reviewing a Detailed Investigation Report Council should follow the below process:

1. Was the investigation and report undertaken/overseen by an appropriate Contaminated Land Practitioner in accordance with the requirements of the Bellingin Shire Council Contaminated Land Policy?
 - a. No - Report is to be disregarded.
The proponent may choose to have the investigation and report independently reviewed and verified by a suitably qualified Contaminated Land Practitioner or accredited Site Auditor. Council will accept reports that have been independently reviewed and verified.
 - b. Yes - Go to question 2
2. Responds to issues raised in preliminary investigation (if one was undertaken)
 - a. No – The report is to be refused. The proponent may request that the contaminated land practitioner make updates in line with Council’s comments.
 - b. Yes – Go to question 3
3. If no preliminary investigation was undertaken does the report include:
 - a. Detailed information on the location, conditions and characteristics of the site
 - b. Information on the sites history and past land uses including contamination sources and potential types
 - i. No – The report is to be refused. The proponent may request that the contaminated land practitioner make updates in line with Council’s comments.
 - ii. Yes – Go to question 4
4. Site sampling and analysis processes
 - a. Does the report include
 - Sampling, analysis and data quality objectives
 - Rationale behind sampling regime used at the site
 - Detailed description of sample collection methods used by practitioner
 - i. No – The report is to be refused. The proponent may request that the contaminated land practitioner make updates in line with Council’s comments.
 - ii. Yes – Go to question 5
5. Analysis of contamination and recommendations
 - a. Does this report include
 - Review of field and laboratory quality assurance and quality control data against set data quality objectives
 - Summary of results outlining the type, extent and level of contamination present
 - Descriptions of risks that the contamination poses to human health and the environment
 - Clear statement on whether a RAP is required
 - i. No – The report is to be refused. The proponent may request that the contaminated land practitioner make updates in line with Council’s comments.
 - iii. Yes – Report should be accepted by Council.

Further information on the scope and type of information that should be provided in a detailed investigation can be found in the EPA Guidelines for Reporting on Contaminated Sites as well as in the SEPP 55 Planning Guidelines.

Appendix G: Remedial Action Plan Review Procedure

When reviewing a RAP Council should follow the below process:

1. Was the RAP prepared by an appropriate Contaminated Land Practitioner in accordance with the requirements of the Bellingen Shire Council Contaminated Land Policy?
 - b. No - RAP is to be disregarded.
The proponent may choose to have the RAP independently reviewed and verified by a suitably qualified Contaminated Land Practitioner or accredited Site Auditor. Council will accept RAP's that have been independently reviewed and verified.
 - c. Yes - Go to question 2
2. Does the RAP include the following information:
 - a. Remediation goals
 - b. Outline of the extent of remediation required
 - c. Discussion of possible remedial options and how risk can be reduced
 - d. Rationale for the selection of recommended remedial option
 - e. Proposed testing to validate the site after remediation
 - f. Contingency plan if the selected remedial strategy fails
 - g. Interim site management plan (before remediation), including e.g. fencing, erection of warning signs, stormwater diversion
 - h. Site management plan (operation phase):
 - i. Site stormwater management plan
 - ii. Soil management plan
 - iii. Noise control plan
 - iv. Dust control plan, including wheel wash (where applicable)
 - v. Odour control plan
 - vi. Occupational health and safety plan
 - i. Remediation schedule
 - j. Hours of operation
 - k. Contingency plans to respond to site incidents, to obviate potential effects on surrounding environment and community
 - l. Identification of regulatory compliance requirements such as licences and approvals
 - m. Names and phone numbers of appropriate personnel to contact during remediation
 - n. Community relations plans, where applicable
 - o. Staged progress reporting, where appropriate
 - p. Long-term site management plan.
 - b. No – The report is to be refused. The proponent may request that the contaminated land practitioner make updates in line with Council's comments.
 - c. Yes – RAP should be accepted by Council.

Further information on the scope and type of information that should be provided in a RAP can be found in the EPA Guidelines for Reporting on Contaminated Sites as well as in the SEPP 55 Planning Guidelines.

Appendix H: Validation Report Review Procedure

When reviewing a Validation Report Council should follow the below process:

1. Was the Validation assessment and report undertaken/overseen by an appropriate Contaminated Land Practitioner in accordance with the requirements of the Bellingen Shire Council Contaminated Land Policy?
 - b. No - Report is to be disregarded.
The proponent may choose to have the investigation and report independently reviewed and verified by a suitably qualified Contaminated Land Practitioner or accredited Site Auditor. Council will accept reports that have been independently reviewed and verified.
 - c. Yes - Go to question 2
2. Does the Validation report include the following:
 - An appropriate rationale and justification for the validation strategy
 - Validation sampling and analysis plan
 - Statistical confirmation that the remediated site complies with the clean-up criteria set for the site (if achieved)
 - Where the targets have not been achieved, reasons for such failure must be stated and additional site work should be proposed that will achieve the original objectives (if further remediation is practical)
 - Verification of compliance with regulatory requirements including a copy of all licences, approvals and development consents that apply
 - Provision of a clear statement on the suitability of a site proposed site use
 - a. No - Report is to be disregarded.
The proponent may choose to have the investigation and report independently reviewed and verified by a suitably qualified Contaminated Land Practitioner or accredited Site Auditor. Council will accept reports that have been independently reviewed and verified.
 - b. Yes – The validation report should be accepted by Council. As required under SEPP 55 a notice of completion should be provided to Council stating that remediation works have been completed.

Further information on the scope and type of information that should be provided in a validation report can be found in the EPA Guidelines for Reporting on Contaminated Sites as well as in the SEPP 55 Planning Guidelines.

Appendix I: Ongoing Monitoring Report Review Procedure

When reviewing an Ongoing Monitoring Report Council should follow the below process:

1. Was the Validation assessment and report undertaken/overseen by an appropriate Contaminated Land Practitioner in accordance with the requirements of the Bellingen Shire Council Contaminated Land Policy?
 - d. No - Report is to be disregarded.
The proponent may choose to have the investigation and report independently reviewed and verified by a suitably qualified Contaminated Land Practitioner or accredited Site Auditor. Council will accept reports that have been independently reviewed and verified.
 - e. Yes - Go to question 2
2. Are Council satisfied that further remediation works are not practical at the site?
 - a. No – Council should consider having a Site Auditor or other suitably qualified Contaminated Land Practitioner to review merits of this plan.
 - b. Yes - Go to question 3
3. Does the report include the following information:
 - Monitoring strategy
 - Parameters to be monitored
 - Monitoring locations
 - Frequency of monitoring
 - Reporting requirements
 - a. No – Report is to be disregarded
The proponent may choose to have the investigation and report independently reviewed and verified by a suitably qualified Contaminated Land Practitioner or accredited Site Auditor. Council will accept reports that have been independently reviewed and verified.
 - b. Yes - Go to question 4
4. Does Council consider the monitoring program to be adequate?
 - a. No – Report is to be disregarded
The proponent may choose to have the investigation and report independently reviewed and verified by a suitably qualified Contaminated Land Practitioner or accredited Site Auditor. Council will accept reports that have been independently reviewed and verified.
 - c. Yes – The Ongoing Monitoring Report should be accepted by Council.

Further information on the scope and type of information that should be provided in an ongoing monitoring report can be found in the EPA Guidelines for Reporting on Contaminated Sites as well as in the SEPP 55 Planning Guidelines.

Appendix J: Section 149 Planning Certificate Standard Notations

This Appendix provides information that council may add to a Planning Certificates issued under Section 149(2) and 149(5) of the EP&A Act.

Section 149(2) Planning Certificates

In accordance with the This Policy recommends that wherever relevant the following standard notation should be added to 149(2) Planning Certificates:

1. Where Council has received a Site Audit Statement that relates to the land
'Council has received a Site Audit Statement that relates to the land.'
2. Where the site has not been regulated by the CLM Act
'The land to which this certificate relates is not presently subject to regulation under the Contaminated Land Management Act 1997.'
3. Where the site has been declared significantly contaminated under the CLM Act
'The land to which this certificate relates is significantly contaminated land under the Contaminated Land Management Act 1997.'
4. Where the site is subject to a management order under the CLM Act
'The land to which this certificate relates is subject to a management order under the Contaminated Land Management Act 1997.'
5. Where the land is subject to a voluntary management proposal under the CLM Act
'The land to which this certificate relates is subject to an approved voluntary management proposal under the Contaminated Land Management Act 1997.'
6. Where the land is subject to an ongoing maintenance order under the CLM Act
'The land to which this certificate relates is subject to an ongoing maintenance order under the Contaminated Land Management Act 1997.'
7. Where the land has been, but is no longer declared significantly contaminated under the CLM Act
'The land to which this certificate relates was, but is no longer significantly contaminated land under the Contaminated Land Management Act 1997.'
8. Where the land has been, but is no longer subject to a management order under the CLM Act
'The land to which this certificate relates was, but is no longer subject to a management order under the Contaminated Land Management Act 1997.'
9. Where the land has been, but is no longer subject to a voluntary management proposal under the CLM Act

'The land to which this certificate relates was, but is no longer subject to an approved voluntary management proposal under the Contaminated Land Management Act 1997.'

10. *Where the land has been, but is no longer subject to an ongoing maintenance order under the CLM Act*

'The land to which this certificate relates was, but is no longer subject to an ongoing maintenance order under the Contaminated Land Management Act 1997.'

Section 149(5) Planning Certificates

This Policy recommends that wherever relevant the following standard notation should be added to 149(5) Planning Certificates:

'Council are aware that the lands to which this certificate relates is or has the potential to be affected by land contaminated. Contact Council for further information.'

Appendix K: Standard Conditions of Consent

This Appendix provides a set of standard conditions of consent that council may consider using in development consents

Development Applications for contaminated sites

Request for information:

'Prior to determination of development application if additional information is required, one or more of the following may be relevant.'

Site History

'A review of the historical land uses of the site is requested to ensure that any activities that have the potential to cause land contamination are identified. Council requests that this information be forwarded with a statutory declaration by any person furnishing relevant information declaring that the information is true and complete to the best of their knowledge.'

'Where a potentially contaminating activity is identified, a relevant contaminated site investigation will be required and shall be carried out in accordance with Council's Contaminated Land Policy, the Managing Land Contamination Planning Guideline (1998), relevant EPA Guidelines and the Assessment of Site Contamination NEPM (1999 as amended 2013). Please note the requirements specified in Council's policy for consultants reporting and for Site Audits.'

Preliminary investigations

'A preliminary contaminated site investigation is required to be submitted prior to further assessment of DA Number/year. The preliminary investigation shall be carried out in accordance with Council's Contaminated Land Policy, the Managing Land Contamination Planning Guideline (1998), relevant EPA Guidelines and the Assessment of Site Contamination NEPM (1999 as amended 2013). Please note the requirements specified in Council's policy for consultants reporting and for Site Audits.'

Detailed investigations

'A detailed contaminated site investigation is required to be submitted prior to further assessment of DA Number/year. The detail Investigation shall be carried out in accordance with Council's Contaminated Land Policy, the Managing Land Contamination Planning Guideline (1998), relevant EPA Guidelines and the Assessment of Site Contamination NEPM (1999 as amended 2013). Please note the requirements specified in Council's policy for consultants reporting and for Site Audits.'

Recommended Condition where development will destroy evidence of potential contamination in an area of the site:

'Prior to any works commencing on the site a photographic survey and oral history of the use of the land may be required is to be submitted to Council for its records.'

Recommended Conditions for Deferred Commencement or prior to Construction Certificate:

'The following conditions may be applied to ensure that the land is remediated in accordance with the development proposal and the information provided in relevant contamination assessments. Each application will be considered on its merit and the use, or modification, of any of the standard

condition is at the discretion of Council in each circumstance. Conditions may be tailored to meet the specific circumstance of the development.

The use of deferred commencement is strongly advised if there is any doubt that the remediation will be entirely successful.'

Remediation Action Plans

'A Remediation Action Plan (RAP) is to be prepared that addresses the contamination identified in [report(s) details Title, Author, Date] and sets out how site can be made suitable for its intended use including methodology, clean-up criteria and validation procedures. The RAP must be prepared in accordance with Council's Contaminated Land Policy, the Managing Land Contamination Planning Guideline (1998), relevant EPA Guidelines and the Assessment of Site Contamination NEPM (1999 as amended 2013). Please note the requirements specified in Council's policy for consultant's reporting and for site audits.

[A Site Audit statement stating that the land CAN BE MADE SUITABLE (Section B) for the proposed development as [insert SAS land use category of the development] land use shall be provided to Council. Please note the requirements specified in Council's policy for site audits.]

[Any remediation carried out prior to commencement is subject to the requirements to either obtain consent or notify Council in accordance with SEPP 55 and Council's policy.]'

Validation

'A validation report shall be provided to Council along with the summary report and notice of completion required under clause 17(2) of SEPP 55 to confirm that the remediation has been completed generally in accordance with the RAP and that the site is suitable for the development. The validation report must be prepared in accordance with Council's Contaminated Land Policy, the Managing Land Contamination Planning Guideline (1998), relevant EPA Guidelines and the Assessment of Site Contamination NEPM (1999 as amended 2013). Please note the requirements specified in Council's policy for consultants' reporting and for Site Audits.

Any recommendations identified in the validation report shall be binding on the development.'

Site Management Plans

A Site Management Plan (has the same meaning as an Environmental Management plan as defined in the Guidelines for the NSW Site Auditor Scheme (2nd edition) (DEC NSW 2006)), if required to make the site suitable for the development, shall be submitted to Council for approval. The plan shall address what land use restrictions are required, any ongoing monitoring requirements and what responses should be made to any unsatisfactory monitoring results. The Site Management Plan must be prepared in accordance with Council's Contaminated Land Policy, the Managing Land Contamination Planning Guideline (1998), relevant EPA Guidelines and the Assessment of Site Contamination NEPM (1999 as amended 2013). Please note the requirements specified in Council's policy for consultants reporting and for Site Audits.

A restriction or covenant requiring compliance with the approved site management plan must be registered on the title under section 88E of the Conveyancing Act 1919 or section 29(3) of the Contaminated Land Management Act 1997. Assistance must be provided to Council (including by executing relevant documents) to enable registration (without unreasonable delay) of the restriction

or covenant and Council is to be named as the only party able to vary or release the restriction or covenant.'

Site Audit Statement

'A Statutory Site Audit Statement in accordance with Part 4 Contaminated Land Management Act 1997 stating that the land is suitable for the proposed development as [insert SAS land use category of the development] land use shall be provided to Council. Please note the requirements specified in Council's policy for Site Audits.

SAS land use categories are found on the Site Audit Statement template available on the EPA website <http://www.epa.nsw.gov.au/resources/clm/SAS.doc>.'

Recommended Conditions for ongoing site management:

All construction, development and use shall be bound by the recommendations of the validation report or any Site Management Plan coming from the remediation of the site.

Category 1 remediation:

- 1 Remediation activities shall be carried out in accordance with the RAP [insert details of RAP: title, author, date]. Any variation to the RAP must be communicated to Council before work is commenced to determine if any proposed variation will require reassessment under s96 of the EP&A Act.*
- 2 Remediation work is to be carried out by a suitably qualified and experienced contractor under the guidance of a contaminated land consultant who meets the requirements of Council's Contaminated Land Policy in relation to reporting, certification and insurances.*
- 3 A site auditor shall oversee the remediation [and where practicable, be the same site auditor that has reviewed the RAP]. A site audit statement in accordance with Part 4 Contaminated Land Management Act 1997 shall be provided to Council for the validation report and any Site Management Plan stating that the land is suitable for the proposed development as [insert SAS land use category of the development] land use.*
- 4 A Construction Certificate shall be required for any structure required to carry out the remediation.*

Community consultation

- 5 Adjoining property owners must be notified in writing of the commencement date of the remediation activities at least 7 days prior to remediation activities commencing on site.*
- 6 A sign identifying the contact details of the remediation contractor must be displayed at the site for the duration of the remediation activities. The sign must identify the phone numbers for the duration of the remediation activities.*
- 7 While the remediation activities are being undertaken the contractor must maintain a written record of any complaints received in relation to the conduct of the remediation. The written record must include each complainant's name and address, the time and date that each complaint was made, the nature of each complaint and the actions taken to address the complaint. The record may be requested by Council officers during the conduct of remediation, in which case the record must be made available to Council.*

Reason: so that any impacts on the surrounding environment are mitigated in a timely manner.

8 *Any complaint received by the contractor in relation to the remediation activities must be notified to Council during Council business hours as soon as possible, and in all cases no later than 2 business days following the date that the complaint was received by the contractor.*

Reason: so that Council is made aware that a complaint has been made and the contractor has dealt with the complaint promptly.

Managing Impacts

9 *Remediation activities must not cause any environmental harm outside of the area nominated for remediation within the site. The remediation area is to be contained by a suitable barrier or fencing to prevent all unauthorised access. Erosion and sediment controls must be in place to prevent any soil leaving the remediation site. Runoff from areas of contaminated soil, whether in situ, stockpiled or in excavation pits, must not be permitted to leave the site without relevant testing or treatment.*

10 *Remediation must not create visible dust that extends beyond any site boundary.*

11 *Remediation activities must not cause offensive noise (as defined by POEO Act) and avoid the production of vibration that may impact nearby properties.*

12 *Remediation activities must be managed to ensure that dust, odour, gases or fumes are not emitted beyond the boundary of the remediation site. Appropriate monitoring equipment must be used to demonstrate compliance with the condition.*

Dealing with Waste

13 *All liquid and solid waste must be classified in accordance with the Protection of the Environment (Waste) Regulation 2014 and related guidelines.*

14 *All waste transported from the remediation site must be covered in a vehicle suitable for that waste material. There must be no tracking of soil onto public roads.*

15 *Any receiver of waste material must be properly licensed by the EPA to receive that waste. If a non-licensed premises is intended to receive waste from the site then an approved notice within the meaning of s143(4) of the POEO Act (s143 notice) must be supplied prior to removal of the material from the remediation site.*

16 *Details of material removed including volume, mass, classification, destination and any s143 notices are to be included in the validation report.*

17 *All waste transport routes must avoid where possible all sensitive land uses such as residential areas, schools, preschools, etc, as well as bus routes and particularly school bus pick up and drop off periods.*

Validation report

18 *A validation report shall be provided to Council along with the summary report and the notice of completion required under clause 17(2) of SEPP 55 to confirm that the remediation has been carried out in accordance with the requirement this consent and SEPP 55 and provide a statement regarding the suitability of the site for use in accordance with the generic land use settings identified by the National Environmental Protection (Assessment of Site Contamination) Measure (1999). The validation report must be prepared in accordance with Council's Contaminated Land Policy, the Managing Land Contamination Planning Guideline (1998), relevant EPA Guidelines and the National Environmental Protection (Assessment of Site Contamination) Measure (1999).*

Site Management Plan

19 *If the validation report recommends or requires the implementation of an ongoing site management plan (has the same meaning as an Environmental Management plan as defined in the Guidelines for the NSW Site Auditor Scheme (2nd edition DEC NSW 2006) or a site management plan is otherwise required, the site management plan must be prepared in consultation with Council in regard to how land use will be restricted, compliance with any ongoing monitoring and responses to unsatisfactory monitoring results.*

20 *A restriction or covenant requiring compliance with the site management plan must be registered on the title under section 88E of the Conveyancing Act 1919 or section 29(3) of the Contaminated Land Management Act 1997. Assistance must be provided to Council (including by executing relevant documents) to enable registration of the restriction or covenant and Council is to be named as the only party able to vary or release the restriction or covenant.*