

Policy Document

Contaminated Land Management Policy



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Policy

1. ABOUT THIS POLICY

This policy, known as the Contaminated Land Management Policy, outlines requirements relating to the use and / or development of land that is or may be contaminated.

This policy has been developed under the provisions of the *Contaminated Land Management Act*¹ (CLM Act), its associated State Environmental Planning Policy No. 55 – Remediation of land² and the Managing Land Contamination – Planning Guidelines³ in regards to the principles of:

- i. Ensuring that changes of land use, or new development proposals, will not increase the risk to human health or the environment;
- ii. Avoiding inappropriate restrictions on land use; and
- iii. Providing information to support decision making and to inform the community.

1.1 LAND TO WHICH POLICY APPLIES

All land in the Balranald Shire Local Government Area (LGA).

1.2 DATE ADOPTED BY COUNCIL

This policy was adopted by Council at **Balranald on 20th** September 2017 - Resolution Number 09.16.3828 .

1.3 TERMS AND DEFINITIONS

Terms and definitions are set out in Appendix 1.

1.4 PURPOSE

This policy provides a framework for the management of contaminated or potentially contaminated land in the Balranald Shire LGA. The policy identifies how the management of contaminated land is integrated into Council's planning and development processes.

¹ Contaminated Land Management Act 1997
<http://www.legislation.nsw.gov.au/maintop/view/inforce/act+140+1997+cd+0+N>

² State Environmental Planning Policy No. 55 – Remediation of Land
http://www5.austlii.edu.au/au/legis/nsw/consol_reg/seppn55ol537/

³ Managing Land Contamination – Planning Guidelines
http://www.epa.nsw.gov.au/resources/clm/gu_contam.pdf

1.5 OBJECTIVES

The integration of contaminated land management into the local planning and development control process will enable Council to:

- Ensure that the Council exercises its functions in relation to the development of contaminated land with a reasonable standard of care and diligence and that decisions are made in good faith;
- Ensure that the likelihood of land contamination is considered as early as possible in the planning and development control process;
- Ensure that planning and development decisions take into account available information relating to the likelihood of land contamination;
- Link decisions about the development of land with the information available about contamination possibilities;
- Ensure that any development of contaminated land will not result in unacceptable levels of risk to human health or the environment;
- Avoid inappropriate restrictions on the development of contaminated land;
- Ensure that site investigations and remediation work are carried out in a satisfactory manner, and where appropriate, are independently verified by site audits;
- Facilitate the provision of consistent and reliable information to the public about land contamination;
- Ensure that ongoing responsibility for management and monitoring of contaminated land is clearly and legally assigned;
- Ensure that the community is not unduly disadvantaged by increased health and environmental risks or increased management costs when accepting the dedication of public assets;
- Adopt a policy approach that will provide strategic and statutory planning options based on the information about contamination; and
- Exercise statutory planning functions with a standard of care.

1.6 POLICY APPLICATION

This policy applies to the following planning functions of Council:

- The preparation and amendment of Local Environmental Plans
- The preparation, approval and amendment of Development Control Plans
- The preparation and adoption of Plans of Management for Community Land
- The determination of Development Applications
- The modification of Development Consents;
- The determination of activities pursuant to Part 5 of the Environmental Planning and Assessment Act 1979; and
- The storage and sharing of contaminated land information through Section 149 certificates.

1.7 GUIDELINES

This policy has been developed from the State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55) and in conjunction with the *Contaminated Land Management Act 1997* (CLM Act) and Balranald Local Environment Plan 2010.

Effective management of contaminated land in land-use planning is necessary in managing the risk of harm potentially posed by land contamination to human health and the environment.

In the context of land contamination, councils are the planning and consent authorities and are thereby expected to act in “good faith” and in accordance with the requirements of the NSW CLM Act. “Good faith” provisions also extend to the subordinate State Environmental Planning Policy No.55 – Remediation of Land (SEPP 55), and its Planning Guidelines.

Councils have responsibilities under the *Environmental Planning and Assessment Act*⁴ (EP&A Act) in regard to the early identification of contaminated sites, the consideration of land contamination issues in planning functions, data and information management regarding land contamination, and to inform the public on contamination matters (e.g. Section 149 planning certificates).

Under the CLM Act, the EPA regulates contaminated sites where the contamination is significant enough to warrant regulation. Contaminated sites that are not regulated by the EPA are managed by local councils through land-use planning processes.

1.8 CHANGE MANAGEMENT

This policy will require management and review every 4 years or as legislation and regulations are updated. Any change must be made in accordance with the relevant legislation and regulations applicable at the time, and/or any regulatory changes.

2. OBLIGATIONS

2.1 DUTY TO REPORT

The CLM Act 1997 requires persons to notify the Environment Protection Authority (EPA) if they become aware that their activities have contaminated land so as to present an unacceptable risk to human health or the environment.

The Act also requires landowners to notify the EPA if they become aware that their land has been contaminated so as to present an unacceptable risk of harm to human health or the environment. This requirement applies whether the contamination occurred before or during the current owner’s tenure of the land and the notification must be made as soon as practicable after becoming aware of the risk (See Appendix 2 – Activities that may cause contamination).

To assess this risk, the land owner and or persons who have caused the contamination should consult Guidelines on the Duty to Report Contamination under the *Contaminated Land Management Act 1997*.⁵

Section 60 of the CLM Act imposes a duty on owners of land, and persons who have contaminated land, to immediately notify the EPA when they become aware that contamination presents a significant risk of harm.

⁴ Environmental Planning and Assessment Act
<http://www.legislation.nsw.gov.au/viewtop/inforce/act+203+1979+first+0+N>

⁵ Guidelines on the Duty to Report Contamination under the *Contaminated Land Management Act*
<http://www.epa.nsw.gov.au/clm/150164-land-contamination.htm>

According to the Guidelines on the Duty to Report Contamination under the *Contaminated Land Management Act 1997*, a person is taken to be aware of the contamination if it is considered that they are aware or should have reasonably become aware of the contamination. Factors taken into account in determining when a person should reasonably have become aware of the contamination are;

- i. The persons' abilities, including their experience, qualifications and training
- ii. Whether the person could reasonably have sought advice that would have made them aware of the contamination
- iii. The circumstances of the contamination.

2.2 CONSULTANTS

Contaminated land consultant certification schemes have been developed to ensure any consultants dealing with contaminated sites have the necessary competencies to carry out the work. The certifications outlined below are recognised by the EPA and certify that a contaminated land consultant has achieved an acceptable minimum standard of competency:

- Site Contamination Practitioners Australia (SCPA); and
- Environment Institute of Australia and New Zealand's (EIANZ) Contaminated Land Assessment Specialist Certified Environmental Practitioner (CLA Specialist CEnvP)

Where reports are required to be submitted to the EPA and/or Council they must comply with the requirements of the CLM Act to be prepared, or reviewed and approved, by a certified SCPRA or EIANZ CLA Specialist CEnvP Practitioner. This requirement includes reports associated with a:

- Preliminary investigation order
- Management order
- Voluntary management proposal
- Ongoing maintenance order
- Duty to report contamination

Where required to be submitted to Council, reports must be prepared in accordance with the current relevant guidelines approved under the CLM Act and in accordance with SEPP 55. Council will require the following to be submitted:

- Preliminary investigation
- Detailed investigation
- A Remediation Action Plan
- Validation, monitoring and remediation reporting

The front cover of a submitted report must include the details of the consultant's certification. For a CLA Specialist CEnvP this involves affixing the CEnvP logo and for SCPA the certified practitioner is to affix their seal.

As the contaminated land consultant certification schemes are new, there is a 24 month transition period to enable consultants to become certified. Any requirements for reporting undertaken after 1 July 2017 must be prepared, or reviewed and approved, by a certified consultant.

3. COUNCIL RECORDS AND INFORMATION MANAGEMENT

Council has a responsibility to provide information regarding land use history, land contamination and remediation.

The SEPP 55 Guidelines emphasises the importance of local government information systems in ensuring that adequate information is available to Council staff and the community in relation to both actual and potential land contamination.

Council also has a statutory responsibility to include certain information regarding land contamination on planning certificates issued under Section 149(2) of the EP&A Act.

Council's records regarding contaminated land are dynamic and will change over time as land is investigated, remediated and validated, and as new sites of potential contamination are identified. Existing records in relation to contaminated land should be kept on individual property files for each parcel of land. To assist Council in the management of information the following is (without limitation) records for individual parcels of land (where available / known):

- a) Site contamination reports submitted to Council (i.e. Preliminary Investigation, Detailed Investigation, Remedial Action Plans Validation and Monitoring Reports);
- b) Site Audit Statements received;
- c) EPA declarations and orders issued under the CLM Act (Including voluntary investigation management proposals approved by the EPA);
- d) Development Applications for Category 1 remediation works;
- e) Prior notification to Council of Category 2 remediation works;
- f) Notification of completion of Category 1 and Category 2 remediation work;
- g) Information regarding previous or current land uses which are likely to have resulted in land contamination; and
- h) Written complaints to Council about contamination.

Notations may be made on Council's property information system in relation to investigations and remediation work carried out for individual properties. This will assist staff to identify land that has been fully remediated or remediated for specific land uses. Some properties listed on the information system may be subject to legal notices under legislation administered by the EPA. The public should also consult with the EPA for up-to-date information on any such land in the local government area.

4. PLANNING (SECTION 149) CERTIFICATES

Under Section 149 of the EP&A Act a person may request a planning certificate that contains advice on land contamination matters about a property from Council. For example, a planning certificate would show the existence of a council policy to restrict the use of land.

Such matters relating to land contamination that must be included on section 149(2) planning certificates are as set out in section 59(2) of the CLM Act will also include:

- a) Whether Council has adopted a policy to restrict the use of land due to the risk of land contamination;
- b) Whether the land is an investigation area or remediation site;
- c) Whether the land is subject to an investigation order or remediation order; and
- d) Whether a site audit statement of the land is held by Council.

Council is formally advised whenever a notice is issued under the CLM Act and accordingly annotates its planning certificates. Section 149(2) planning certificates will not include specific information about actual or potential contamination (such as the types, extent and level of contamination) on a parcel of land.

Council may also elect to provide additional information of a factual nature on S.149(5) certificates regarding the contamination status of a property.

Procedure

1. ABOUT THIS PROCEDURE

The procedure applies to a planning process in which there is a need to consider a potential or known contaminated site in the development application or a planning proposal process. It is premised on SEPP 55 Planning Guidelines and sets out steps to ensure decisions are made in good faith, adequately manage harm and that the land is appropriate for its intended use.

A separate procedure exists for the management of data and information relating to potential or to known contaminated land, including managing notifications from the NSW EPA, Site Assessment Statements, consultant reports, historical land use information, etc (See Appendix 12).

2. COUNCIL'S PROCEDURE FOR CONSIDERING LAND CONTAMINATION ISSUES FOR PLANNING PROPOSALS

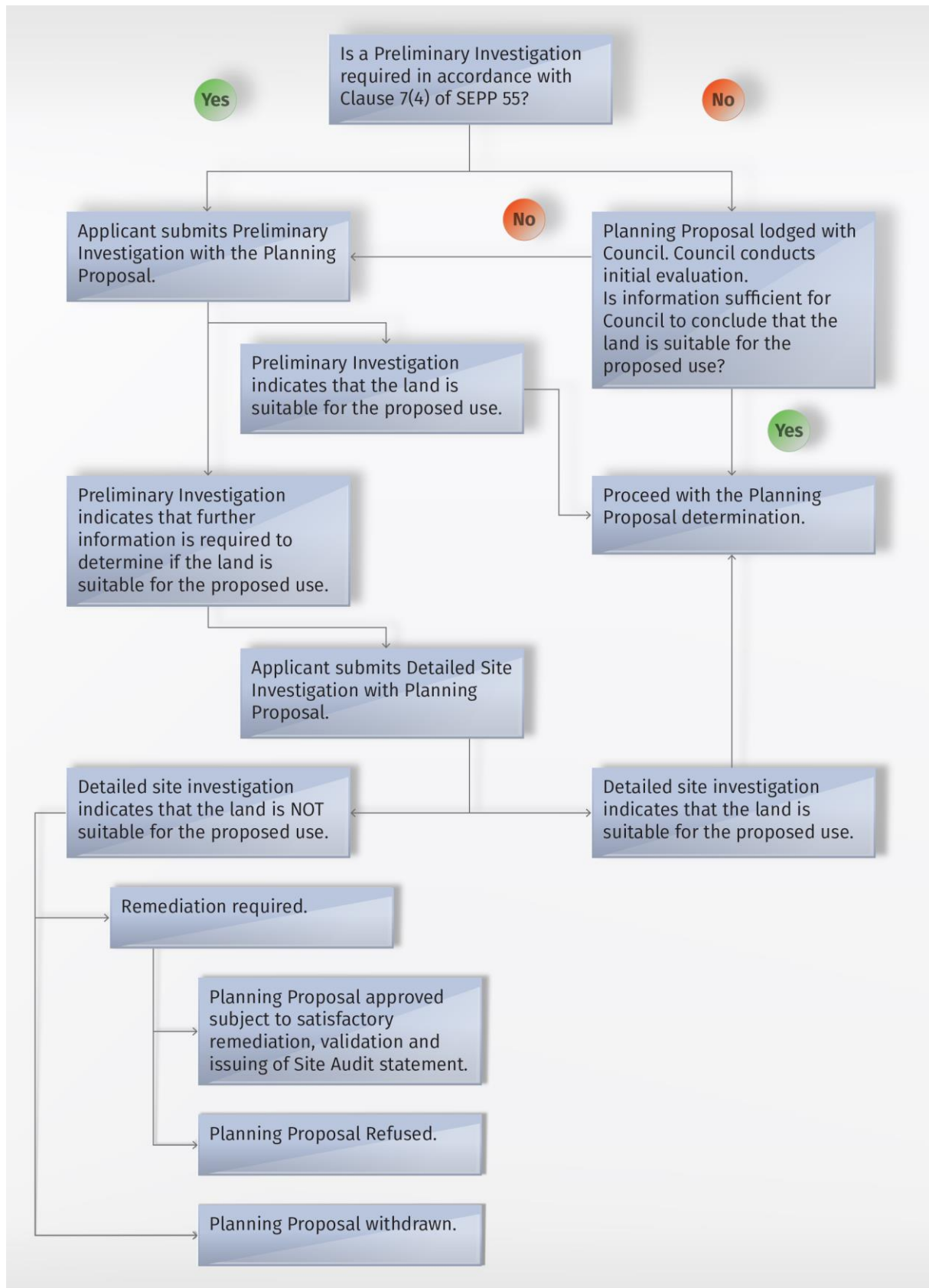
All land subject to a planning decision must be considered as to whether the issue of contamination is relevant. If it is, investigations may be required to provide information about the land to enable that function to be carried out in good faith.

An initial evaluation is an assessment of readily available factual information. Its purpose is to determine whether contamination is an issue that requires further investigation prior to the preparation of the plan, or determination of the matter and whether a site investigation process is required to be carried out.

The preliminary investigation is to identify any past or present potentially contaminating activities and to provide a preliminary assessment of site contamination. The preliminary investigation typically contains a detailed appraisal of the site history and a report based on visual site inspection and assessment.

The detailed site investigation is undertaken by an experienced and certified consultant at the cost of the applicant, and should be undertaken in accordance with the guidelines made or approved by the EPA under Section 105 of the CLM Act.

Figure 1: Preliminary Investigation process for planning proposals



2.1 INITIAL EVALUATION

An initial evaluation is to comprise an assessment of readily available factual information. Its purpose is to determine whether contamination is an issue that requires further investigation prior to the preparation of the plan, or to determine the matter and whether a site investigation process is required.

The initial evaluation will be based on readily available factual information and should be carried out regardless of the nature of the proposed use or the current use. This information may include:

- the current zoning and permissible land uses;
- records from previous zoning;
- historical land uses;
- aerial photographs;
- development and building applications; and
- property files and information provided by the applicant or other information available to Council.

Council may also carry out a site inspection of the land as part of the initial evaluation process.

As part of the initial investigation, applicants may request Council undertake a search of its records to determine previous approved developments at the site.

If Council is satisfied that the initial evaluation concludes that contamination is not an issue, then Council may not require any further investigation.

If, after an initial evaluation, there is nothing to suggest that the land might be contaminated, or that further enquiry is warranted, Council and the proponent may process without further reference to this policy. However; if there are indications that:

- the land is or may be contaminated; or
- there is insufficient information on which to make a decision;

a site investigation process is to be carried out in accordance with the Contaminated Land Planning Guidelines.

Insufficient information on which to make a decision exists if there are significant gaps in historical information for a site, or if land uses are not described in sufficient detail to identify the presence or absence of possible contaminating land uses during periods in which such uses could be lawfully carried out.

The circumstances in which a site investigation process is required also include those specified in clause 6 and 7 of SEPP 55 – Remediation of Land. In accordance with these clauses, Council will require a preliminary investigation to be submitted with zoning and rezoning applications or a subdivision or development application where the land concerned is:

- Land that is within an investigation area;
- Land on which a potentially contaminating land use is being, or is known to have been carried out;

- Land on which it is proposed to carry out development for residential, educational, recreational, child care purposes or for a hospital;
- Where there is no knowledge or incomplete knowledge as to whether potentially contaminating development has been carried out on the land; and
- Where it would have been lawful to carry out such development on the land during any period in respect of which there is no knowledge or incomplete knowledge.

See Appendix 5: Council procedure for Initial Evaluation for steps on undertaking this process.

2.2 PRELIMINARY INVESTIGATION

The objectives of a preliminary investigation are to identify any past or present potentially contaminating activities and to provide a preliminary assessment of site contamination. The preliminary investigation typically contains a detailed appraisal of the site history and a report based on visual site inspection and assessment.

Where contaminating activities are suspected to have had an impact on the land, sampling and analysis will be required to confirm and support any conclusion reached from the site history appraisal.

When undertaking a preliminary investigation landowners should consider that the information gained should be in accordance with the Guidelines on the Duty to Report Contamination under the *Contaminated Land Management Act 1997* and may include:

- Description of activities that have occurred on the site
- Any large gaps in history that might hide a use
- Reliability of sources
- Historical permissible uses that may have occurred on site where there is a gap in land history
- Does that site pose a significant threat to human health or the environment?
- Does information conform to the relevant EPA guidelines?

As part of the preliminary investigation, applicants may request Council search its records to determine previous approved developments at the site.

Council will require further investigation (preliminary investigation) to be conducted and results submitted with planning proposals where it is found through the initial evaluation that the land concerned is:

- Land that is or that has been notified to the EPA under s60, or is regulated by the EPA under any other section, of the CLM Act;
- Land on which activities referred to in Appendix 2 are being undertaken, or are known to have been carried out; or
- Land on which there is incomplete knowledge about whether activities referred to in Appendix 2 are being, or are known to have been carried out, and if the proposed development involved residential, educational, recreational, child care or hospital purposes.

Where an initial evaluation by Council identified that the land was previously used for agricultural or horticultural purposes, Council may request a preliminary investigation to be undertaken to determine the history of the property. If the preliminary investigation shows that the land was only used for broad acre agriculture then the application may, in most cases, proceed. Although it is likely that herbicides and pesticides were used for broad acre farming, the likelihood of elevated levels of residual pesticides in the soil would be low. However, if investigations show that the land was used for intensive agriculture or horticulture, or if there are any other reasons for Council to be concerned about contamination or misuse of potential contaminants then a further investigation may be required.

Council may also require further investigation when:

- There are reasonable grounds to believe that the land is contaminated because of its history, condition, or other factual information known (where it is available);
- The site has been investigated or remediated but there is insufficient information available about the nature and extent of contamination or remediation, or whether these circumstances have changed;
- Where the land use changes to a more sensitive land use;
- There are restrictions on, or conditions attached to, the use of the site by regulatory or planning authority that are, or may be related to contamination, but there is insufficient information available about the nature and extent of contamination;
- Council records have demonstrated that the site is associated with pollution incidents or illegal dumping of waste; or
- The site is adjoining land that has been associated with activities that may cause contamination listed in Appendix 2 and it is likely that this may have contaminated the subject site.

The preliminary site contamination investigation shall be reported in accordance with the requirements of the NSW EPA Guidelines for Consultants Reporting on Contaminated Sites. The applicant is responsible for engaging a suitably certified, qualified and experienced consultant to undertake the preliminary site contamination investigation and is responsible for all costs borne in engaging the consultant and the works involved.

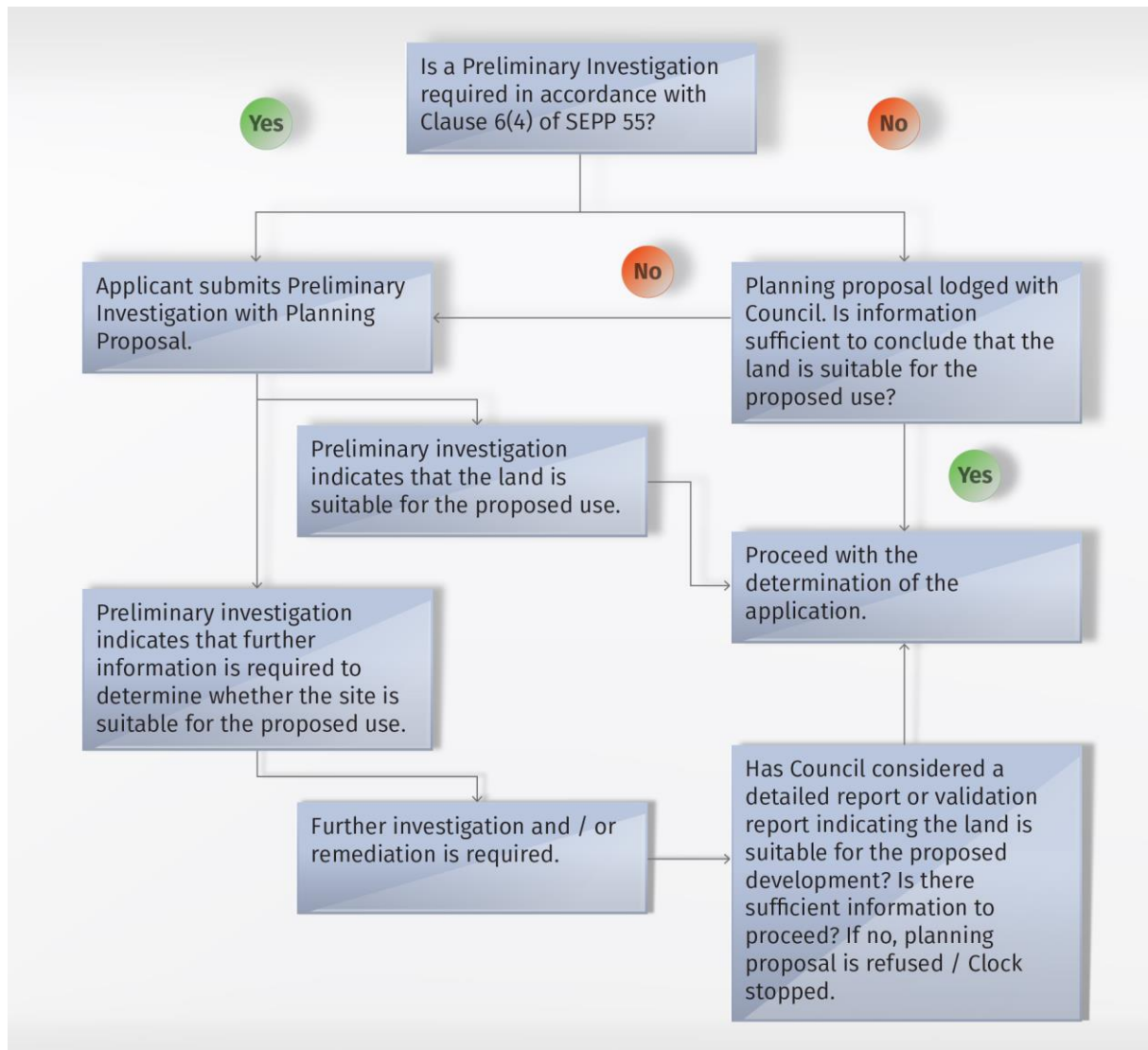
If after the preliminary investigation Council is satisfied that contamination is not an issue, then any further investigation may not be required.

See Appendix 6: Council procedure for Preliminary Site Investigation for steps on undertaking this process.

2.3 DETAILED INVESTIGATION

If the result of the preliminary investigation demonstrates the potential for, or existence of, contamination that may preclude the land from being suitable for the proposed zone or use, Council may require a detailed contamination investigation, which is described below. In some cases, the preliminary and detailed investigations may be combined (e.g. where it is known that the land is contaminated or that the land has been used for a potentially contaminating activity).

Figure 2: Consideration of planning proposals



The detailed site contamination investigation is to be undertaken, in accordance with the guidelines made or approved by the EPA under Section 105 of the CLM Act, by a suitably certified, qualified and experienced consultant at the cost of the applicant. The objectives of a detailed site investigation are to:

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

The detailed site contamination investigation shall state whether the site is suitable for the proposed use, and for all other purposes permissible in the zone if it can be made suitable through remediation.

If remediation is required, the report should also list the feasible remediation options available to make the site suitable for any purpose permitted within that zone. If a feasible option is available, the planning proposal can proceed with certain provisions.

If site contamination investigations show that the site is contaminated, but there are feasible remediation options, Council may include provisions in a local environmental plan or development control plan to ensure that remediation is addressed prior to the redevelopment of the land.

Section 4 outlines the process for remediation and validation prior to development in accordance with the approved planning proposal.

If the detailed site investigation shows that the site is contaminated, but there are no options to remediate, Council may not allow the planning proposal to proceed.

In the event that a detailed site investigation report is required to be assessed by Council, Council may hire a third party consultant to assess the investigations on Council's behalf, at the applicant's expense.

See Appendix 7: Council procedure for Detailed Site Investigation for steps on undertaking this process.

3. COUNCIL'S PROCEDURE FOR CONSIDERING LAND CONTAMINATION ISSUES FOR DEVELOPMENT APPLICATIONS

3.1 GENERAL

Section 79C of the EP&A Act requires Council to consider the suitability of the site for the proposed development when assessing development applications. This includes any risk from contamination to public health and environment.

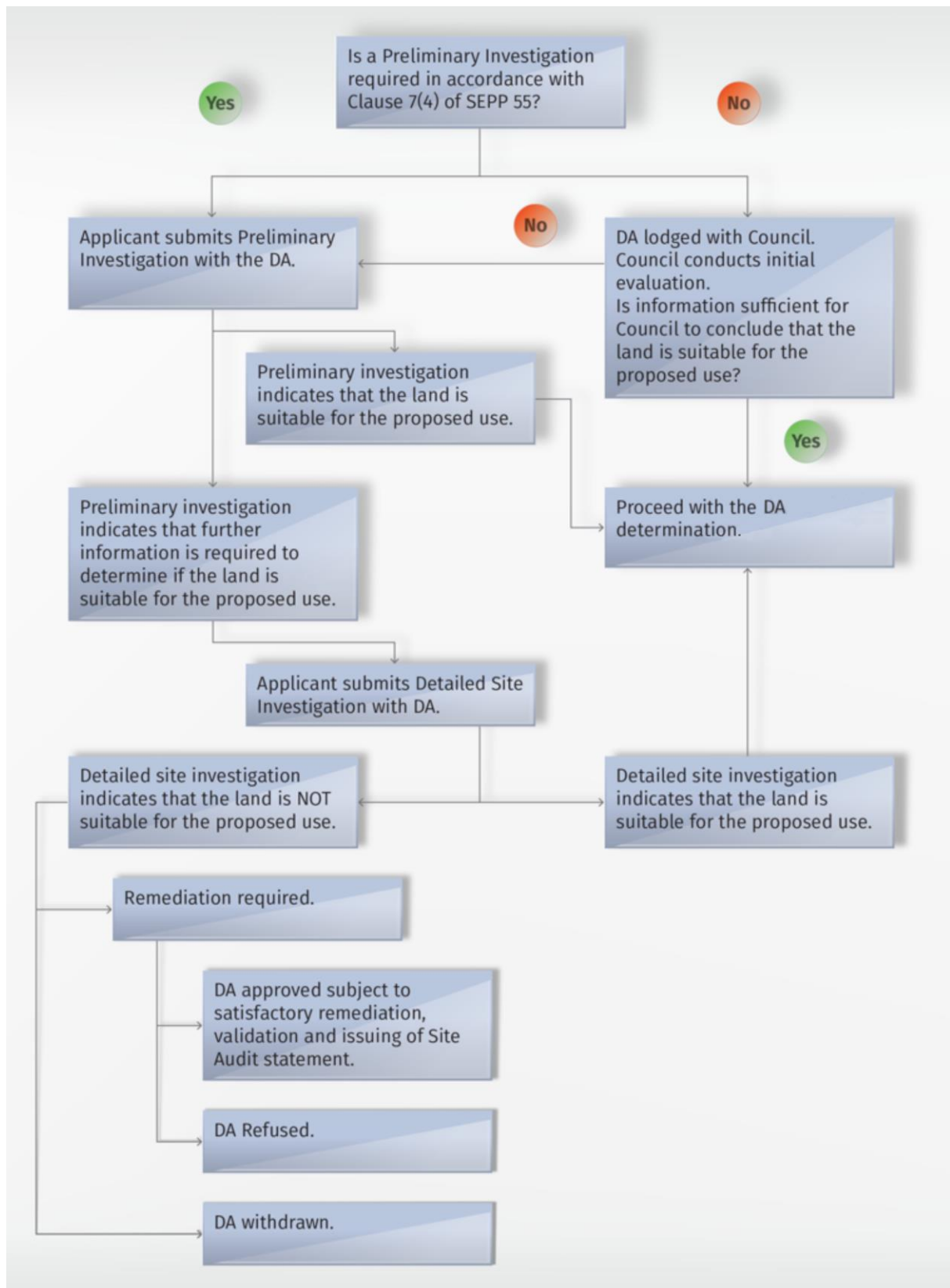
Council will not grant consent to the development of any land unless there has been consideration of whether the land is contaminated, and;

- If the land is contaminated, Council is satisfied that the land is suitable in its contaminated state (or will be suitable after remediation) for the purposes of the proposed development; and
- If the land requires remediation to be made suitable for any purpose for which the development is proposed, Council is satisfied that the land will be remediated before the land is used for that purpose.

Upon lodging a development application for a change of use, the applicant can also become liable for the clean-up of any contamination on the site prior to their proposal being authorised. This is because when a change of use is approved, it can result in an increased risk of harm, even if the contamination itself does not change.

The following sections outline situations when Council will require site contamination information to be submitted with applications.

Figure 3: Preliminary Investigation process for development applications



3.2 INITIAL EVALUATION

Council will conduct an initial evaluation as part of the assessment process for a development application to determine if contamination is likely to be an issue and whether sufficient information is available to make a decision in good faith.

The initial evaluation will be based on readily available, factual information provided by the applicant and any other available information (e.g. previous contamination investigations, previous zoning and land use and restrictions relating to contamination issued by the EPA). For that purpose, the contamination may be within a building/structure or other structure on the land, rather than only within the soil of that land.

Where an initial evaluation by Council identified that the land was previously used for agriculture or horticulture purposes, Council may request a preliminary investigation to be undertaken to determine the history of the property. If the preliminary investigation shows that the land was only used for broad acre agricultural then the application may proceed. Although it is likely that herbicides and pesticides were used for broad acre farming, the likelihood for elevated levels of residual pesticides in the soil would be low. However, if investigations show that the land was used for intensive agriculture or horticulture, or if there are any other reasons for Council to be concerned about contamination or misuse of potential contaminants then a further investigation may be required.

See Appendix 5: Council procedure for Initial Evaluation for steps on undertaking this process.

3.3 PRELIMINARY INVESTIGATION

The objectives of a preliminary investigation are to identify any past or present potentially contaminating activities and to provide a preliminary assessment of site contamination. The preliminary investigation typically contains a detailed appraisal of the site history and a report based on visual site inspection and assessment.

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

- Land that is within an investigation area that has been notified as such by the EPA;
- Land on which activities referred to in Appendix 2 are being, or are known to have been carried out; or
- Land on which there is incomplete knowledge about whether activities referred to in Appendix 2 are being carried out, and if the proposed development involved residential, educational, recreation, child care or hospital purposes.

Council may also require further investigation when:

- There are reasonable grounds to believe that the land is contaminated because of the land's history, condition, or other information known (where it is available);
- The site has been investigated or remediated but there is insufficient information available about the nature and extent of contamination or remediation, or where these circumstances have changed;
- The land use has changed to a more sensitive land use;

- There are restrictions on, or conditions attached to the use of the site by a regulatory or planning authority that are, or may be related to contamination, but there is insufficient information available about the nature and extent of contamination;
- Council records have demonstrated that the site is associated with pollution incidents or illegal dumping of wastes; or
- The adjoining land has been associated with activities that may cause contamination listed in Appendix 2 and is likely that this may have contaminated the subject site.

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

As part of the preliminary investigation, applicants may request Council undertake a search of its records to determine previous approved developments at the site.

If after the preliminary investigation Council is satisfied that contamination is not an issue, then any further investigation may not be required.

See Appendix 6: Council procedure for Preliminary Investigation for steps for undertaking this process.

3.4 DETAILED INVESTIGATION

If the results of the preliminary investigation demonstrate the potential for, or existence of, contamination which may preclude the land from being suitable for the proposal, Council may require a detailed contamination investigation, which is described below. In some cases, the preliminary and detailed investigations may be combined (e.g. where it is known that the land is contaminated or that the land has been used for an activity that could cause contamination).

The lodgement of a development application may trigger the management and/or remediation of any significant contamination on the site prior to the development being authorised. The detailed site contamination investigation is to be undertaken by a suitably certified, qualified and experienced consultant (at the cost of the applicant) in accordance with the guidelines made or approved by the EPA under Section 105 of the CLM Act.

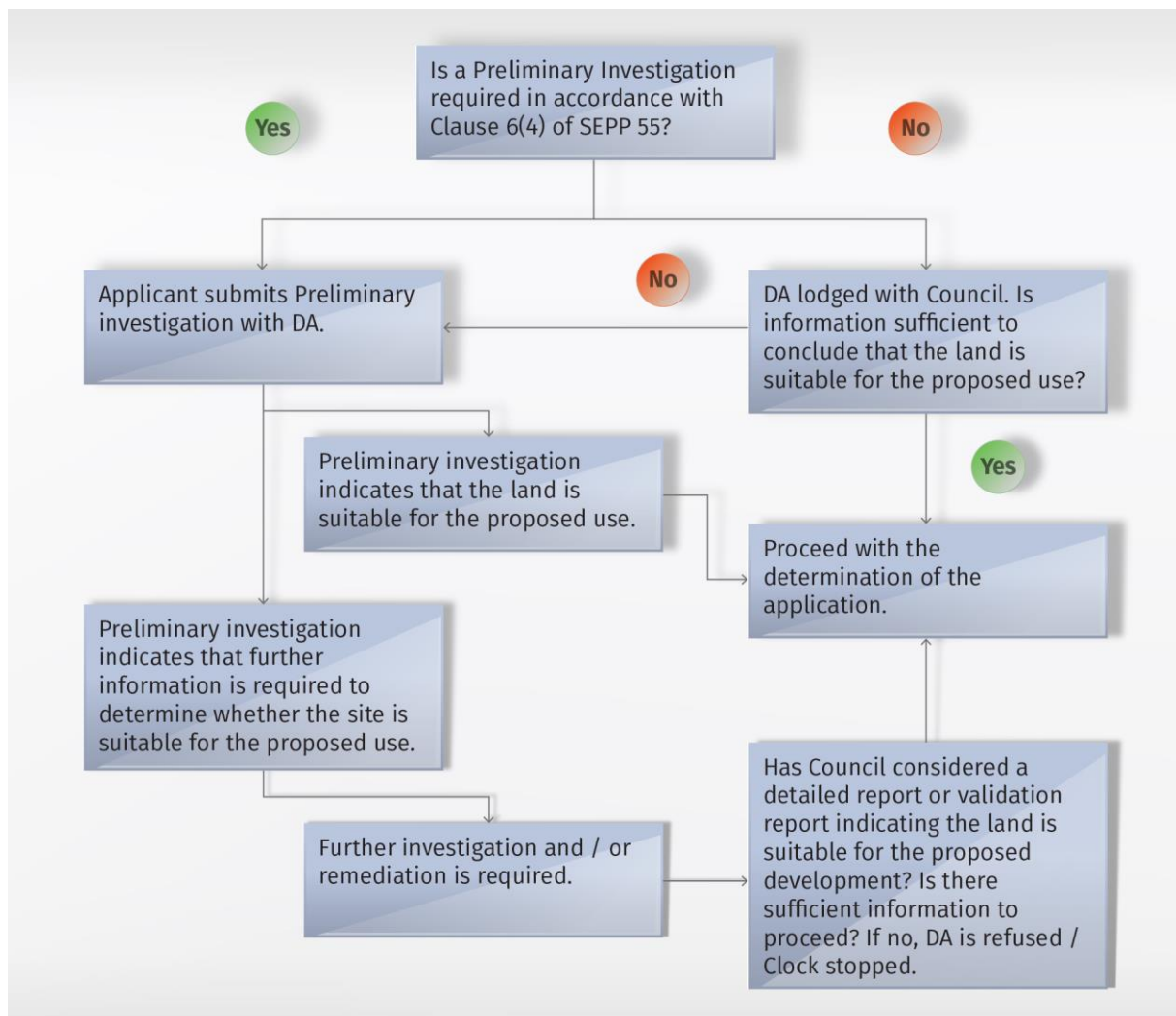
The objectives of a detailed site investigation are to:

- Define the extent and degree of contamination;
- Assess the potential risk posed by contaminants to human health and the environment; and
- If necessary, obtain sufficient information for the development of a Remedial Action Plan.

The detailed site contamination investigation shall state whether the site is suitable for the proposed use and for all other purposes permissible in the zone, or if remediation is necessary. If remediation is required, a remediation action plan will need to be prepared for Council outlining the feasible remediation options available to make the site suitable for the proposed use.

If the detailed site contamination investigation states (and Council is satisfied) that the site is suitable for the proposed use, then Council may determine the development application through Council's usual procedures.

Figure 4: Consideration of development applications



If the results of the detailed site contamination investigation demonstrated the existence of contamination that may preclude the land from being suitable for the proposed use, the applicant may choose to either withdraw the application or to remediate the land. Council's response will then depend on whether the remediation work constitutes Category 1 or Category 2 remediation work. A detailed explanation of what constitutes Category 1 remediation or Category 2 remediation is provided in Section 4.5 and 4.6 respectively.

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

- Require the applicant to amend the application (if already submitted) to include a remediation proposal; or
- Require a new development application for the remediation to be submitted before the application is considered for the final use of the site.

If the proposed remediation is Category 2 remediation work (i.e. remediation work that does not require consent), Council may;

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

If the investigation finds that the land is unsuitable for the proposed use and may not be appropriately remediated, or the applicant does not wish to remediate:

- The proposal may be modified to a use that is suitable for the land without remediation, provided a new development application is not required; or
- The application may be withdrawn; or
- The application should be refused.

See Appendix 7: Council procedure for Detailed Investigation for steps outlining this process.

4. REMEDIATION PROCESSES

4.1 REMEDIATION

A Remedial Action Plan (RAP), is documentation describing remedial actions that should be prepared for all remediation proposals. A formal RAP must be developed by an experienced and certified consultant and be submitted to Council for all Category 1 remediation work (i.e. remediation work that required development consent). The RAP should also contain an environmental management plan and workplace health and safety plan for the remediation works and shall be submitted to Council prior to DA approval.

The objectives for the RAP are to:

- Set remediation objectives;
- Determine the most appropriate remedial strategy; and
- Identify necessary approvals that need to be obtained from any other regulatory authorities.

Remedial Action Plans are to be consistent with the SEPP 55 Planning Guidelines and all remediation is to be carried out in accordance with the EPA guidelines made under the CLM Act. The applicant is responsible for engaging an experienced and certified consultant to prepare the RAP and for all associated costs, including any remediation works as well as site audit costs if requested by Council.

The previous Figure 3 outlines the relationships between the Planning System and the CLM Act, and the role of Council and the EPA in the process of site remediation.

See Appendix 8: Council procedure for Remediation for steps for undertaking this process.

4.2 VALIDATION AND MONITORING REPORT

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

Council will require a validation and monitoring report to be submitted by the applicant after remediation works have been completed, and prior to the commencement of any development works. Council will place a condition on the development consent requiring the submission and approval of a validation and monitoring report prior to the issue of a construction certificate, or if a construction certificate is not required, prior to occupying the site, or within a specified timeframe as stipulated in conditions of consent. The validation report will be required to be submitted to the satisfaction of the Council.

Alternatively, Council may issue a deferred commencement or staged consent for the proposed use or development, requiring that remediation and validation is undertaken prior to any other work commencing.

Ideally the same certified consultant should undertake the site investigation, remediation and validation of the site. The Validation Report must confirm that the remediated site complies with the clean-up criteria set for the site in the RAP and be prepared in accordance with the *EPA Guidelines for Consultants Reporting on Contaminated Sites*.

Council may require independent review of the remediation and validation by an EPA accredited auditor.

4.3 VOLUNTARY REMEDIATION

Section 60 of the CLM Act places a duty on the owner and the polluter of contaminated land to report contamination to the EPA.

Owners of land that has been identified as being contaminated or potentially contaminated may wish to voluntarily undertake investigation and/or remediation at any time, regardless of whether they intend to carry out development, or apply for a planning proposal regarding that land.

Investigation by the owner must be undertaken in accordance with the relevant EPA guidelines by an experienced and certified consultant. Remediation must be carried out according to the NSW legislation and the process outlined in this Policy. Requirements for remediation are provided below in Section 4.4.

Council will consider the results of any investigation or remediation prior to providing a planning certificate for the property.

See Appendix 9: Council procedure for Voluntary Remediation for steps for undertaking this process.

4.4 REQUIREMENTS FOR REMEDIATION

In some situations remediation work itself has the potential for environmental impact and the planning process must ensure that these impacts are adequately identified and mitigated. Remediation work is classified as either Category 1 remediation work (i.e. remediation that requires development consent), or Category 2 remediation work (i.e. remediation work where no consent is required however the work must still be carried out in accordance with the requirements of SEPP 55).

All remediation work must be carried out by an experienced and certified consultant in conjunction with a Remedial Action Plan. Council's procedure for considering site remediation proposal is shown in Figure 3.

4.5 CATEGORY 1 REMEDIATION WORK

Development consent is generally only required for remediation work where there is potential for significant environmental impacts from the work.

Remediation work that requires development consent is known as Category 1 remediation work. Category 1 work includes any work that is:

- Designated development; or
- Carried out on land that is declared to be critical habitat (for threatened species); or
- Likely to have a significant impact on critical habitat or a threatened species, population or ecological community; or
- Development for which another State Environmental Planning Policy or a regional environmental plan requires development consent; or
- In an area or zone to which any of the following classifications apply under an environment planning instrument:
 - A. Coastal protection;
 - B. Conservation or heritage conservation;
 - C. Habitat area, habitat protection area, habitat or wildlife corridor;
 - D. Environment protection;
 - E. Escarpment, escarpment protection or escarpment preservation;
 - F. Floodway;
 - G. Littoral rainforest;
 - H. Nature reserve;
 - I. Scenic area or scenic protection;
 - J. Wetland; or
- On any land in a manner that does not comply with a policy made under the contaminated land planning guidelines by the council for any local government area in which the land is situated.

All category 1 remediation work must be carried out in accordance with:

- The contaminated land planning guidelines;
- The guidelines published under the CLM Act; and
- A Remedial Action Plan prepared in accordance with the contaminated land planning guidelines and approved by the consent authority.

All other remediation work may be carried out without development consent and is known as Category 2 remediation work.

Note: under Clause 9(f) of SEPP 55, Council's can nominate Category 1 remediation works, It's not a good idea to nominate everything, but if there is a concern, eg: removal of USTs not being undertaken correctly or shallow groundwater, adjacent to a waterway etc, then the Council is able to nominate these works as Category 1. You will then have to list them above.

4.6 CATEGORY 2 REMEDIATION WORK

Category 2 remediation works is all remediation work that is not defined as Category 1 remediation work. Category 2 remediation work does not require development consent.

- Part 5 of the EP&A Act applies where development consent is not required under a planning instrument but where approval from a public authority is required. Each determining authority will consider the potential significance of any environment impacts from the proposed remediation.
- If the remediation is likely to significantly impact the environment, an Environmental Impact Statement (EIS) would be required.
- If consent is not required under SEPP 55 (e.g. Category 2 remediation works), it is unlikely that the remediation works will significantly impact the environment and therefore an EIS would not be required, however this would be determined on a case-by case basis.

Under Part 5 of the EP&A, Category 2 remediation works must take full account of all matters likely to impact the environment

SEPP 55 requires that Council must be notified at least 30 days before Category 2 remediation works commence. Prior notice of Category 2 remediation works must also address the information in Appendix 3 – Requirements for Category 2 Remediation Works.

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

See Appendix 9: Council procedure for Remediation for steps for undertaking Category 1 and Category 2 remediation works.

4.7 SITE AUDITING

A site audit is an independent review of any or all stages of the site investigation process, conducted in accordance with the CLM Act. A site audit may review a preliminary investigation, a detailed investigation, a Remedial Action Plan, or validation report.

A site audit will lead to the provision of a certificate called a Site Audit Statement, stating for what use the contaminated land is suitable. A Site Audit Statement must be prepared by an EPA accredited site auditor in accordance with the legislation.

Council may request a site audit to be undertaken at any stage during the contamination investigation or remediation works if Council:

- Believes on reasonable grounds that information, including that related to potential contamination or previous land use history, provided by the applicant is incorrect or incomplete;
- Wishes to verify whether the information provided by the applicant has adhered to appropriate standards, procedures and guidelines; or
- Does not have the internal resources to undertake a technical review.

If Council requires a site audit, the cost shall be borne by the applicant.

A site auditor can comment on, or verify information provided by the applicant:

- to determine if the contaminated land consultant complied with all appropriate standards, procedures and relevant EPA guidelines;
- to determine if further investigations or remediation is required before the land is suitable or determine any specified use or range of uses.
- to determine if the proposed remediation is adequate and, if undertaken, will render the site suitable for the proposed use.
- to determine if there is any acceptable off-site migration of contaminants, particularly via ground water; or
- to determine if the contamination conditions at the site are suitable for in-ground absorption of stormwater.

Before issuing a Site Audit Statement, the site auditor must prepare a Site Audit Summary Report. This report is a requirement of the EPA. It contains the key information and the basis of consideration that leads to the issue of the Site Audit Statement. The EPA Guideline for the NSW Site Auditor Scheme provides guidelines on the content of the statement and audit report.

See Appendix 10: Council procedure for Site Auditing for undertaking process steps.

5. PLANNING (SECTION 149) CERTIFICATES

Under Section 149 of the EP&A Act a person may request from Council a planning certificate that contains advice on land contamination matters about a property. For example, a planning certificate would show the existence of a council policy to restrict the use of land.

Such matters relating to land contamination that must be included on section 149(2) planning certificates area as set out in section 59(2) of the CLM Act and will also include:

- a) Whether Council has adopted a policy to restrict the use of land due to the risk of land contamination;
- b) Whether the land is an investigation area or remediation site;
- c) Whether the land is subject to an investigation order or remediation order; and
- d) Whether a site audit statement of the land is held by Council.

Council is formally advised whenever a notice is issued under the CLM Act and accordingly annotates its planning certificates. Section 149(2) planning certificates will not include specific information about actual or potential contamination (such as the types, extent and level of contamination) on a parcel of land.

Additional information of a factual nature regarding the contamination status of the site can be placed on the S.149(5) section of the planning certificate.

See Appendix 11: Section 149 Certificates procedure for undertaking this process steps.

APPENDIX 1: TERMS AND DEFINITIONS

Category 1 Remediation Work under SEPP 55 <i>As defined in the SEPP 55 guidelines.</i>	Remediation work that requires development consent. Defined in Section 4.5 of this document.
Category 2 Remediation Work under SEPP 55 <i>As defined in the SEPP 55 guidelines.</i>	Remediation work that does not require development consent under SEPP 55. Defined in Section 4.6 of this document.
CLM Act	<i>Contaminated Land Management Act 1997</i>
Contaminated Land <i>As defined in the SEPP 55 guidelines.</i>	Land in, on or under which any substance is present at a concentration above that naturally present in, on or under the land that poses, or is likely to pose, an immediate or long-term risk to human health or environment.
Contamination <i>As defined in the CLM Act.</i>	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 represents a risk of harm to human health or any other aspect of the environment.
Detailed Investigation <i>As defined in the SEPP 55 guidelines.</i>	An investigation to define the extent and degrees of contamination, to assess potential risk posed by contaminants to human health and the environment, and to obtain sufficient information for the development of a remedial action plan if required.
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
Independent review <i>As defined in the SEPP 55 guidelines.</i>	An evaluation by an independent expert required by a planning authority of any information submitted by an applicant conducted at the applicant's expense.
Initial evaluation <i>As defined in the SEPP 55 guidelines.</i>	An assessment of readily available factual information to determine whether contamination is an issue relevant to the decision being made.
Investigation Order <i>As defined in the SEPP 55 guidelines.</i>	An order by the EPA under the Contaminated Land Management Act 1997 to investigate contamination at a site of within an area.
Notice of completion <i>As defined in the SEPP 55 guidelines.</i>	A notice to Council in accordance with the State Environmental Planning Policy No. 55 – Remediation of Land that remediation work has been completed.
Notification of remediation <i>As defined in the SEPP 55</i>	Prior notice of category 2 remediation work given to Council in accordance with the State Environmental Planning Policy no. 55 –

<i>guidelines.</i>	Remediation of Land.
Planning authority <i>As defined in the SEPP 55 guidelines.</i>	A public authority or other person responsible for exercising a planning function.
Preliminary Investigation <i>As defined in the SEPP 55 guidelines.</i>	An investigation to identify any past or present potential contaminating activities and to provide a preliminary assessment of any site contamination. The preliminary investigation typically contains detailed appraisal of the site history and a report based on visual site inspection and assessment.
Remedial Action Plan <i>As defined in the SEPP 55 guidelines.</i>	A plan that sets remediation goals and documents that outline the process required to remediate a site.
Remediation Order <i>As defined in the SEPP 55 guidelines.</i>	A direction from the EPA under the <i>Contaminated Land Management Act 1997</i> to remediate.
Remediation Site <i>As defined in the SEPP 55 guidelines.</i>	A site declared by the EPA under the Contaminated Land Management Act 1997 as posing a significant risk of harm.
Remediation Work <i>As defined in the SEPP 55 guidelines.</i>	Work in, on or under contaminated land, being work that: Removes the cause of contamination of the land; or Disperses, destroys, reduces, mitigates or contains the contamination of the land; or Eliminates or reduces any hazard arising from the contamination of the land (including by preventing the entry of persons or animals on that land).
SEPP 55	State Environmental Planning Policy 55 – Remediation of Land
Site Audit <i>As defined in the CLM Act.</i>	<i>A review</i> That relates to management of the actual or possible contamination of land; and That is conducted for the purpose of determining any one or more of the following matters The nature and extent of any contamination of the land The nature and extent of any management of actual or possible contamination of the land Whether the land is suitable for any specified use or range of uses What management remains necessary before the land is suitable for any specified use or range of uses The suitability and appropriateness of a plan of management, long-term management plan or a voluntary management proposal.

<p>Site Auditor <i>As defined in the SEPP 55 guidelines.</i></p>	<p>A person accredited by the EPA under the Contaminated Land Management Act to conduct site audits.</p>
<p>Site Auditor Statement <i>As defined in the SEPP 55 guidelines.</i></p>	<p>A certificate issued by a site auditor for what use the land is suitable. OR A site audit statement prepared by a site auditor in accordance with the Contaminated Land Management Act.</p>
<p>Site Audit Report <i>As defined in the SEPP 55 guidelines.</i></p>	<p>A report containing the key information and the basis of consideration which leads to the issue of a site audit statement. OR A site audit report prepared by a site auditor in accordance with the Contaminated Land Management Act.</p>
<p>Site History <i>As defined in the SEPP 55 guidelines.</i></p>	<p>A land use history of a site that identifies activities or land uses that 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.</p>
<p>Site Investigation Process <i>As defined in the SEPP 55 guidelines.</i></p>	<p>The process of investigating land that may be, or is, contaminated, for the purpose of providing information to a planning authority.</p>
<p>Validation <i>As defined in the SEPP 55 guidelines.</i></p>	<p>The process of determining whether the objectives for remediation and any development consent conditions have been achieved.</p>

APPENDIX 2: ACTIVITIES THAT MAY CAUSE CONTAMINATION

Activities that may cause contamination, as listed by the Planning Guidelines SEPP 55 – Remediation of Land, are listed below. This should be used as a guide only. A conclusive contaminated or non contaminated status can only be determined after a site history investigation and sampling analysis (where required).

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

Source: Department of Urban Affairs and Planning & Environment Protection Authority. 1998.
Managing Land Contamination Planning Guidelines. Table 1.

* Not currently listed in SEPP 55 Guidelines Remediation of land.

APPENDIX 3: REQUIREMENTS FOR CATEGORY 2 REMEDIATION

An applicant undertaking Category 2 remediation work must comply with the following requirements in order to maintain the amenity of adjoining owners, to prevent a risk to human health and to protect the environment.

The following detail should also be included in the development of a Remedial Action Plan in accordance with Guidelines on the Duty to Report Contamination under the Contaminated Land Management Act 1997.

1. Hours of Operation

All remediation work (including the delivery/removal of materials or equipment) shall be limited to the following hours of work (unless through an alternative mutual agreement in writing with Council or is carried out in a residential zone) to:

- Monday to Friday 7.00am to 6.00pm
- Saturday 8.00am to 1.00pm

No remediation work is permitted on Sundays or public holidays.

Noise from power tools and equipment in a residential zone is only restricted by the following:

- Noise should not be heard in a habitable room in a neighbour's residence between:
 - 8pm to 7am on weekdays and Saturdays
 - 8pm to 8am on Sundays and public holidays

2. Noise and Vibrations

Any noise and vibrations from the site shall be limited by:

- Complying with the NSW EPA's Industrial Noise Policy where applicable;
- Ensuring that all machinery and equipment is operated in an efficient manner to minimise noise from the site on adjoining properties;
- Ensuring that the use of any plant and/or machinery does not cause vibrations in excess of legislation and Australian Standards, on any premises.

3. Erosion and Sediment Control Plans

An Erosion and Sediment Control Plan (ESCP) shall be prepared and submitted to Council for approval prior to remediation works commencing onsite. The ESCP shall be developed with regard to the requirements detailed in Council's Soil and Water Management Policy and Council's Engineering Guidelines and Technical Specifications.

Sediment control structures shall be provided to prevent sediment entering drainage systems particularly where surfaces are exposed or where soil is stockpiled.

All erosion and sediment control measures must be maintained in a functional condition throughout the remediation works.

4. Stockpiles

No stockpiles of soil or other materials shall be placed on public land (i.e. footpaths, reserves or nature strips). All stockpiles shall be placed away from drainage lines, gutters or stormwater pits or inlets. All stockpiles of soil or other material shall be maintained to prevent dust, odours or seepage. All stockpiles of contaminated soils shall be secured to prevent dust, odour or seepage if being stored for more than 24 hours.

5. Bunding

Any areas used for remediation or the stockpiling of construction materials or contaminated soils shall be controlled to contain surface water runoff and run-on and be designed and constructed so as to prevent the leaching of contaminants into the subsurface/groundwater. Locate stockpiles and construction materials away from drainage lines and provide bunding of disturbed areas and excavations to prevent runoff to waterways or stormwater where necessary. Ensure stabilisation as soon as possible. All surface water discharges from the area to Council's stormwater system shall not contain detectable levels of contaminants.

6. Site Access and Vehicle Use

Vehicle access to the site shall be designated to prevent the tracking of sediment onto public roadways and footpaths. Soil, earth, mud or similar material must be removed from the roadway by sweeping, shovelling, or a means other than washing on a daily basis or as required by an appropriate authority. Soil residue from vehicle wheels shall be collected and disposed of in an appropriate manner.

All vehicles are to:

- Enter and exit the site in a forward motion;
- Comply with all road rules, including vehicle weight limits;
- Minimise the use of Local Roads by utilising State Roads where available;
- Be cleaned pre and post works to prevent the movement of weed seeds;
- Securely cover or seal all loads to prevent the release of any dust, fumes, soil or liquid emissions during transportation;
- Conduct deliveries of soil, materials, equipment or machinery during the hours of remediation work outlined in Section 1;

Note. Applicants may consult Council prior to selecting the most suitable transport route.

7. Air Quality

Emissions of dust, odour and fumes from the site are to be appropriately controlled as per the EPA regulations and guidelines. These may include but are not limited to:

- Using water sprays to suppress dust;
- Establishing dust screens around work zones, the perimeter or the development site and any material handling areas;
- Securely covering loads entering/exiting the site;
- Covering stockpiles of contaminated soil that remain on site for more than 24 hours;

- Keeping excavation surfaces and stockpiles moist.

8. Groundwater and Surface Water

Contaminated water is to be disposed of offsite at an appropriate waste treatment processing facility. Alternatively water that has been analysed for suspended solids, total solids, pH and contaminants identified in preliminary/detailed site investigations may be excavation pumped to stormwater if levels of all parameters tested meet EPA and Australian and New Zealand Guidelines (ANZECC) for fresh and marine water quality. Application may be made to Council for the water to be disposed of via sewer via a Trade Waste Agreement.

9. Existing Vegetation

There shall be no removal or disturbance to trees or native understorey without the prior written consent through Council's Tree Preservation Order process. All trees that will be retained on the site must be suitably protected from damage during remediation works. This includes provision of protective fencing to protect the root zone of these trees. The fencing must extend to a minimum of the drip line of each tree. No stockpiling, storage, excavation, vehicle parking, or vehicle movement is to occur within the root zone protection area. Tree protection fencing must remain in place until the end of remediation works.

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

10. Capping of Contaminated Soil

Capping of contaminated soil should only occur after alternative remediation works have been investigated, particularly in urban zoning or areas identified as future growth in Balranald's LEP/DCP.

Contaminated soil is only permitted to be capped if it does not prevent any permitted use of the land and it can be demonstrated that there will be no ongoing impacts on human or environment health. Capping of contaminated soil that exceeds zoning permissible levels, is classified as Category 1 Remediation Work and may only be permitted in accordance with a Development Consent.

Where site capping is carried out on a site and further maintenance is required, Council will require the placement of a covenant on the title of the land. The covenant will advise of any maintenance works required to be carried out. Records of any maintenance undertaken on the site shall be kept for future reference and provided to Council on an annual basis. The cost of the preparation of covenant is borne by the applicant.

11. Contaminated Soil Disposal

Disposal of contaminated soil must be in accordance with the Protection of the Environment Operations Act and Regulations and any EPA guidelines relevant at the time (such as the NSW EPA publication NSW EPA Environmental Guidelines: Assessment, Classification and Management of Liquid and Non-Liquid Wastes (2004)).

Any enquires associated with the off-site disposal of waste from a contaminated site should be referred to the EPA helpline (phone 131 555). If contaminated soil or other waste is transported to or from a site a licensed waste transport contractor must be used.

The Balranald Shire Council's Waste Management Facility only accepts waste in accordance with its Environment Protection Licence (insert licence number). Section L5 Waste requires that waste be 'General Solid Waste'. Analysis of the contaminated soil is to be undertaken to verify that the waste is 'General Solid Waste'. All documentation is to be provided to Council's Waste Management Team and approved prior to the waste entering the landfill.

12. Work Health and Safety

It is the employer's responsibility to ensure that all site remediation works comply with the Work Health and Safety legislation and other applicable SafeWork (previously known as WorkCover) NSW requirements.

13. Importation of Fill

All fill imported to the site shall be validated as Virgin Excavated Natural Material (VENM/ENM) as defined in the Protection of the Environment Operations Act 1997 (POEO Act) to ensure the imported fill is suitable for the proposed land use from a contamination perspective. Council may in certain instances require details of the appropriate validation of imported fill material to be submitted with any application for the future development of the site.

Fill is permitted for use provided that:

- It itself is not contaminated;
- It is weed and pest free;
- It is compatible with the existing soil characteristic so as not to adversely affect site drainage.

14. Site Security and Lighting

The site shall be secured to ensure against all unauthorised access by using appropriate fencing.

It is recommended that security lighting is used to deter unauthorised access. If security lighting is used it shall be shielded to protect the amenity of adjoining landowners.

15. Rodents and Vermin

Rodents and vermin are to be adequately controlled and disposed of in an environmentally appropriate manner.

16. Consultation

Written notification to adjoining owners/occupants is to occur at least two days prior to the commencement of remediation works. Notification is to include:

- Estimated length of works;
- Contact details of Site Manager;

Signage visible from the road and adjacent to site access is to display the Site Manager and Remediation Contractor contact details for the duration of the works.

17. Removal of Underground Petroleum Storage Systems (UPSS)

The removal of all UPSS is to be completed in accordance with the:

- Protection of the Environment Operations (Underground Petroleum Storage Systems) Regulations 2014)⁶;
- Australian Institute of Petroleum's Code of Practice: The Removal and Disposal of Underground Petroleum Storage Tanks (AIP CP22-1994)⁷;
- NSW Work Cover requirements;
- Australian Standard/s including AS 2601 – 1991 Demolition of Structures and AS 1940 – 2004 Storage and Handling of Flammable and Combustible Liquids.

Following the removal of underground storage systems containing fuel, the site area, which includes bowser lines and fuel lines, shall be assessed, remediated if need be, and validated in accordance with the requirements above. All documents must be submitted to Council, including but not limited to a tank pit validation prepared in accordance with the POEO regulations.

18. Hazardous Materials

Hazardous and/or intractable wastes arising from the remediation work shall be removed and disposed of in accordance with the requirements of the NSW EPA and SafeWork (previously known as WorkCover) NSW, together with the relevant regulations, namely:

- NSW Work Health and Safety Act 2011;
- NSW Work Health and Safety Regulation 2011;
- Contaminated Land Management Act and Regulations; and
- Environmentally Hazardous Chemicals Act 1985 and Regulations.

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

19. Site clean-up/rehabilitation

The remediation work site must be stabilised to ensure that no offsite impacts occur on the site post completion.

⁶ Protection of the Environment Operations (Underground Petroleum Storage Systems) Regulation 2014
<http://www.legislation.nsw.gov.au/maintop/view/inforce/subordleg+565+2014+cd+0+N>

⁷ NB: Australian Institute of Petroleum's Code of Practice: The Removal and Disposal of Underground Petroleum Storage Tanks (AIP CP22-1994) has been withdrawn by AIP.

20. Site Validation

All Category 2 remediation work shall be validated by a site auditor accredited by the EPA under Part 4 of the CLM Act and a copy provided to Council within 90 days of completion and prior to the commencement of building construction works. The validation report is to:

- Contain a copy of any reports or records taken during remediation or following completion of validation works;
- Contain a validation statement detailing all works have been undertaken and completed satisfactorily;
- Demonstrate that the objectives of any relevant Remedial Action Plan (RAP) have been achieved, any conditions of development consent have been complied with or whether any further remediation work or restrictions on land use are required;
- Provide evidence confirming that all NSW EPA, SafeWork (previously known as WorkCover) and other regulatory authorities license conditions and approvals have been met;
- Identify the need for continued monitoring in situations where clean-up is not feasible or on-site containment has occurred;
- State the suitability of the site for its current or proposed use.

Successful validation is the statistical confirmation that the remediated site complies with the clean-up criteria set for the site.

The site auditor must:

- Be currently accredited by the NSW EPA;
- Comply with all relevant publications of the NSW EPA;
- Not have a conflict of interest or a pecuniary interest, within the meaning of Section 54 of the Contaminated Land Management Act 1997.

The full cost of the validation will be borne by the applicant and not Council.

Category 2 Remediation Works Checklist

Requirement	Completed
Remediation works are not classified as designated development under the <i>Environmental Planning and Assessment Act 1979</i> or any other planning instrument.	
Remediation works are not proposed on land that is: Identified as critical habitat under the <i>Threatened Species Conservation Act 1995</i> ; or Likely to have a significant impact on threatened species, populations, ecological communities or their habitats; or In an area or zone classified under an Environmental Planning Instrument as conservation or heritage conservation, habitat area, habitat protection area, habitat or wildlife corridor, environment protection, floodway, nature reserve, scenic area or scenic protection, or wetland; or Requiring consent under another State Environmental Planning Policy.	
Remediation work is consistent with the <i>Requirements for Category 2 Remediation of Contamination Land</i> , or you have received written confirmation from Council.	
Details of category 2 remediation work has been submitted 30 days prior to commencement, unless otherwise exempt.	
Written notification to adjoining owners/occupants has occurred at least two days prior to the commencement of remediation works detailing the estimated length of the works and contact details of the Site Manager.	
Have provided written correspondence to Council and members of the public who raised written concerns relating to the remediation works within 2 working days of commencement.	
Signage is visible from the road and adjacent to site access; displaying the Site Manager and Remediation Contractor contact details.	
Have provided notice of completion of remediation work within 30 days after the completion of the works to Council and any other consent authority in accordance with Clauses 17 and 18 of SEPP 55.	
Have provided independent verification within 90 days of remediation works being completed.	
If applicable, have notified Council of maintenance required in order for a covenant to be placed on the title.	
Have a mechanism in place to provide Council details of maintenance completed annually.	

APPENDIX 4: CONDITIONS OF CONSENT

The following conditions have been created for use with development applications involving contaminated land. Not all conditions will be relevant to every development application and they will be used as appropriate and where relevant to a particular application. Amendments may also be made, where appropriate, to reflect legislative or other changes.

Contaminated Land

The subject land has been contaminated from past land use or development. Accordingly, the applicant is advised to make contact with the SafeWork NSW (previously known as WorkCover) for advice regarding minimising harm to workers during operations. Any soil or debris that may need to be removed from the site may only be deposited at licensed landfill sites able to receive potentially contaminated wastes. Reference should be made to Balranald Shire Council Contaminated Land Management Policy.

Contamination – Recommendations

The recommendations contained in (insert section) of the document entitled (insert title) prepared by (insert author) dated (insert date) and supplied to Council (insert date) are adopted as conditions of this Consent subject to the following additional requirements.

- a) Insert
- b) Insert

Contamination – Notation on Title

A notation is to be registered on the title of (insert Lot and DP) advising prospective purchasers to the effect that:

- a) The land is classified as contaminated land as past uses of the land may have contaminated, or contributed to the contamination of, the land; and
- b) Remediation works have been partial and localised only; and
- c) Contaminants may remain in both the soil and groundwater; and
- d) Further investigation and remediation may be required prior to any particular use of the land being undertaken or approved.

Environmental - site remediation works

Site remediation works (as may be required) are to be carried out generally in accordance with the approved contamination report and remedial action plan, the ANZECC and NHMRC Guidelines (1992) and applicable NSW Environment Protection Authority Guidelines.

On completion of the site remediation works, the following documentation is to be submitted to the Principal Certifying Authority and to Balranald Shire Council, if Council is not the Principal Certifying Authority:

- a) Written notification that the site remediation works have been completed is to be submitted within 30 days of the works being completed.

- b) The report is to certify that the remediation works have been carried out in accordance with the approved Remedial Action Plan and relevant NSW Environment Protection Authority requirements. (D436)

State Environmental Planning Policy 55 – guidelines and notices

All remediation work must, in addition to complying with any requirement under the Environmental Planning and Assessment Act or any other law, be carried out in accordance with:

- a) the contaminated land planning guidelines; and
- b) the guidelines (if any) in force under the Contaminated Land Management Act 1997.

In addition a notice of completion of remediation work on any land must be given to the Council. The notice is to be given within 30 days after the completion of the work.

Completion of Remediation Works – Prior to the commencement of any other works

Upon the completion of any remediation works stated in the RAP, the person acting on this consent must submit to Council a Validation and Monitoring Report. The report is to be prepared in accordance with the NSW Environment Protection Authority's Guidelines for Consultants Reporting on Contaminated Sites 1998.

Completion of Remediation Works – Prior to Occupation

Upon the completion of the approved remediation works stated in the approved Remediation Action Plan and before the issue of an Occupation Certificate (whether an interim or final Occupation Certificate), the person acting on this consent shall submit to Council a Validation and Monitoring Report. The report is to be conducted in accordance with the NSW Environment Protection Authority's Guidelines for Consultants Reporting on Contaminated Sites 1998.

Environmental Management Plan

Prior to the issue of a Construction Certificate, an Environmental Management Plan (EMP) for the site is to be submitted to Balranald Shire Council for consideration and approval. The EMP is to be prepared by an experienced and certified consultant in consultation with Council and other relevant agencies, and may need to be amended to include the comments provided by Council and other agencies. The EMP is to:

- a) Address all environmental aspects of the development's construction and operational phases; and
- b) Recommend any systems/controls to be implemented to minimise the potential for any adverse environmental impact(s); and
- c) Incorporate a programme for ongoing monitoring and review to ensure that the EMP remains contemporary with relevant environmental standards.

The EMP should include but is not limited to the following:

- i. Soil and water management
- ii. Air Quality
- iii. Water Quality
- iv. Dust suppression
- v. Litter control
- vi. Noise control
- vii. Waste management
- viii. Dangerous/hazardous goods storage
- ix. Emergency response and spill contingency.

Council will not withhold its consent to the Environmental Management Plan provided the above-mentioned matters are reasonably addressed.

The relevant aspects of the approved EMP are to be implemented during the relevant phase(s) of the development.

- Employment of Environmental Consultant

An experienced and certified environmental consultant is to be employed to supervise the implementation of the development in accordance with the relevant aspects of the approved EMP as identified at each phase of the development (e.g. prior to commencement of works, construction and post-construction/ ongoing operations of the development). Details of the environmental consultant, including contact details, employed to oversee the development is to be submitted to Balranald Shire Council with the 'Notification of Commencement' 2 days before any works are to commence on site.

Note: An appropriately qualified and experience environmental consultant must be certified by one of the following certification schemes or equivalent:

- Site Contamination Practitioners Australia (SCPA); and
 - Environment Institute of Australia and New Zealand's (EIANZ) Contaminated Land Assessment Specialist Certified Environmental Practitioner (CLA Specialist CEnvP).
- Add following paragraph if required:
Operational matters of the development, Compliance Certificates or other written document are to be obtained from a qualified environmental consultant certifying that the aspects of the approved EMP are complied with. The Compliance Certificate or other written documentation is to be submitted to Balranald Shire Council on an annual basis, on the anniversary of the Occupation Certificate being issued for the development.

Erosion and Sediment Control

Run-off and erosion control measures must be implemented to prevent soil erosion, water pollution or the discharge of loose sediment on surrounding land. The control measures must be in accordance with Balranald Shire Council's adopted Erosion and Sediment Control Guidelines for Building Sites.

Erosion and sediment control measures must address and incorporate general site management material handling practices, soil stabilisation, wind erosion, access measures and shall provide for:

- a) The diversion of uncontaminated run-off around cleared or disturbed areas.
- b) The erection of a silt fence to prevent debris escaping into drainage systems or waterways.
- c) The prevention of tracking of sediment by vehicles onto roads.
- d) Covering of vehicles entering/exiting the site with material.
- e) The stockpiling of topsoil, excavated material, construction and landscaping supplies and debris within the site, and the removal or utilisation (where appropriate) of that stockpile after completion of the works.
- f) Maintenance of control measures until the land is effectively rehabilitated and stabilised beyond the completion of construction. (C430)

Maintenance of soil erosion and pollution controls

All measures specified in Council's Soil and Water Management Policy to minimise the effects of soil erosion and pollution are to be installed then maintained until disturbed areas are rehabilitated and landscaped. Council may issue infringement notices incurring a monetary penalty where measures are not provided or maintained.

Environmental - dust control

Effective dust control measures shall be introduced and maintained at all times. Full details of the proposed method of dust control shall be submitted to and approved by Council with the construction certificate.

Environmental - dust suppression

Dust suppression techniques are to be employed during works to reduce any potential nuisances to surrounding properties.

Waste Disposal

All waste generated on site during the project shall be classified and separated in accordance with DECCW's Waste Classification Guidelines and transported to facility that may lawfully accept the waste.

Secure Remediation Area

Prior to commencement of works on site, a secure fence shall be installed around the proposed remediation area to prevent access by unauthorised persons, which shall be removed following completion of remediation works.

Landscape Plan

Prior to the issue of a Construction Certificate, a detailed Landscape Plan that includes the following will be required:

- a) Identification and accurate mapping of all trees suitable for retention based on health and condition.
- b) Report detailing species, health, condition and hazard rating of trees identified as suitable for retention.

- c) Trees identified for retention to be clearly tagged on site to allow for assessment by Council officers.
- d) A tree planting/revegetation plan detailing species and location.
- e) Methods of tree protection during engineering works for trees identified to be retained.

APPENDIX 5: COUNCIL PROCEDURE FOR INITIAL EVALUATION

Process: Initial Evaluation

Exceptions: If an application is sent directly to the NSW Department of Planning and Environment as the land is deemed to be contaminated, and that the contamination is significant enough to be declared Significantly Contaminated under the CLM Act.

Trigger: An application is submitted to Council by an applicant for a given site.

Checklist process:

Step	Process	Yes	No
1	Does the application include a statement that the land (or neighbouring land) is, or is likely to be contaminated?	Go to Step 1A.	Initiate Preliminary site investigation process – Appendix 6.
1A	Did the application include a Site Audit Statement or Remedial Action Plan?	Go to site auditing or to Remediation process. - Appendix 10 and 8 respectively.	Go to Step 2.
2	Is the application requiring a change in land use to residential, educational, recreational, child care or hospital?	Need to be mindful of this when deciding as to whether a preliminary site investigation is required before proceeding.	Go to Step 3.
3	Is the site; under consideration (or neighbouring sites) included in the Register as ‘significantly contaminated’ or ‘remediated land’? Listed on the EPA’s notifications list i.e. sites which are awaiting assessment?	Go to Step 3A.	Go to Step 4.
3A	Does the Site Audit Statement or Remedial Action Plan place limitations on the use of the land?	Initiate preliminary site investigation process – Appendix 6.	Go to Step 4.
4	Is the site under consideration (or neighbouring sites) included in the register as potentially contaminated land?	Go to Step 4A.	Go to Step 5.

4A	Determine previous land use history and contamination potential. Is contamination possible?	Initiate preliminary site investigation – Appendix 6.	Go to Step 5.
5	Has the site under consideration been subject to either a preliminary or detailed site contamination investigations in the past?	Go to Step 5A.	Go to Step 6.
5A	Locate and review Site Audit Statement and the Validation and Monitoring Report. Do restrictions and/or conditions on the land use require further investigation?	Initiate preliminary site investigation – Appendix 6.	Go to Step 6.
6	Is the application outlining no change in land use, but the existing land use involves an activity listed in Appendix 2 of the Policy?	Go to Step 6A.	Go to Step 7.
6A	Is the previous/existing land use related to industrial/commercial or to intensive broadacre?	Consider if a preliminary site investigation is warranted before proceeding.	Go to Step 7.
7	<p>Does information on current zoning and permissible land uses (e.g. restrictions and/or conditions on land use relating to land contamination contained in the LEP, DCP etc), or records from previous zonings, development and building applications, property files and information provided by the applicant <u>suggest land contamination may be an issue for this or in neighbouring sites?</u></p> <p>Does the Local Environment Plan or Development Control Plan place restrictions or conditions for the development of the site?</p> <p>Is an identified historical land use for the land (or neighbouring land) listed in Appendix 2 of the Policy?</p> <p>Is an identified historical land use (or neighbouring land) related to agriculture or intensive horticulture? (excludes broadacre horticulture).</p>	Yes or maybe to one or more – Initiate preliminary site investigation - Appendix 6.	No to all. Proceed with normal planning assessment process. Process finalised.

Is or has the site (or neighbouring land) been subject to land use restrictions related to contamination?		
Is or has the site (or neighbouring land) been subject to conditions on its use?		
Is or has the site (or neighbouring land) been subject to remediation action?		
Is or has the site (or neighbouring land) been subject to pollution incidents and/or illegal dumping of waste?		
Did a site inspection identify any land contamination issues?		

Key decision for check list:

Initial Evaluation Report (as a file note) concludes that:

1. Reasonable efforts have been made to come to a conclusion that there is no risk in the development application relating to land contamination, hence the assessment of the Development Application continues business-as-usual; or
2. There is insufficient information to determine whether the land under consideration in the development application is not contaminated land, in that the land concerned is either:
 - Land that is within an investigation area that has been notified as such by the EPA;
 - Land on which activities referred to in Appendix 2 of the Contaminated Land Management Policy are being, or are known to have been carried out, especially in regards to agriculture and intensive horticulture activities; or
 - Land on which there is incomplete knowledge about whether activities referred to in Appendix 2 of the Contaminated Land Management Policy are being, or are known to have been carried out, and if the proposed development involved residential, educational, recreational, child care or hospital purposes.

If 1): proceed with normal business process in the assessment of the development application.

If 2): notify the applicant in writing that a Preliminary Site Investigation is required.

APPENDIX 6: COUNCIL PROCEDURE FOR PRELIMINARY SITE INVESTIGATION

Process: Preliminary Site Investigation

Exceptions: If an application is sent directly to the NSW Department of Planning and Environment (as a consenting authority) as the land is deemed to be contaminated, and that the contamination is significant enough to warrant regulation.

Trigger: Initial Evaluation could not conclude that the land under consideration in the application is not contaminated land.

Activity: Request the applicant to use a suitably qualified expert to undertake a preliminary site contamination investigation, and to undertake this investigation in accordance with the NSW EPA Guidelines for Consultants Reporting on Contaminated Sites. Request that the outcomes of this investigation are included in a revised application. (Note: this activity can be undertaken in conjunction with the Detailed Site Investigation).

Checklist process:

Step	Process	Yes	No
1	The application includes a Preliminary Site Investigation Report.	Go to Step 2.	Go to Step 1A.
1A	Request the applicant provide the Preliminary Site Investigation Report.	Go to Step 2.	Undertake Step 1A before proceeding.
2	Review the Preliminary Site Investigation Report and determine whether a Detailed Site Investigation is required.	Go to Step 3.	Undertake Step 2A before proceeding.
3	Preliminary Site Investigation Report (as a file note with the report) demonstrates the potential for, or existence of, contamination, which may preclude the land of being suitable for the proposed use.	Go to Detailed Site Investigation – Appendix 7.	Go to Step 4.
4	Is there a requirement for conditions of consent (refer to Appendix 4).	Go to step 5.	Process the application. Process finalised.
5	Process application with Conditions of Consent.	Process finalised.	Step 5 needs to be undertaken before process can be finalised.

APPENDIX 7: COUNCIL PROCEDURE FOR DETAILED SITE INVESTIGATION

Process: Detailed Site Investigation

Exceptions: If an application is sent directly to the NSW Department of Planning and Environment (as the consenting authority) as the land is deemed to be contaminated, and that the contamination is significant enough to warrant regulation.

Trigger: Preliminary Site Investigation Report identifies the potential for, or existence of, contamination which may preclude the land of being suitable for the proposed use.

Activity: Request the applicant to use a suitably qualified expert to undertake a detailed site contamination investigation, and to undertake this investigation in accordance with the NSW EPA Guidelines for Consultants Reports for Contaminated Sites. Request that the outcomes of this investigation are included in a revised development application. (Note: this activity can be undertaken in conjunction with the Preliminary Site Investigation).

Checklist process:

Step	Process	Yes	No
1	The application includes a Detailed Site Investigation Report.	Go to Step 3.	Go to Step 2.
2	Request the applicant provide a Detailed Site Investigation Report	Go to Step 3.	Undertake Step 2 before proceeding.
3	Does the Detailed Site Investigation Report include a statement that the site is contaminated and that the contamination is significant enough to warrant regulation?	Go to Step 4.	Go to Step 3A.
3A	Request the applicant submit a revised Detailed Site Investigation Report to include a statement on the suitability.	Go to Step 3B.	Cannot proceed until Step 3A is undertaken.
3B	Revised Detailed Site Investigation report received.	Go to Step 4.	Cannot proceed until revised detailed site investigation report is received.
4	The Detailed Site Investigation Report includes a statement on whether the site is suitable for the proposed use and for all other purposes permissible in the zone, or if it can be made suitable through remediation.	Go to Step 5.	Go to Step 4A.
4A	Request a statement on whether the site is suitable for the proposed use and for all other	Go to Step 5.	Undertake Step 4A before proceeding.

	purposes permissible in the zone, or if it can be made suitable through remediation.		
5	Does the Detailed Site Investigation Report include a statement that the site is potentially contaminated and that the contamination is significant enough to warrant regulation?	Go to Step 5A.	Go to Step 6.
5A	Notify NSW EPA immediately.	Proceed with EPA directions.	No other action can be undertaken until Step 5A has occurred.
6	Does the Detailed Site Investigation Report conclude that the land is unsuitable for the proposed use and may not be appropriately remediated, or the applicant does not wish to remediate?	Go to Step 6A.	Go to Step 7.
6A	The application may be modified to a use that is suitable for the land without remediation (e.g. relating to a development application outlining no change in land use), provided a new development application is not required, or the application can be withdrawn, or the application can be refused by Council. Application modified for consent.	Go to Step 7.	Go to Step 6B.
6B	Has the applicant indicated its intent to withdraw the development application?	Go to Step 6C.	Go to Step 6D.
6C	Close the assessment of the application.	Process finalised.	Undertake Step 6C to finalise process.
6D	Application refused by Council.	Go to Step 6E.	Application is required to be modified, withdrawn or refused for process to be finalised.
6E	Consider if the site should be included on the Contaminated Lands site register and include on register if required.	Process finalised.	Undertake Step 6E to finalise process.
7	Does the Detailed Site Investigation Report include a statement that the site <u>is</u>	Go to Step 8.	Go to Step 9.

	<u>contaminated</u> , which may preclude the land from being suitable for the proposed use?		
8	Has the applicant indicated its intent to withdraw the development application?	Go to Step 6C.	Go to Step 9.
9	Is Council satisfied that the site is suitable for the proposed use and for all other purposes permissible in the zone?	Go to Step 10A.	Go to Step 9.
9A	Are conditions of consent required?	Go to Step 9B.	Go to Step 10.
9B	Include conditions of consent (see Appendix 4 of the Policy).	Process finalised.	Process can't be finalised until Step 9B is undertaken.
10	Council to develop restrictions and/or conditions for the land, including any restrictions relating to the intended land use or conditions on the remediation and also provision of a Validation and Monitoring Report prior to commencement of development work (e.g. construction certificate).	Go to Step 11.	Undertake Step 10 before proceeding.
11	Does the Detailed Site Investigation Report include a list of feasible remediation options available to remediate the site in order to make it suitable for the proposed use?	Go to Remediation – Appendix 8.	Go to Step 11A.
11A	Seek this information from the applicant.	Go to Remediation – Appendix 8.	Process cannot proceed until Step 11A has been undertaken.

Note: Subsequent to finding that the Detailed Site Investigation Report includes a statement that the site is contaminated and that the contamination is significant enough to warrant regulation, Council must notify the NSW EPA who may then declare the land as a 'Remediation Site' thereby subjecting the land to remediation works and processes under the Management Order issued by the EPA.

APPENDIX 8: COUNCIL PROCEDURE FOR REMEDIATION

Process: Managing requirements of Council, the applicant and other actors relating to remediation of land and its congruence with SEPP 55 Planning Guidelines, and that remediation works will be undertaken in accordance with the relevant EPA Guidelines under the Contaminated Land Management Act.

Exceptions:

- Category 1 remediation works with consent from the Department of Planning and Environment.
- Category 2 remediation works subject to a Remediation Order by the EPA without consent. Under this scenario the EPA declares that the land is a Remediation Site and a Remediation Order is issued by the EPA.
- Site that is under voluntary remediation (i.e. Voluntary Remediation Plan) with the EPA declaring the site a Remediation Site (See Section 4.3, Voluntary Remediation) and where the EPA does not require the specific works to be undertaken under the EP&A Act.

Trigger:

- Land covered by a development application requires remediation to make the land suitable for the proposed use and for all other purposes permissible in the zone.
- Receipt of a notification regarding proposed Category 2 remediation works without consent.

Checklist process:

Step	Process	Yes	No
1	Is the remediation work likely to have a potential for significant environmental impacts from the remediation works?	Go to Step 1A	Go to Step 1B
1A	Remediation works would be considered as Category 1 remediation works with Council consent (go to sub-section Category 1 Remediation Works With Council Consent).	Proceed to subsection Category 1 Remediation Works with Council Consent.	N/A
1B	Considered as Category 2 remediation works without consent (go to sub-section Category 2 Remediation Works Without Consent).	Proceed to subsection Category 2 Remediation Works Without Consent.	N/A

Notes: Category 1 remediation work includes any work that is:

1. Designated development as listed in Schedule 3 under the Environmental Planning and Assessment Regulation (2000), and requires the applicant to prepare an Environmental Impact Statement.
2. Carried out on land that is considered as critical habitat (for threatened species).
3. Likely to have a significant impact on critical habitat or a threatened species, population or ecological community.
4. Development for which another SEPP requires development consent.
5. In an area or zone to which are classified for coastal protection, conservation or heritage conservation, habitat area, habitat protection area, habitat or wildlife corridor, environmental protection, floodway, nature reserve, scenic area or scenic protection, wetland, or any land in a manner that does not comply with the Policy made under the contaminated land planning guidelines by Council.
6. Any other works as nominated by Council under s.9(f) of SEPP 55 – Remediation of Land.
7. Council should notify NSW EPA that it considers remediation works associated with a planning proposal or development application to be Category 1 remediation works.

Category 1 Remediation Work Subject to Management Order with Consent of Department of Planning and Environment.

Notes:

1. Similar process to Category 1 Remediation Works with Council Consent except that Department of Planning and Environment manage the assessment steps and Council receives notifications at certain stages in the process.
2. A Remediation Action Plan must be prepared by the applicant and subsequently approved by the Department of Planning and Environment (as the consenting authority).
3. Department of Planning and Environment may require an Environmental Impact Statement (EIS) if the remediation is likely to significantly affect the environment.
4. A Remediation Action Plan, planning proposal or development application and an EIS is required to be submitted by the applicant to the Department of Planning and Environment.
5. Management Order is issued by the EPA.
6. Post-remediation: Validation and Monitoring Report and Site Audit Statement sent to the Department of Planning and Environment (under SEPP 55) and to the EPA (under the Remediation Order).

Category 1 Remediation Work with Council Consent

Step	Process	Yes	No
1.	Does the Category 1 remediation work include any work that is designated development listed in Schedule 3 of the Environmental Planning and Assessment Regulation?	Determine whether the applicant is required to submit an Environmental Impact Statement before proceeding.	Go to step 2.
2	If the remediation work is Category 1 remediation work, has the applicant submitted a Remedial Action Plan?	Go to 2A.	Remedial Action Plan required before proceeding.
2A	Is Council satisfied that the site can be remediated?	Go to Step 3.	Go to Step 2B.
2B	Request applicant provides a revised Remedial Action Plan or if unsure decide whether to use a Site Auditor to review the Remedial Action Plan.	Go to Step 3.	Undertake Step 2B before proceeding.
3	Are the proposed clean-up criteria appropriate for the future use of the site, considering possible human health and environmental impacts?	Go to Step 4.	Go to Step 3B.
3B	Has the applicant provided a suitable revised Remedial Action Plan and Council is satisfied the land can be remediated for the intended land use. If unsure decide whether to use a Site Auditor to review the Remedial Action Plan.	Go to Step 4.	Undertake Step 3B before proceeding.
4	Are the proposed plans for remediation work acceptable in that they include an operational plan, occupational health and safety plan, site environmental management plan, community relations plan and contingency plan and outline all necessary approvals required from regulatory authorities?	Go to Step 5.	Go to Step 4A.
4A	Request applicant provides revised Remedial work plans. Is council satisfied with the revised remedial work plans? Unsure – Decide whether to use a Site Auditor to review the Remedial Action Plan.	Go to Step 5.	Undertake Step 4A before proceeding.

5	Is a Site Auditor required to review the Remediation Action Plan?	Inform the applicant that Council intends to engage a Site Auditor, and that the cost of this auditor is with the applicant. Go to Step 6.	Go to Step 7.
6	Request the applicant to submit a satisfactory Remedial Action Plan. Process should be stopped until a satisfactory RAP is submitted.	Go to Step 7.	Undertake Step 6 before proceeding.
7	Does Council need to impose conditions on the development consent in relation to: Requiring the submission of a Validation and Monitoring Report after completion of the remediation work, but before commencement of the development work (i.e. before issuance of a construction certificate). Any other conditions and/or restrictions on the remediation work, including any condition of consent set out in appendix 3 of the Policy?	Go to Step 7A. Go to Step 7B.	Go to Step 8.
7A	Prepare conditions of consent to reflect provision of a Validation and Monitoring Report upon completion of remediation works.	Go to Step 8.	Undertake step 7A before proceeding.
7B	Prepare conditions of consent to reflect identified conditions of consent relevant to the remediation works and ongoing management of the land under consideration in regards to occupational health and safety, site environmental management (including ongoing site monitoring) and any other identified matter.	Go to Step 8.	Undertake Step 8A before proceeding.
8	Any objections received on the advertised planning proposal or development application (including the Remedial Action Plan)?	Go to Step 8A.	Go to Step 9.
8A	Is the planning proposal or development consent a designated development?	Go to Step 8B.	Go to Step 9.
8B	These objections must be sent to the Department of Planning and Environment for comment.	Go to Step 9.	Undertake step 8B before proceeding.
8C	Planning proposal or development consent is not designated development, Council is to	Go to Step 9.	Undertake step 8C.

	review objections and make a determination on these		
9	Determine the development application, including any comments on objections received from the Department of Planning and Environment (if designated development).	Go to Step 10.	Undertake step 9 before proceeding.
10	Inform the applicant of determination.	Go to Step 11.	Undertake step 10 before proceeding.
11	Upon completion of the remediation works, and before a construction or occupation certificate is issued, has a notification from the applicant that includes the Validation and Monitoring Report been submitted to Council within 30 days of completion of the remediation works or as specified in the Development consent? (Note: sometimes submission for the validation report within 30 days of completion of remedial works and prior to construction certificate is not feasible. Some flexibility is required here.	Go to Step 12.	Go to Step 11A.
11A	Request the notification and Validation and Monitoring Report to be submitted to Council.	Go to Step 12.	Undertake step 11A before proceeding.
12	Does the Validation and Monitoring Report include: A statement that the land under consideration has been remediated in accordance with the approved Remedial Action Plan to make it suitable for its intended use or other purpose in that zone?	Go to Step 13.	Go to Step 12A.
12A	If the site was remediated in accordance with requirements, then request the report is modified to include such a statement, or; If the report identified that full remediation was not feasible or onsite containment of contamination is proposed, then ensure that a detailed ongoing monitoring strategy/program and site environmental management plan is provided.	Go to Step 13.	Undertake step 12A before proceeding.
13	Does the Validation and Monitoring Report include: A statement confirming that all licences,	Go to Step 13A.	Go to Step 13C.

	approvals and development consents have been complied with?		
13A	Did the Validation and Monitoring Report include any documentary evidence?	Go to Step 14.	Go to Step 13B.
13B	Request that the report is modified to include such documentary evidence.	Go to Step 14.	Undertake step 13B before proceeding.
13C	Request that the report is modified to include such a statement and documentary evidence.	Go to Step 14.	Undertake step 13C before proceeding.
14	Does the Validation and Monitoring Report include: A Site Audit Statement and Site Audit Summary Report?	Go to Step 15.	Go to Step 14A.
14A	Request that the Site Audit Statement and Site Audit Summary Report is provided.	Go to Step 15.	Undertake step 14A before proceeding.
15	Is Council satisfied with the Validation and Monitoring Report and the Site Audit Statement?	Process finalised.	Undertake step 15A
15A	Seek a Site Auditor to review with a view to verify information contained in the Validation and Monitoring Report (See Appendix 10 Site Auditing).	Go to Step 15.	Cannot proceed until Step 15A is undertaken.

Note: Site auditor will provide a report that will confirm the above questions and thereby dictate whether the process continues or if another iteration on the Remedial Action Plan is required. If no Remediation Action Plan is sought (or is not needed), then the remediation must be tested against standards endorsed by the EPA.

Include the relevant information in section 149(2) planning certificates, covenants on the title or annual reporting and other information made available under section 149(5).

Category 2 Remediation Work Without Consent

Notes:

1. Category 2 remediation work is all remediation work that is not defined as Category 1 remediation work.
2. Category 2 remediation work does not require consent.
3. Council is required to be notified of any proposed category 2 remediation work at least 30 days before the works commence.
4. This notification is also required to address information contained in Appendix 2 Requirements for Category 2 Remediation Works.
5. Remediation Action Plans are not mandatory for Category 2 works without consent, but Council can deem the risk of contamination to be of the level requiring a Remediation Action Plan to be developed by the applicant.
6. A copy of the Validation and Monitoring Report and a Site Audit Statement from an EPA accredited auditor must be forwarded to Council within 30 days of the completion of the remediation works. Council will not consider any subsequent development applications for the site until it is satisfied that the site is suitable for the proposed use.
7. This section does not consider Category 2 Remediation Work Subject to a Remediation Order by the EPA – without consent, nor Category 2 remediation works relating to underground petroleum storage systems (even though Appendix 3 of the Policy includes UPSSs in the 'requirements for category 2 remediation works'). The UPSS regulatory framework is proposed to be changed in 2017 resulting in more responsibility given to local government.

Step	Process	Yes	No
1	For Category 2 remedial works, was Council notified at least 30 days before commencement of the works?	Go to Step 3.	Go to step 2.
2	Contact applicant to remind them of the notification requirement.	Go to Step 3.	Process cannot proceed until Step 2 is complete.
3	Did the notification include a proposal for the remediation works that addressed information contained in Appendix 3 of the Policy in relation to 'Requirements for Category 2 Remediation Works', and the dates in which	Go to Step 4.	Go to Step 3A.

	this work is to be undertaken?		
3A	Obtain this information from the applicant.	Go to Step 4.	Process cannot proceed until Step 3A is undertaken.
4	Did the notification seek any approvals from Council (e.g. dissolved hydrocarbon impact from open excavations to be taken to landfill or discharged to the sewer under consent conditions)?	Go to Step 4A.	Go to Step 5.
4A	Consult with relevant internal operational area.	Go to Step 5.	Undertake Step 4A before proceeding.
5	Did the notification require any approvals from other regulatory bodies (e.g. leaching [i.e. discharge] of toxic material to stormwater or sewer)?	Go to step 5A.	Go to Step 6.
5A	Request evidence of approval.	Go to Step 6.	Undertake Step 5A before proceeding.
6	Did the notification provide contact details?	Go to Step 6A.	Go to Step 7.
6A	Consult with relevant internal operational area.	Go to Step 7.	Undertake Step 6A before proceeding.
7	Has a remedial works plan been submitted with the notification?	Go to Step 8.	Go to Step 7A.
7A	Ask and receive the Remedial Works Plan from the applicant.	Go to Step 8.	Cannot proceed until Step 7A is undertaken.
8	Does the Remedial Works Plan state that it has been prepared in line with the SEPP55 Planning Guidelines, and that proposed remediation works will be undertaken in accordance with the relevant EPA Guidelines under the Contaminated Land Management Act?	Go to Step 9.	Go to Step 8A.
8A	Seek the applicant or proponent to provide this confirmation in writing.	Go to Step 9.	Undertake step 8A before proceeding.
9	Has a site inspection been undertaken?	Go to Step 10.	Go to Step 9A.
9A	Arrange and undertake a site inspection.	Go to Step 10.	Undertake step 9A before proceeding.

10	Upon completion of the remedial works has the following been provided to Council? Within 30 days of completion of the remediation works, a notification that remediation work and validation has been completed.	Go to Step 11.	Go to Step 10A.
10A	Contact the proponent and request this information is submitted to Council	Go to Step 11.	Cannot proceed until Step 10A is undertaken.
11	Upon completion of the remedial works has the following been provided to Council? Validation and Monitoring Report	Go to Step 12.	Go to Step 11A.
11A	Contact the proponent and request the Validation and Monitoring Report is submitted to Council.	Go to Step 12.	Cannot proceed until Step 11A is undertaken.
12	Upon completion of the remedial works is Council satisfied that the category 2 remediation works have been carried out?	Go to Step 13.	Go to Step 12A.
12A	Issue a clean-up notice under the POEO Act requiring that further works be undertaken, or that a site auditor is appointed to review works to date and make suggestions on what additional works are required.	Go to Step 13.	Cannot proceed until Step 12A is undertaken.
13	Is Council satisfied with the content of the Validation and Monitoring Report and the Site Audit Statement?	Go to Step 14.	Go to Step 13A.
13A	If Council is not satisfied with the content of the site audit statement it should be reported to the EPA.	Go to Step 14.	Cannot proceed until Step 13A is undertaken.
14	Did the Validation and Monitoring Report and/or Site Audit Statement include: A statement that the land under consideration has been remediated to make it suitable for its intended use or other purpose in that zone?	Go to Step 15.	Go to Step 14A.
14A	Request that this information is provided.	Go to Step 15.	Undertake step 14A before proceeding.
15	Did the Validation and Monitoring Report and/or Site Audit Statement include: Requirements relating to ongoing site	Go to Step 15A.	Go to Step 16.

	management, including restrictions on use?		
15A	Include the relevant information in section 149(2) planning certificates, covenants on title or annual reporting and other information made available under section 149(5).	Go to Step 16.	Undertake step 15A.
16	Has a site inspection been undertaken?	Go to Step 17.	Undertake Step 16A.
16A	Undertake a site inspection.	Go to Step 17.	Cannot proceed until Step 16A is undertaken.
17	Council is satisfied with the remediation work.	Process finalised.	Process cannot be finalised until Council is satisfied with the remediation works.

Note: Some notifications on category 2 remediation works without consent list requests Council approvals. An example is the discharge of dissolved hydrocarbon impact to sewer or to take it to landfill to de-wet. Council has adopted a Liquid Trade Waste Policy, advice should be sought from Council regarding approval to dispose of material to sewer. Should the material pose a significant risk to human health and / or the environment an approval must be sought from the relevant state agency (e.g. NSW Office of Water).

APPENDIX 9: COUNCIL PROCEDURE FOR VOLUNTARY REMEDIATION

Process: -To manage data and/or information regarding any voluntary management proposal approved by the EPA.

Exceptions: None identified.

Objective: to ensure the appropriate management of data and information from activities related to voluntary management proposals.

Trigger:

- Land owner informs Council of intent to remediate identified contaminated land.
- EPA notifies Council of a voluntary management proposal to remediate a contaminated site.
- EPA notifies Council of completion of remediation works associated with a voluntary management proposal.

Checklist process:

Step		Yes	No
1	Notification received from EPA in regards to a voluntary management proposal?	Go to Step 2.	Process not applicable.
2	Record information in Council's systems in accordance with agreed procedures.	Go to Step 3.	Undertake Step 3 before proceeding.
3	Is Council satisfied that a section 149(2) planning certificate can be issued for the site?	Go to Step 4.	Go to Step 5.
4	Prepare appropriate text for the section 149(2) planning certificate (See Appendix 11 Section 149 Certificates).	Process Completed.	Process not completed until Step 4 is undertaken.
5	Liaise with EPA for clarification.	Process completed.	Process not completed until Step 5 is undertaken.

Notes:

1. Duty to Notify: Anyone whose activities have caused land to be contaminated, and owners of land who become aware, or ought reasonably to be aware, that the land has been contaminated must notify the EPA as soon as practicable after becoming aware of the contamination when a site owner provides an undertaking to voluntarily remediate a site that initiates a process via a notification to the NSW EPA. This is a requirement under section 60(3) of the Contaminated Land Management Act and supported by the Guidelines on the Duty to Report Contamination under the Contaminated Land Management Act.
2. Management Orders: The EPA may order persons to manage significantly contaminated land in the following hierarchy: those responsible for the contamination, the landowner and the notional owner. Under worst-case scenarios this could see Council as the 'notional owner' of private land and thereby is responsible for remediation.
3. Voluntary Management Proposals: The EPA may approve a voluntary management proposal for the management of significantly contaminated land, with or without conditions. The voluntary management proposals subsumes the former voluntary investigation proposal and the voluntary remediation proposal.

APPENDIX 10: COUNCIL PROCEDURE FOR SITE AUDITING

Process: To ensure that Council has confidence in information regarding contamination or potential contamination of land and verification thereof.

Exceptions: None identified

Trigger: Council:

- Believes on reasonable grounds that information including that related to potential contamination or previous land use history, provided by the applicant is incorrect or incomplete.
- Wishes to verify whether the information provided by the applicant has adhered to appropriate standards, procedures and guidelines.
- Does not have the internal resources to undertake a technical review.

Notes:

1. A Site Auditor is an individual accredited by the EPA under Part 4 of the CLM Act.
2. Site auditors review the work of contaminated site consultants. The CLM Act calls these reviews site audits and defines a site audit as an independent review.
3. Site auditors can prepare an independent review:
 - a. that relates to investigation or remediation carried out (whether under the CLM Act of otherwise) in respect of the actual or possible contamination of land; and
 - b. that is conducted for the purpose of determining any one or more of the following matters:
 - I. the nature and extent of any contamination of the land
 - II. the nature and extent of the investigation or remediation
 - III. whether the land is suitable for any specified use or range of uses
 - IV. what investigation or remediation remains necessary before land is suitable for any specified use or range of uses
 - V. the suitability and appropriateness of a plan of remediation, a long-term management plan, a voluntary investigation proposal or a remediation proposal.
4. Costs for Site Audit services are borne by the applicant.

Checklist process:

Step	Process	Yes	No
1	Developed a terms of reference for site audit.	Go to Step 2.	Undertake Step 1 before proceeding.
2	Package and provide all direct and background information required to be verified by the Site Auditor.	Go to Step 3.	Undertake Step 2 before proceeding.
3	After completion of the site audit, has the Site Audit Summary Report been provided with the Site Audit Statement?	Go to step 4.	Go to Step 3A.

3A	Seek Site Audit Summary Report from applicant.	Go to Step 4.	Undertake Step 3A before proceeding.
4	Is Council satisfied with the outcomes of the site audit?	Process completed.	Go to Step 5.
5	Liaise with site auditor to clarify findings or report to EPA for review.	Process Completed.	Process cannot be deemed completed until Step 5 (findings clarified or EPA reviewed) is undertaken.

APPENDIX 11: SECTION 149 CERTIFICATES PROCEDURE

Process: To ensure that accurate information regarding land contamination matters including Council policy to restrict the use of land is included in planning certificates issued under section 149 of the EP&A Act.

Trigger: A request for information regarding a parcel of land that triggers a process under section 149 of the EP&A Act.

Steps:

1. Identify parcel of land of interest.
2. Check Register for annotations regarding contaminated land management issues.
3. Generate certificate.
4. Confirm correctness of statements included in the certificate regarding contaminated land management matters.

Under s.149 of EP&A Act, a person may request from Council a planning certificate containing advice on matters about the land that are prescribed in the EP&A Regulation including information regarding land contamination.

- (a) Section 59(2) of the CLM Act provides that specific notations (as listed below) relating to contaminated land issues must be included on s.149 certificates where:*
- (b) that the land to which the certificate relates is significantly contaminated land within the meaning of that Act – if the land (or part of the land) is significantly contaminated land at the date when the certificate is issued;*
- (c) that the land to which the certificate relates is subject to a management order within the meaning of that Act – if it is subject to such an order at the date when the certificate is issued;*
- (d) that the land to which the certificate relates is the subject of an approved voluntary management proposal within the meaning of that Act – if it is the subject of such an approved proposal at the date when the certificate is issued;*
- (e) that the land to which the certificate relates is subject to an ongoing maintenance order within the meaning of that Act – if it is subject to an order at the date when the certificate is issued;*
- (f) that the land to which the certificate relates is the subject of a site audit statement within the meaning of that Act – if a copy of such a statement has been provided at any time to the local authority issuing the certificate.*

In addition to detailing information relevant to the prescribed matters, all s.149(2) certificates issued by Council will also contain one of the following notations relating to land contamination:

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

- has a previous land use history which could have involved use of contaminants on the site, for examples, land which may have been used for an activity listed in Appendix 2, or
- is known to be contaminated, but
- has not been remediated,

an appropriate notation may be:

‘Council has adopted by resolution a policy on contaminated land which may restrict the development of the land. This policy is implemented when zoning or land use changes are proposed on lands that have previously been used for certain purposes. Consideration of Council’s adopted policy and the application of provisions under relevant State legislation is warranted.’

Where council’s contaminated land policy restricts the use of land which:

- is known to contain contaminants, but
- has been remediated for a particular use or range of uses and some contamination remains on the site, for example encapsulated,

an appropriate notation might be:

‘Council has adopted by resolution a policy on contaminated land which may restrict the development of the land. This policy is implemented when zoning or land use changes are proposed on lands which are considered to be contaminated, or on lands which have been remediated for a specific use. Consideration of Council’s adopted policy and the application of provisions under relevant State legislation is warranted.’

Where Council records do not contain a clear site history without significant gaps in information and council cannot determine whether or not the land is contaminated, and therefore the extent to which council’s policy should apply, council may decide to take a cautious approach. In such cases an appropriate notation might be:

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

Council may make additional notations upon S.149(2) or S.149(5) certificates where specific information is obtained in relation to the use of land.

APPENDIX 12: PROCEDURE FOR STORING CONTAMINATED SITES INFORMATION

Directorate: Infrastructure & Development

Purpose: This procedure outlines the steps to be completed on receipt of contaminated land information from any source.

Scope: All Balranald Shire Council Officers.

Definitions:

Lot & DP: Unique allotment descriptor
Practical: Council's electronic finance and rating system
Rate card: Rates information entry within the Practical system

References:

Environmental Planning & Assessment Act 1979
Environmental Planning & Assessment Regulation 2000
State records Act 1998

Activity: On receipt of contaminated land information the following steps should be followed:

Check if described allotment/s, ie Lot and DP descriptor/s, are listed on the Contaminated Land Register:

If listed:

- a) Update information on the register if required
- b) Update note on Practical rate card Information if required
- c) Place original or printed copy of electronic advice on the Contaminated Land register hardcopy file and a copy of the information in the hardcopy property file

If not Listed:

- a) Insert entry into Contaminated land Register
- b) Create note on Practical Information rate card
- c) Place original or printed copy of electronic advice on the Contaminated Land register hardcopy file and a copy of the information in the hardcopy property file with a red file marker affixed to the front page
- d) In the event of a subdivision occurring of a property listed on the Contaminated Land Register, the Infrastructure & Development Administrative Assistant is required to ensure that copies of information is provided to both property files and both of the Practical rate cards if required.