

Contaminated Land Policy



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City of
Newcastle

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Part A - Preliminary

1 Purpose

1.1 The purpose of this Policy is to:

- a) Provide a Policy Statement to be followed by City of Newcastle (CN) when exercising relevant planning functions in relation to land contamination. This Policy is supplemented by CN's Contaminated Land Management Technical Manual;
- b) Provide local context for decision making that is generally consistent with the Contaminated Land Planning Guidelines notified under the Environmental Planning and Assessment Act 1979;
and
- c) Assist CN to exercise its functions relating to the development of contaminated land with a reasonable standard of care and diligence.

2 Scope

2.1 This Policy applies to:

- a) All CN staff involved in the planning, assessment and management of contaminated land and related information
and
- b) All development and land within CN's local government area.

Part B - Plan Making and Development Assessment

3 Applicable Matters

3.1 The following controls apply when preparing or determining a:

- a) Development Application (including modification) or an activity under Part 5 of the Environmental Planning and Assessment Act 1979;
- b) Local Environmental Plan;
- c) Development Control Plan; or
- d) Plan of Management for Community Land.

4 Principles

4.1 CN commits to the following key principles when making a determination in respect of any of the matters referred to in the previous clause:

- a) **Early consideration of contamination** - to ensure that the likelihood of land contamination is considered as early as possible in the planning and development process.
- b) **Consideration of available information** - to ensure that planning and development decisions take into account readily available information relating to the likelihood of land contamination.
- c) **Assess and minimise risk** - to ensure that development of contaminated land will not result in unacceptable levels of risk to human health or the environment.
- d) **High standards of investigation/remediation** - to ensure that site investigations and remediation work are carried out in accordance with relevant guidelines and where appropriate, are independently verified by site audits.
- e) **Avoid inappropriate restrictions** - to avoid inappropriate restrictions on land use with respect to its contamination status.
- f) **Ongoing management is clearly and legally assigned** - to ensure that responsibility for ongoing management and monitoring of contaminated land is clearly and legally assigned.

- g) **Avoid inappropriate dedication of contaminated assets** - to ensure that the community is not unduly disadvantaged by accepting the dedication of public assets which have increased human health or environmental risks or have potentially higher asset management costs due to contamination.

5 Initial Evaluation

- 5.1 When making a determination in respect to plan making or development assessment, CN is to undertake an initial evaluation generally in accordance with NSW Government Contaminated Land Planning Guidelines and all relevant legislation.
- 5.2 Information related to the requirements of the initial evaluation are set out under **Attachment B**.

6 Determining Site Investigation Requirements

- 6.1 If there are indications that the land is or may be contaminated and there is insufficient information on which to make a decision, the applicant should be asked to provide further information.
- 6.2 Information related to the requirements of the site investigation requirements are set out under **Attachment B**.

7 Site Investigation and Reporting

- 7.1 If contamination is or may be present, the site is to be subject to a site investigation process. The purpose of the site investigation process is to provide CN with sufficient information to:
 - a) Assess likely risk to human health and the environment;
 - b) Make an informed decision as to whether to approve the proposed development; and
 - c) Determine whether any special conditions need to be imposed requiring remediation of the land.
- 7.2 The appropriate level of investigation will depend on the circumstances and may involve one or more of the following stages, as described in NSW Government endorsed contaminated land guidelines;
 - a) Stage 1 - Preliminary investigation
 - b) Stage 2 - Detailed investigation
 - c) Stage 3 - Remedial action plan
 - d) Stage 4 - Validation and site monitoring.
- 7.3 Requirements for reporting on site investigations and site audit statements are set out under **Attachment B** and in the technical manual.

8 Determination

- 8.1 Following consideration of the findings of the site investigation process, CN is to grant consent or otherwise authorise the matter only if it is satisfied that:
 - a) The land is suitable for the purpose for which the development is proposed to be carried out; or
 - b) If remediation is required, the land will be remediated to make the land suitable before it is subdivided or used for the proposed purpose.

9 Conditions of Consent

- 9.1 In making its determination, CN is to consider appropriate conditions to ensure:
- a) The community is not unduly disadvantaged by accepting the dedication of public assets which have increased human health or environmental risks or have potentially higher asset management costs due to contamination; and
 - b) Remediation, validation, reporting and certification of the works will be completed at the appropriate stage of the development.

Part C - Remediation Work

10 Applicable Matters

- 10.1 This Part applies to remediation work as defined in the relevant SEPP (currently State Environmental Planning Policy (Resilience and Hazards) 2021).
- 10.2 Remediation works are defined under two categories:
- a) Category 1 remediation works, which require development consent;
 - b) Category 2 remediation works, which do not require development consent.

11 Key Principles

- 11.1 Remediation of land to be subdivided or developed:
- a) Should be carried out and completed in a manner which will not result in an unacceptable level of risk to human health or the environment.
 - b) Should aim to remediate land to the highest land use possible under the current or proposed zoning without the need for site specific on-going management controls such as capping.
 - c) Should aim to remediate groundwater to a level that allows the maximum reuse of the resource into the future.
- In the case of subdivision:
- a) All remediation work including site capping should be completed on the development lots prior to the issue of a subdivision certificate.
 - b) Should not place a public agency in a position where it may have to become involved in any future management or monitoring of contaminated land. In this regard any ongoing management and monitoring requirements need to be clearly and legally assigned to the proprietors of newly created lots. It will need to be demonstrated to the satisfaction of CN that any further remediation required as a result of ongoing management or monitoring requirements can be legally and practically enforced.

12 Category 1 Remediation Work

- 12.1 Category 1 remediation work is a special category of remediation work defined in the relevant SEPP. Category 1 remediation work may only be carried out with development consent.
- 12.2 Category 1 remediation includes works that are carried out in a manner that is not consistent with this Policy.
- 12.3 For the purpose of this Policy, Category 1 remediation works includes works which would require the implementation of an Environmental Management Plan (EMP) for long term management of contamination. For example, remediation works to cap and/or contain contaminated soil on the site would require long term management and the preparation of an EMP.

13 Category 2 Remediation Work

- 13.1 Category 2 remediation work is any remediation work that is not defined as Category 1 remediation work under the relevant SEPP.
- 13.2 Under the relevant SEPP, Category 2 remediation work may be carried out without development consent. However, if remediation work is carried out in a manner that does not comply with this Policy adopted under the Contaminated Land Planning Guidelines, such work is then classified as Category 1 remediation work.
- 13.3 Additional requirements (site management provisions) are specified in the technical manual to ensure that Category 2 remediation works will not have an adverse impact on the environment or public amenity within the Newcastle LGA.
- 13.4 Category 2 remediation work that does not comply with the site management provisions are therefore classified as Category 1 remediation work and will require development consent. Development applications lodged for Category 1 remediation works should identify any areas of non-compliance with the site management provisions and identify any alternative site management measures to be implemented.
- 13.5 It is the responsibility of those remediating a site to ensure compliance with:
 - a) All relevant environmental legislation and regulations;
and
 - b) The site management provisions in the technical manual.

Part D - Dedication of Assets to City of Newcastle

14 Applicable Matters

- 14.1 This Part applies to the requirements of CN for the dedication of land and public assets.

15 Key Principles

- 15.1 CN will not accept dedication of public assets where it is considered that the community will be unduly disadvantaged by accepting the dedication for any land that has increased human health or environmental risks or have potentially higher asset management costs due to contamination.

16 Standards for Investigation and Acceptance of Assets

- 16.1 CN has set out in the technical manual, specific requirements related to land proposed to be dedicated as a public asset. These include investigation, sampling and reporting requirements and acceptable levels of contamination for categories of assets.

Part E - Information Management

17 Applicable Matters

- 17.1 This Part applies to the recording and keeping of information by CN about land contamination, and the supply of such information to the public.
- 17.2 CN records include:
 - a) Documents, reports, registers and files
 - b) Maps and plans
 - c) Computerised land and geographical information systems.

18 Key Principles

- 18.1 Information relating to land contamination, or the likelihood of land contamination, should be gathered, kept, and disseminated in such a manner as to:
- a) Provide a basis for informed planning decisions that consider land use history.
 - b) Facilitate the provision of reliable information to the community.
 - c) Minimise risk to human health and the environment.
 - d) Avoid unnecessary restrictions on development.
 - e) Enable CN to exercise its duties with reasonable care and diligence.
 - f) Acknowledge any limitations on information, such as its degree of uncertainty or accuracy, collection date and purpose of collection.

19 Record Keeping

- 19.1 CN is to keep sufficient and appropriate records relating to the existence or likelihood of land contamination generally in accordance with NSW Government legislation and contaminated land guidelines.
- 19.2 CN will develop and maintain a Contaminated Land Information System to facilitate compliance with statutory obligations, support its planning functions, and provide relevant and accurate information on contaminated land to the community in accordance with the *NSW Government Information (Public Access) Act 2009*.

20 Supply of Information

- 20.1 Information about land contamination held within CN's records is to be supplied to the public only by the following means:
- a) By issuing Planning Certificates (upon application by any person, and subject to payment of the prescribed fee)
 - b) By providing access to documents in accordance with the Government Information (Public Access) Act 2009 (GIPA Act).
- 20.2 CN has set out further details in the technical manual in relation to the provision on information on Planning Certificates.

Annexure A - Definitions

Applicant

A person or body seeking to carry out development on land.

Category 1 remediation work

Remediation work that requires development consent under the relevant SEPP. Category 1 remediation work is defined in the relevant SEPP.

Category 2 remediation work

Remediation work that does not need development consent under the relevant SEPP. Category 2 remediation work is all other work not defined as Category 1 in the relevant SEPP.

Note: This Policy contains specific requirements relating to when category 2 remediation works are defined as category 1 remediation works as provided for under section 4.8(f) in the SEPP (Resilience & Hazards) 2021.

Community land

Land that is classified as community land under the Local Government Act 1993. Community land is a public asset owned and/or managed by CN and is required to be used and managed in accordance with a plan of management.

Contaminated land

Contaminated land is defined within the Contaminated Land Management Act 1997.

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

The definition in this Act contains further clarification.

Contaminated Land Planning Guidelines

Guidelines listed under section 105 in the Contaminated Land Management Act 1997 and notified under Schedule 6 in the Environmental Planning and Assessment Act 1979.

This Policy has been prepared in accordance with these Guidelines, or whichever is in force at the time of adoption.

Contaminated Land Management Technical Manual (the technical manual)

This is CN's Technical Manual prepared to supplement this Policy and provide further information on CN policy and requirements to be followed in relation to land contamination.

CN

City of Newcastle, the trading name of Newcastle City Council.

Detailed investigation

An investigation to define the extent and level 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.

Reporting requirements for a detailed investigation are outlined in NSW EPA statutory contamination guidelines.

Development

Development is defined in the Environmental Planning and Assessment Act 1979.

Environmental Management Plan (EMP)

An EMP, means a plan which addresses the integration of environmental mitigation and monitoring measures for soil, groundwater and/or hazardous ground gases throughout an existing or proposed land use. The contents of an EMP are set out in the NSW EPA Contaminated Land Guidelines - Consultants reporting on contaminated land.

Planning Certificate

A certificate issued under section 10.7 in the Environmental Planning and Assessment Act 1979, providing information about planning and other matters relating to a specified parcel of land.

Planning Certificates are of two types:

- A 'basic certificate' containing the matters prescribed under Section 10.7(2) [that is, the matters referred to in Schedule 2 of the Environmental Planning and Assessment Regulation 2021 and Section 59(2) of the Contaminated Land Management Act 1997]
- A 'full certificate' containing additional information provided under section 10.7(5) as well as the matters referred to above.

Under the Conveyancing (Sale of Land) Regulation 2022 (Schedule 1), only a 'basic certificate' containing the matters prescribed under Section 10.7(2) must be attached by the vendor to any contract for the sale of land.

Preliminary investigation

Preliminary investigation is defined in section 4.3 in the relevant SEPP and refers the reader to the Contaminated Land Planning Guidelines.

Reporting requirements for a preliminary investigation are outlined in NSW EPA statutory contamination guidelines.

Relevant SEPP

The State Environmental Planning Policy (SEPP) that is relevant to the assessment of contaminated land. At the time of adoption of this Policy, the relevant SEPP is identified as State Environmental Planning Policy (Resilience and Hazards) 2021.

Remedial action plan

A plan which sets remediation goals and documents the process by which it is proposed to remediate a site. Reporting requirements for a remedial action plan are outlined in NSW EPA statutory contamination guidelines.

Remediation

Remediation is defined in section 4.3 in the relevant SEPP.

Site audit

Site audit is defined in the Contaminated Land Management Act 1997. A site audit is undertaken by an independent site auditor with accreditation under the Act.

Site audit statement

A written statement by a site auditor that summarises the findings of a site audit. Site audit statements are prepared according to a standardised format prescribed by NSW EPA statutory contamination guidelines.

Site auditor

A person accredited under the Contaminated Land Management Act 1997 as a site auditor.

Site investigation process

The process of investigating land that is or may be contaminated. The purpose of the site investigation is to provide CN with sufficient information for it to make an informed decision as to whether it should authorise a proposed change of use of land. A site investigation may include up to four stages:

- Stage 1 - Preliminary investigation
- Stage 2 - Detailed investigation
- Stage 3 - Remedial action plan
- Stage 4 - Validation and site monitoring.

Site investigation report

Includes one or more of the following;

- A preliminary investigation report;
- Detailed investigation report;
- Remedial action plan; and
- Validation and site monitoring report.

Validation and site monitoring

The process of determining whether the objectives for remediation and any conditions of development consent have been achieved. Reporting requirements for validation and site monitoring are outlined in NSW EPA statutory contamination guidelines.

Annexure B - Evaluation, Investigation, and Reporting

Initial Evaluation Requirements

The 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 determination of the matter, and whether a site investigation process is required to be carried out.

The evaluation is to be based upon records held by CN that are readily accessible and may also be based upon factual information gained from a site inspection. There is no requirement to research or consider records held by other agencies.

If after consideration of the matters referred to in this clause, there is no information to suggest that the land might be contaminated, or that further enquiry is warranted, determination of the matter may proceed without further reference to this Policy.

Further considerations are as detailed under CN's Contaminated Land Technical Manual

Site Investigation Requirements

Further information is usually obtained through a site investigation process carried out in accordance with the relevant State Environmental Planning Policies and 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 uses listed as potentially contaminating in NSW Government contaminated land guidelines.

The circumstances in which further information is required to be obtained and considered by the consent authority prior to determination is outlined in NSW State legislation (currently Chapter 4 of State Environmental Planning Policy (Resilience and Hazards) 2021).

Further considerations are as detailed under CN's Contaminated Land Technical Manual

Site Investigation and Reporting

If remediation is required to make the land suitable for a proposed land use, then a Remedial Action Plan must be submitted by the applicant to CN for assessment. Once the Remedial Action Plan is deemed to be appropriate by CN as per the requirements of this policy the application can progress to determination.

The applicant is responsible for commissioning and paying for the site investigation process and submission of reports to CN, inclusive of any required revisions.

CN may require the applicant to engage a Site Auditor and submit appropriate advice, including a site audit statement (as defined under the Contaminated Land Management Act 1997). The applicant is responsible for commissioning and paying for the site audit statement.

Further considerations are as detailed under CN's Contaminated Land Technical Manual

Annexure C - Policy Authorisations

This Policy Authorisation may be updated and amended by the CEO from time to time.

In accordance with section 378 of the *Local Government Act 1993*, the Chief Executive Officer delegates the following functions to the positions listed:

Title of Authorisation	Description of Authorisation	Position Number and Title
Nil.	Nil.	Nil.

Document Control

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Related Document Information, Standards & References

Related Legislation:	This Policy supports CN's compliance with the following legislation: <ul style="list-style-type: none"> • Contaminated Land Management Act 1997 • Environmental Planning and Assessment Act 1979 • SEPP (Resilience and Hazards) 2021.
Related Policies (Council & Internal):	Nil.
Related Procedures, Guidelines, Forms or documents:	Contaminated Land Management Technical Manual
Standards, Codes or other references:	Nil.

Relevant Newcastle 2040 Theme/s

Term / Abbreviation
Liveable

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