

Attachment A

Draft Contaminated Land Policy

Contaminated Land Policy

Purpose

To provide a framework for the City of Sydney Council (the 'City') to appropriately manage land contamination through land use planning and related processes.

This policy aims to:

- ensure land use changes or development will not increase risk to human health or the environment
- ensure any contaminants are adequately remediated to ensure the land complies with relevant land use contamination criteria as required by law and is fit for intended purpose
- avoid inappropriate restrictions on land use
- provide information that supports decision making and to inform the community of the City's requirements
- consider the potential for land to be contaminated when assessing and determining development applications
- consider the potential for land to be contaminated when preparing planning proposals for rezoning, including when preparing planning proposals for which the City is the applicant

Scope

This policy applies to land within the City's Local Government Area (LGA).

This policy together with any developed contaminated land guidelines, aligns with the requirements of State Environmental Planning Policy (SEPP) (Resilience and Hazards) 2021 (Chapter 4 - Remediation of land) and Land Contamination Planning Guidelines (as amended).

The City's responsibility and commitment is to provide accurate and timely information and advice to support the decisions and considerations in dealing with land contamination with due care and diligence and in doing so, act in 'good faith'.

Definitions

Term	Meaning
Category 1 Remediation	Remediation works requiring Development Consent
Category 2 Remediation	Remediation works that do not require Development Consent (but must be notified to the Council 30 days before remediation works commence)
Clean-Up Notices	The appropriate regulatory authority (ARA) may issue a clean-up notice requiring a person to take specified clean-up action when they reasonably suspect that a pollution incident, as defined in the Protection of the Environment Operations Act (POEO Act), has occurred or is occurring. The EPA may issue a clean-up notice even if it is not the ARA in an emergency situation
Contamination	The condition of land or water where any chemical substance or waste has been added as a direct or indirect result of human activity at above background level and represents, or potentially represents, an adverse health or environmental impact
Contaminated Land Investigation and Remediation Stages	The process of contaminated land management can be broadly divided into the following stages: <ul style="list-style-type: none"> • Preliminary Site Investigation (PSI) • Sampling and analysis quality plan (SAQP) • Detailed Site Investigation (DSI): Several reports, such as additional investigations, contamination delineation, monitoring, and/or Site-Specific Risk Assessments may be included in this stage • Site specific risk assessment and modelling (the findings of the DSI will determine if this is needed). • Remedial Action Plan (RAP) • Site remediation and validation • Environmental Management Plan (EMP) (only needed at sites where full clean-up is not feasible, or on-site containment of contamination is proposed). • Ongoing Environmental Management Plan (OEMP) • Long term Environmental Management Plan (LTEMP)
Conceptual Site Model (CSM)	Provides the framework for identifying sources of contamination, contaminant migration pathways, receptors and exposure mechanisms.
Data Quality Indicators (DQI)	Pre-determined indicators used to assess if the data is considered fit for its intended uses in operations, decision making and planning. The typical parameters adopted are Precision, Accuracy, Representativeness, Completeness and Comparability (PARCC).
Data Quality Objectives (DQO)	A seven-step planning approach used to define the type, quality and quantity of data required to inform a specified decision relating to the environmental condition of a site.
Detailed Site Investigation (DSI)	An intrusive environmental investigation undertaken to determine the nature, extent and degree of contamination; to assess potential risk posed by contaminants to health and the environment; and obtain sufficient information to develop a Remedial Action Plan (RAP), if needed.
Duty to Report	A statutory requirement for landowners and parties responsible for land contamination to report contamination to the NSW EPA. The triggers for reporting are presented in the “Guidelines on the Duty to Report Contamination under the Contaminated Land Management Act 1997” (NSW EPA, 2015).

Ecological Investigation Levels (EILs)	Levels derived for selected metals and organic compounds for assessing risks to ecological receptors in soils, published in the National Environmental Protection (Assessment of Site Contamination) Measure 1999 (NEPM).
Ecological Screening Levels (ESLs)	Levels derived for select petroleum hydrocarbon compounds for assessing risks to ecological receptors in soils published in the NEPM.
Environmental Management Plan (EMP)	<p>A plan outlining monitoring and management requirements where contamination not able to be remediated remains onsite and there is certainty that it will not migrate or create vapours.</p> <p>An EMP will include information on the nature and location of remaining site contamination; how to manage it appropriately; and who the responsible parties are for its implementation</p> <p>City of Sydney agreement in writing is required if an EMP is to apply to land owned by the City including land that is to be dedicated to form part of the public domain upon completion. The EMP may contain essential information for City/utility workers where activities may expose them to contained contamination.</p>
Health Investigation Levels (HILs)	Levels derived for select metals and organic compounds for assessing risks to ecological receptors in soil.
Health Screening Levels (HSL's)	Levels derived for select petroleum hydrocarbon compounds for assessing human health risks via inhalation and direct contact pathways.
Land Dedication	Land "dedicated" to the City on registration of a plan of subdivision to be used as a public asset.
Land Transfer	The land is "transferred" to the City on registration of a transfer instrument as a Lot and is generally used for operational land including for buildings or where the City will be undertaking further improvement works to the land.
Management Orders	<p>An order issued by the NSW EPA to responsible parties for the management of significantly contaminated land in the following order (as far as practicable)</p> <ul style="list-style-type: none"> • those responsible for the contamination • the landowner • the notional owner (for example, financiers) <p>A management order can include actions to investigate and/or remediate the land. The former 'investigation orders' and 'remediation orders' are taken to be 'management orders' from 1 July 2009.</p>
Preliminary Site Investigation (PSI)	An environmental investigation undertaken normally as a desktop review of data (but may also include limited field investigations) aimed at identifying any past, or present potentially contaminating activities. The outcome of a PSI provides a basis for a more detailed site investigation, if required.
Public land	Land owned or under the care and control of the City of Sydney.
Quality Assurance/Quality Control Process (QA/QC)	A process used to assess the reliability of field work and analytical results for an investigation.
Remedial Action Plan (RAP)	A plan that sets objectives, and documents the process, for remediating a contaminated site.
Sampling and Analysis Quality Plan (SAQP)	A document prepared to provide the context, justification and details of the selected sampling and analysis approach.
Section 9.1 Directions	Section 9.1 of the Environmental Planning and Assessment Act 1979. Section 2.63 sets out considerations for contaminated land when making Local Environment Plans (LEP's).
Significantly Contaminated Land	Land declared by the NSW EPA as having contamination that is considered significant to warrant regulation under the Contaminated Land Management Act 1997 (CLM Act).

Site Audits	An independent review by a Site Auditor, accredited by the NSW EPA, under the CLM Act.
Site Auditor	A person accredited by the NSW EPA under the CLM Act to conduct site audits. Site Auditors independently review contaminated land consultant reports to ensure consistency with NSW EPA guidance.
Site Audit Report (SAR)	Summarises the report(s) reviewed by the Site Auditor and contains the information, discussion and rationale that support the auditor’s conclusions. A Site Audit Report must be accompanied by a Site Audit Statement.
Site Audit Statement (SAS)	A document prepared by the Site Auditor outlining the conclusions of the Site Audit. The document is issued on a NSW EPA approved form. A Site Audit Report must be issued before a Site Audit Statement can be issued.
Statutory Site Audit	A type of site audit required by a regulatory authority to satisfy requirements under the CLM Act; requirements imposed by an environmental planning instrument; development consent requirements; or requirements under other legislation.
Underground Petroleum Storage Systems (UPSS)	An underground storage facility that holds petroleum products. UPSS can leak and cause soil and groundwater contamination. They pose a significant threat to the environment and human health if unmonitored and leaking.
Validation Report	A report that details the work undertaken to remediate the site in accordance with an approved Remedial Action Plan (RAP), and in compliance with contaminated land guidelines and other applicable regulatory requirements.
Voluntary management proposals (VMP’s)	Proposals that outline how contamination will be managed once a site is declared as significantly contaminated land by the NSW EPA. VMPs can be submitted by anyone to the NSW EPA, but often, these are submitted by the landowner or the polluter.

Policy Statement

The City acknowledges the potentially serious human health and ecological risks posed by the presence of contaminated land.

Responsibilities

The City’s legal obligations for minimising risks from exposure to contaminated land, as far as is reasonably practicable, are to protect the health of:

- residents and the public
- workers and other persons in workplaces
- the environment.

The City will meet its legislative obligations for identifying, evaluating, and managing contaminated land to ensure that it does not impact the health of the community and the environment through:

- management of public land and assets
- development of land owned or under the care and control of the City
- proposed activities under part 5 of the NSW Environmental Planning and Assessment Act 1979 (EP&A Act), to consider the environmental impact of any approved activities in respect of council assets

- emergency response procedures
- land use planning
- considering the potential for land to be contaminated when preparing planning proposals for rezoning, including planning proposals for which the City is the applicant.
- considering the potential for land to be contaminated when assessing and determining development applications
- waste management and regulation

Information Management

Council has an important role in supplying the public with information regarding land use history, land contamination and remediation activities.

The City will maintain accurate, reliable, and up-to-date records of information received on contaminated land matters through its information and data systems.

The City will provide information on planning certificates in relation to land contamination as per the requirements of section 10.7(2) & section 10.7(5) of the Environmental Planning and Assessment Act 1979 as follows:

- information on matters prescribed under sections 10(1)(a) and (b), 44 and 59(2) of the Contaminated Land Management Act 1997 that are relevant to a site.
- Identify, whether or not, any adopted policy of the City or any other public authority restricts the development (the subject of the certificate) due to the likelihood of any risk of contamination.

The City may, under section 10.7(5) of the EPA Act 1979, also include advice in a planning certificate, on such other relevant matters affecting the land of which it may be aware, including the following:

- Investigation area (EPA Notification)
- EPA Notices and Orders (EPA Notification)
- Site Audit Statement (SAS)
- Site subject to an Environmental Management Plan (EMP)
- SAS required by a condition of Development Consent
- Significantly contaminated land – (EPA Notification)
- Investigation order (EPA Notification)
- Management order (EPA Notification)
- Voluntary management proposal (EPA Notification)
- Ongoing maintenance order (EPA Notification)
- Contaminated Land – (Earlier EPA Notification)
- Amendment or repeal of orders/notices (EPA Notification)
- UPSS Decommissioning
- SAS received and rejected
- Contaminated Land Potential

Planning Assessment

The City will carry out an initial evaluation in accordance with the SEPP (Resilience and Hazards) 2021 (Chapter 4 - Remediation of land) and Land Contamination Planning Guidelines (as amended).

Where circumstances indicate contamination may be present which may require remediation to make the land suitable for a particular use, the following may be required:

- Preliminary Site Investigation (PSI)
- Detailed Site Investigation (DSI)
- Remediation Action Plan (RAP)
- Site Validation Report (SVR)
- Site Audit Statement (SAS)
- Environmental Management Plan (EMP)

Strategic Planning

The City will consider the potential for land to be contaminated when changes to existing permissible land uses are proposed, regardless of whether it is undertaking a high level strategic planning exercise covering a large area or a smaller site-specific rezoning of a small parcel of land.

If an investigation indicates that contamination makes the land unsuitable for some uses and remediation is not appropriate or feasible, the rezoning proposal may not proceed, or the range of permissible uses will be restricted in the relevant environmental planning instrument.

Dedication and/or Transfer of Land

Handover of a land parcel to the City is through either “dedication” or “transfer”. Land is dedicated (as public road or public reserve) upon registration of a plan of subdivision. Land is transferred on registration of a transfer instrument. Conditions as they relate to contamination and acceptance of land will be as follows:

- the City will accept land that has been remediated and shown to be suitable for the intended use following an assessment of contamination in line with the requirements of SEPP (Resilience and Hazards) 2021 (Chapter 4 - Remediation of land), or any additional requirements under an associated voluntary planning agreement (VPA) or conditions of consent.
- all imported material used on land dedicated or transferred is required to meet the criteria for Virgin Excavated Natural Material (VENM) or Excavated Natural Material (ENM).
- when remediating, a layer of VENM/ENM is required to be installed by the proponent from the surface to 1.5m below ground depending upon City requirements. A high
- visibility marker layer that allows vertical drainage is required under the layer of VENM/ENM. The VENM/ENM is required to be compacted to the City’s requirements.
- Environmental Management Plans (EMP’s) are to be avoided where possible.

If an EMP is unavoidable, the City requires the following:

- prior consent to the proposed EMP
- a Site Audit Statement and Site Audit Report prepared by a NSW EPA accredited Site

Auditor, which certifies the land is suitable for the proposed use subject to the implementation of the EMP (a section A2 site audit).

- management and mitigation measures, which are practical to implement, are consistent with the City's routine asset management practices and must not involve any onerous monitoring requirements, require special qualifications for monitoring, or require ongoing status recording of long-term monitoring.

Managing public land

The City is responsible for managing certain community or public land under its control. This may include land that is known to be contaminated or is potentially contaminated.

Regulatory responsibilities

The City has regulatory responsibilities and maintains policies and legal standards where it is the appropriate regulatory, and/or planning authority and has obligations and powers provided for by legislation, including:

- issuing clean up notices to address human health or ecological risks or after an emergency or incident (Protection of the Environment Operations Act 1997).
- issuing prevention or clean up notices where contaminated waste has been handled (including stored, transported, or disposed of) in an unsatisfactory manner (Protection of the Environment Operations Act 1997).
- issuing penalty infringement notices for improper transport of waste (Protection of the Environment Operations Act 1997).
- enforcement action on any breach of a standard condition imposed on a development consent to dispose of waste in accordance with the Protection of the Environment Operations Waste Classification Guidelines including disposal of waste to an appropriate landfill.
- enforcement action on any breach of the Protection of the Environment Operations (Underground Petroleum Storage Systems) Regulation 2019.

Responsibilities to workers

The City is committed to fulfilling its responsibilities to workers and other persons under the Work Health and Safety Act 2011 and Work Health and Safety Regulation 2017 and maintaining a safe work environment through its:

- general responsibilities
- education, training, and information for workers
- health monitoring for workers
- procedures for identifying and managing contaminated land.

These responsibilities are outlined in The City's Workplace Health & Safety Policies (available on the City's website).

Other stakeholders involved in managing contaminated land

The City will work collaboratively with other government agencies and where appropriate, other stakeholders as needed to respond to contamination issues.

Complaints and investigations

Complaints and enquiries may be directed to the City about incidents in public places and private properties. Complaints and enquiries regarding licensed and state government premises

under the Protection of the Environment Operations Act 1997 should be directed to the NSW EPA.

The City will respond to complaints and enquiries in accordance with the City's Compliance Policy

Complaints about the City in relation to contaminated land may be directed to the NSW Ombudsman.

Implementing the City's Contaminated Land Policy

Supporting documents

The implementation of this policy is supported by:

- Standard conditions of development consent (details of these can be found on the City's website)
- The City's online Safety Management System
- Maintenance and inspection schedules for the City's owned assets
- The City's Asbestos Register.

Communicating the policy

This is a publicly available policy. The policy is to be made available via:

The City's website: www.cityofsydney.nsw.gov.au

The City shall incorporate a statement regarding compliance with this policy in all relevant contracts and agreements with workers (including employees, contractors, consultants and where relevant, volunteers and members of the public).

In the case of any substantive revisions to the policy, the revisions will be approved by the City and the CEO will notify all persons who may have cause to undertake, arrange or supervise any potentially hazardous activities listed in any subsequently approved Contaminated Land Guidelines on behalf of, or for, the City.

Consultation

This policy was developed in consultation with the following:

External Stakeholders

- The NSW Environment Protection Authority (NSW EPA)
- NSW Department of Planning, Industry and Environment (DPIE)
- SafeWork NSW

Internal Stakeholders

- Health and Building
- Strategic Planning & Urban Design
- City Infrastructure Traffic Operations
- Parks Services
- Planning
- Legal and Governance
- Sustainability
- Projects and Properties

References

Laws and Standards

- Contaminated Land Management Act 1997
- Environmental Planning and Assessment Act 1979
- Environmental Planning and Assessment Regulation 2000
- Local Government Act 1993
- Local Government (General) Regulation 2005
- Protection of the Environment Operations Act 1997
- Protection of the Environment Operations (General) Regulation 2009
- Protection of the Environment Operations (Waste) Regulation 2014
- Protection of the Environment Operations (Underground Petroleum Storage Systems) Regulation 2019
- Work Health and Safety Act 2011
- Work Health and Safety Regulation 2017
- State Environmental Planning Policy (Exempt and Complying Development Codes) 2008
- State Environmental Planning Policy (Resilience and Hazards) 2021 (Chapter 4 - Remediation of land) and Land Contamination Planning Guidelines (as amended).

Policies and Procedures

- City of Sydney Access to Information Policy (2017)
- City of Sydney Compliance Policy (2017)
- City of Sydney Landscape Code 2016 – volume 1 and volume 2
- City of Sydney Managing Asbestos Policy (2020)
- City of Sydney Planning Agreement Guidelines (2016)
- City of Sydney Prosecution and Civil Enforcement Policy (2021)
- City of Sydney Public Domain Manual (2017)
- City of Sydney Tree Donation Policy (2016)

- City of Sydney Tree Management Policy (2013)
- City of Sydney Waste Policy – local approvals policy (2017)

Review period

This policy will be reviewed every [3] years.

Approval Status

The Council approved this policy on [DD MONTH YYYY].

Approval History

Stage	Date	Comment	TRIM Reference
Original Policy	(Date, month, year)	Approved by Council	20XX/XXXXXX
Reviewed	(Date, month, year of when it was approved by CEO or City)	Briefly summarise key changes	20XX/XXXXXX (Governance to populate)
Commence Review Date	(Date, month, year – should be 9 months prior to the end of the next review period)		
Approval Due Date	(Date, month, year of when the next review of the policy is due to be finalised/ approved)		

Ownership and approval

Responsibility	Role
Author	Environmental Health Specialist
Owner	Executive Manager Planning and Development
Endorser	City of Sydney Executive
Approver	City of Sydney Council