

# Chapter E4 Contaminated Land

Part E ► General Controls for All Development

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# Chapter E4 ► Contaminated Land

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## E4.1 Introduction

Over time, the land within Woollahra has had many different uses including agricultural, commercial, industrial and residential. Areas have also been used to accommodate landfill. Some of these uses may cause land to become contaminated due to the generation of waste products and the use of chemicals, oils and fuels.

If land is contaminated, it can have serious effects on human health and the environment. These effects can have an immediate impact or become a problem in years to come. It is therefore important the land is free from contamination to ensure that the environment is protected for future generations.

When carrying out planning functions, Council is required by legislation to consider whether a previous land use has caused contamination of a site (this includes the potential risk of any future contamination). For example, when assessing development applications or preparing planning proposals, Council is to consider the possibility of land contamination and the implications it has for any proposed or permissible future uses of land.

This chapter identifies requirements for applicants when proposing development and is consistent with the State Government's planning requirements for managing contaminated land under *State Environmental Planning Policy No 55—Remediation of Land* (SEPP 55).

### E4.1.1 Land where this chapter applies

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This chapter applies to all land within the Woollahra Municipality.

### E4.1.2 Development to which this chapter applies

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This chapter applies to development that requires development consent.

This chapter also sets out Council's policy for considering contamination when preparing planning proposals, such as those involving a rezoning, and includes a statement on Council's policy on access to information regarding contamination.

### E4.1.3 Objectives

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The objectives of this chapter are:

- 01 To establish a policy and procedural framework for integrating contaminated land management into the planning and development process consistent with SEPP 55 and the Guidelines.
- 02 To ensure that changes of land use will not increase the risk to health or the environment.
- 03 To avoid inappropriate restrictions on land use.
- 04 To provide information to support decision making and inform the community.

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#### E4.1.4 Relationship to other parts of the DCP

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All applications, regardless of whether relating to a residential, commercial, community or other land use, must undertake an initial evaluation for contamination as set out in Section 4.2.1 below.

This chapter is to be read in conjunction with the other parts of the DCP that are relevant to the development proposal, including:

- ▶ If located in a residential area—the controls in Part B: General residential, or Part C: Heritage Conservation Areas that apply to the land.
- ▶ If located in a business centre—the controls in Part D: Business Centres that apply to the land.
- ▶ Part F: Land Use Specific Controls - this part contains chapters on Child Care Centres, Educational Establishments, Licensed Premises and Telecommunications.

#### E4.1.5 Relationship to other documents

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The New South Wales Government recognises that the management of contaminated land is a major issue for public agencies, industry and the community. It has established a statutory framework and supporting guidelines to provide a comprehensive, consistent, whole of government approach to contamination and remediation.

Some of the primary documents are identified below, and are to be read in conjunction with this chapter:

- ▶ *Contaminated Land Management Act 1997 (CLM Act)*;
- ▶ *State Environmental Planning Policy No. 55 Remediation of Land (SEPP 55)*; and
- ▶ *Managing Land Contamination: Planning Guidelines (SEPP 55 Guidelines)*.

Note: In this chapter certain terms have the meaning defined in the CLM Act, or SEPP 55.

## E4.2 Matters to consider when lodging a development application

When assessing development applications, section 79C(1) of the Act requires Council to consider “...the suitability of the site for the development”. The risk to health and the environment from contamination is included in the assessment.

Council must also consider clause 7(1) of SEPP 55, which states:

*(1) A consent authority must not consent to the carrying out of any development on land unless:*

- (a) it has considered whether the land is contaminated, and*
- (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
- (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*

Section 4.2.1 below sets out the initial evaluation procedures for considering the likelihood that land the subject of a development application may be contaminated.

Restrictions may then be imposed to reduce the risk of exposure to contaminated materials to acceptable levels. These restrictions may be imposed, or resolved, at different stages of the planning and development process. For instance:

- ▶ If the contamination status of land is unknown, no change in use which may increase the risk of harm should occur until the land has been investigated.
- ▶ If contamination causes an unacceptable risk of harm the use of the land will be restricted to reduce the risk to acceptable levels.
- ▶ If remediation has reduced the risk to acceptable levels no restriction on land use is necessary.

### E4.2.1 Initial evaluation

#### Initial evaluation required for every development application

An initial evaluation must accompany every development application, except applications required to be accompanied by a preliminary investigation (see Section 4.3.1 below).

The initial evaluation is essential to determine whether contamination is an issue, and whether sufficient information is available to carry out a planning function.

The purpose of this initial evaluation is to determine whether land contamination is relevant to the decision being made and whether further information is required from the proponent. Land contamination may be an issue either because of the history of the subject land or the history of neighbouring land.

The initial evaluation should be based on available factual information, including current zoning and permissible uses, records from previous rezonings, development applications, building applications, construction certificates and property files.

A list of potential sources of site history information is provided in Appendix 2 of this chapter. In particular, the initial evaluation should provide details of:

- ▶ present use of the site;
- ▶ date the present use commenced;
- ▶ previous uses of the site (if known);
- ▶ present and previous uses of the adjoining land (if known);
- ▶ whether the present or previous uses of the site, and adjoining lands, were potentially contaminating uses as listed in Appendix 1; and
- ▶ whether there has been any testing or assessment of the site for land contamination.

The SEPP 55 Guidelines include a checklist of what should be considered when preparing the initial evaluation.

The initial evaluation should provide sufficient information to allow Council to proceed with an assessment of a development application.

The applicant is responsible for making the necessary enquiries to obtain the information required to be included in the initial evaluation. The initial evaluation must identify the source of the information on which the evaluation is based. For example, information may be sourced from Council's property files, local history library and oral history.

If the initial evaluation does not provide sufficient information, Council may require further information.

#### **Initial evaluation indicates the land may be affected by contamination**

If the initial evaluation indicates that there is, or may be, contamination on the land, or that contamination may affect the land, the applicant must investigate the site and provide Council with the further information. These further investigations are generally in the form of a site investigation process, consistent with the SEPP 55 Guidelines.



### E4.3 Site investigation process required if the land may be contaminated

The site investigation process involves more detail on gathering and interpreting information for making planning decisions.

The four stages of the site investigation process are:

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

The appropriate level of evaluation and investigation will depend upon the circumstances of each site.

The applicant is responsible for engaging someone to undertake the site investigation process. The investigations, plans, validation and monitoring must be prepared by a suitably qualified and experienced person, and carried out in accordance with the SEPP 55 Guidelines and any other guidelines by the Department of Environment and Heritage (OEH).

A summary of these stages is provided below. More detailed information is contained in the SEPP 55 Guidelines. Council will have regard to the relevant heads of consideration in Section 3.5 of the Guidelines when assessing any investigations, plans, validations and monitoring submitted.

#### E4.3.1 Stage 1 – Preliminary investigation

The main objectives of a preliminary investigation are to identify any past or present potentially contaminating activities, provide a preliminary assessment of any site contamination and, if required, provide a basis for a more detailed investigation.

Council will require a preliminary investigation to be submitted with a development application in accordance with clause 7(4) of SEPP 55 where:

- 7(4) *The land concerned is:*
- (a) *land that is within an investigation area,*
  - (b) *land on which development for a purpose referred to in Table 1 of the contaminated land planning guidelines is being, or is known to have been, carried out,*
  - (c) *to the extent to which it is proposed to carry out development on it for residential, educational, recreational or child care purposes, or for the purposes of a hospital—land:*
    - (i) *in relation to which there is no knowledge (or incomplete knowledge) as to whether development for a purpose referred to in Table 1 to the contaminated land planning guidelines has been carried out, and*
    - (ii) *on which it would have been lawful to carry out such development during any period in respect of which there is no knowledge (or incomplete knowledge).*

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In accordance with the SEPP 55 Guidelines, Council may also require a preliminary investigation to be submitted when:

- ▶ The subject site or land in the vicinity is, or may be, associated with potentially contamination activities listed in Appendix 1 of this chapter but it is not known whether contamination exists.
- ▶ The land was, or is, regulated by a regulatory authority in relation to land contamination, and there is insufficient information available about the nature and extent of contamination.
- ▶ The land has been investigated or remediated but there is insufficient information available about the nature and extent of contamination, or the circumstances have changed.
- ▶ There are restrictions on, or conditions attached to, the use of the site by regulatory or planning authorities 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 land is associated with complaints about pollution or illegal dumping of wastes but it is not known whether contamination exists.
- ▶ A sensitive use including, but not necessarily limited to, residential, educational, recreational, hospital or childcare is proposed on the land and records on the site history are unclear about whether the land has been used in the past for a purpose listed in Appendix 1 of this chapter.

### E4.3.2 Stage 2 – Detailed investigation

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The objectives of a detailed investigation are to:

- ▶ define the nature, extent and degree of contamination;
- ▶ assess potential risk posed by contaminants to health and the environment; and
- ▶ obtain sufficient information to develop a remedial action plan, if required.

A detailed investigation is necessary when a preliminary investigation indicates that the land is contaminated or that it is, or was formerly, used for an activity listed in Appendix 1 and a land use change is proposed that has the potential to increase the risk of exposure to contamination.

Refer to the SEPP 55 Guidelines for more information on what is to be included in a detailed investigation.

### E4.3.3 Stage 3 – Remedial action plan

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If investigations find that contamination makes the land unsuitable for the proposed use and remediation is required, a remedial action plan must be prepared and submitted prior to Council making a determination.

Under SEPP 55, clause 9(e)(ii), remediation work in a heritage conservation area is Category 1 remediation work and therefore requires consent.

Refer to the SEPP 55 Guidelines for more information on what is to be included in a detailed investigation. Council reserves the right to require a site audit of the remedial action plan.

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### E4.3.4 Stage 4 – Validation and monitoring

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The objective of validation and monitoring is to demonstrate whether the objectives stated in the remedial action plan and any conditions of development consent have been achieved.

SEPP 55 requires a notice of completion for all remediation work.

### E4.3.5 Notification

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Where Council or the applicant (including their consultant or site auditor) considers that the contamination at the subject site is significant and warrants regulation under the CLM Act, the OEH may need to be notified.

There is a legal duty on owners of land as well as persons whose activities have contaminated land to notify the OEH as soon as practicable after becoming aware that contamination poses a significant risk of harm to human health or the environment (see Section 60, CLM Act).

### E4.3.6 Site audit statements

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A site audit is an independent review of any or all stages of the site investigation process, conducted in accordance with the CLM Act and the SEPP 55 Guidelines.

A site audit may review a preliminary investigation, a detailed investigation, a remedial action plan or a validation report. Council may require a site audit at any stage in the decision making process.

Under Section 3.6.1 of the SEPP 55 Guidelines, a site audit will be required if Council:

- ▶ believes on reasonable grounds that the information provided by the proponent is incorrect or incomplete;
- ▶ wishes to verify the information provided by the proponent adheres to appropriate standards, procedures and guidelines; and/or
- ▶ does not have the internal resources to conduct its own technical review.

A site audit will also be requested if legislation requires one.

The applicant is responsible for engaging a suitably qualified and experienced consultant to undertake a site audit statement in accordance with these guidelines.

A site audit will lead to the provision of a certificate called a site audit statement, stating the purpose for which the land is suitable. Only site auditors accredited by the OEH can issue site audit statements.

The NSW EPA has prepared guidelines (second edition draft) for the NSW Site Auditor Scheme June 2002, which provides guidelines on:

- ▶ the NSW Site Auditor Scheme;
  - ▶ process of appointing site auditors;
  - ▶ legal, administrative and technical directions; and
  - ▶ site auditors and the preparation of site audit statements.
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#### E4.4 Matters to consider when preparing a planning proposal

In preparing planning proposals for rezoning land, consideration should be given to the possibility of the land being affected by contamination. The procedure for determining the risk of contamination is the same as the procedure for development applications in Section 4.2 above.

However, for planning proposals the procedure only applies if the proposed zone would permit a change of use on the land, and one of the following criteria is met:

- ▶ the land is significantly contaminated land (declared under the CLM Act);
- ▶ development for a purpose referred to in Appendix 1 of this chapter is being, or is known to have been carried out on the land; or
- ▶ it is proposed to carry out development on the land for residential, educational, recreational, child care purposes or a hospital, and there is an incomplete historical knowledge of the land, or it may have been previously lawful to carry out on the land a use identified in Appendix 1 of this chapter.

For all planning proposals, the onus will be on the applicant to demonstrate to Council that the site is suitable for the proposed rezoning. If Council is preparing a rezoning, it will ensure the requirements of SEPP 55 are met.

All planning proposals will be submitted to the Minister for Planning and Infrastructure for review. The Minister will determine whether or not the planning proposal should proceed.

## Appendix 1: Some activities that may cause contamination

The following activities may cause land contamination:

- ▶ 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; and
- ▶ wood preservation.

Note: This appendix is a guide only. It is not sufficient to rely solely on the contents of this appendix to determine whether a site is likely to be contaminated or not.

A conclusive status can only be determined after a review of the site history and, if necessary, sampling and analysis. Due to the possibility of leaching and/or transmission of airborne contaminants, sites adjacent to those with an above listed use may also be at risk of contamination and warrant further investigation.

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## Appendix 2: Potential sources of site history information

Potential sources of information about past and current activities that may indicate land contamination:

- ▶ NSW Department of Environment and Heritage;
- ▶ Sydney Water;
- ▶ WorkCover Authority of New South Wales;
- ▶ Energy Australia; and
- ▶ Local history libraries including the Woollahra Library Information Service.

Information on land contamination may be contained in a range of documents within Council's records. Access to these documents and information may be obtained in accordance with Council's policy on access to information. For example, Council records can also be searched for:

- ▶ historical development applications, building approvals and other approvals; and
- ▶ current and historical land use zoning.

Local history searches of a particular site (and adjoining sites) may indicate previous activities as listed in Appendix 1, could involve the following:

- ▶ Sand's Sydney and New South Wales Directory 1858 to 1932/3;
- ▶ local history publications;
- ▶ past and present telephone books;
- ▶ long term residents;
- ▶ current and past site workers;
- ▶ aerial photographs;
- ▶ historical development applications, building approvals and other approvals; and
- ▶ current and historical land use zoning.

## Appendix 3: Policy on access to information

Council has an important role in supplying information regarding land use history, land contamination and remediation. Council also has a statutory responsibility under section 59 of the CLM Act to include information about land contamination provided to Council by either the OEH or accredited auditors on planning certificates issued under section 149 (2) of the Act.

Knowledge about contamination and the relevance of contamination as an issue will change over time as land is investigated, remediated for particular uses, or as standards for remediation change to accommodate changing values.

### Section 149 planning certificate

Section 149(2) planning certificates issued by Council will contain certain information as prescribed by the CLM Act, section 59(2) to notify people that the land is significantly contaminated, or is the subject of a management order, approved voluntary management proposal, ongoing maintenance order, or site audit statement.

The section 149(2) planning certificate does not itself restrict the use of land. It is simply the mechanism for recording the fact that a Council policy applies which may restrict the use of land.

An application for a planning certificate under section 149(2) of the Act may be made for an individual property. That certificate will include responses to specific questions on land contamination.

In addition to the prescribed matters under the CLM Act, the Regulation requires Council to indicate on a section 149(2) planning certificate whether land is affected by an adopted policy that restricts development of land due to contamination.

This chapter is Council's policy on contaminated lands and may have the effect of restricting development on certain lands and will be referred to in the section 149(2) planning certificate. Accordingly, the following statement will be included on all section 149(2) planning certificates.

*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. Consideration of council's policy and the application of provisions under relevant State legislation is warranted.*