

5.02 Land Contamination

Amendment history

Version Number	Date Adopted by Council	Commencement Date	Amendment Type
1	15/11/2011	15/06/2012	New

Savings provisions

Any development application lodged but not determined prior to this section coming into effect will be determined taking into consideration the provisions of this section.

Land to which this section applies

This section applies to all land within the Newcastle LGA.

This section is also a policy of the Council in accordance with the Contaminated Land Planning Guidelines notified under Schedule 6, Clause 3 of the *Environmental Planning and Assessment Act 1979*.

Development (type/s) to which this section applies

This section applies to all development.

As a policy this section also applies to the following planning functions of Council:

- the preparation of Local Environmental Plans
- the preparation and approval of Development Control Plans
- the preparation and adoption of Plans of Management for Community Land
- the determination of activities pursuant to Part 5 of the *Environmental Planning and Assessment Act 1979*.

Applicable environmental planning instruments and legislation

The provisions of the following listed environmental planning instruments also apply to development applications to which this section applies:

- Newcastle Local Environmental Plan 2012
- *Contaminated Land Management Act 1997*, Office of Environment and Heritage
- State Environmental Planning Policy No 55 – Remediation of Land (SEPP 55).

In the event of any inconsistency between this section and the above listed environmental planning instruments, the environmental planning instrument will prevail to the extent of the inconsistency.

Note 1: Additional environmental planning instruments may also apply in addition to those listed above.

Note 2: The *Environmental Planning and Assessment Act 1979* enables an environmental planning instrument to exclude or modify the application of this DCP in whole or part.

Associated technical manuals

- *Newcastle Contaminated Land Management Technical Manual*, The City of Newcastle.
- *Contaminated Sites - Guidelines for Consultants Reporting on Contaminated Sites*, September 2020, NSW Environment Protection Authority.

Definitions

A word or expression used in this development control plan has the same meaning as it has in Newcastle Local Environmental Plan 2012, unless it is otherwise defined in this development control plan.

Other words and expressions referred to within this section are defined within Part 9.00 - Glossary, of this plan, and include:

- **Category 1 remediation work** - remediation work that needs development consent under State Environmental Planning Policy No. 55 - Remediation of Land.
- **Category 2 remediation work** - remediation work that does not need development consent under State Environmental Planning Policy No. 55 - Remediation of Land.
- **Contaminated land** - land in, on or under which any substance is present at a concentration above that naturally present in, on or under the land and that poses, or is likely to pose, an immediate or long term risk to human health or the environment.
- **Contaminated land planning guidelines** - guidelines notified in accordance with schedule 6, clause 3 of the *Environmental Planning and Assessment Act 1979* (see Reference Section Managing Land Contamination: Planning Guidelines SEPP 55 - Remediation of Land).
- **Contamination** - concentration of substances above that which should be naturally present, and which poses, or is likely to pose, an immediate or long-term risk to human health or the environment.
- **Remediation site** - a site that is land declared to be a remediation site by a declaration in force under Division 3 of Part 3 of the *Contaminated Land Management Act 1997*.
- **Site audit** - an independent review by a site auditor that:
 - (a) relates to investigation or remediation carried out in respect of the actual or possible contamination of land
 - (b) 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 the investigation or remediation
 - what investigation or remediation remains necessary before the land is suitable for any specified use or range of uses.
- **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 in the *Contaminated Land Management Regulation 1998*.
- **Site auditor** - a person accredited under the *Contaminated Land Management Act 1997* as a site auditor.
- **Site history** - is a land use history of a site which identifies activities or land uses which may have contaminated the site, establishes the geographical location of particular processes within the site, and determines the approximate time periods over which these activities took place.

- **Site investigation process** - the process of investigating land that is or may be contaminated. The purpose of the site investigation is to provide the Council 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.
- **Summary site audit report** - a report prepared by a site auditor containing key information and considerations concerning the conduct and findings of a site audit.
- **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 as outlined in the publication *Guidelines for Consultants Reporting on Contaminated Sites, 2000, EPA*.

Aims of this section

1. To ensure that the likelihood of land contamination is considered as early as possible in the planning and development process.
2. To ensure that planning and development decisions take into account available information relating to the likelihood of land contamination.
3. To ensure that any development of contaminated land will not result in unacceptable levels of risk to human health or the environment.
4. To ensure that site investigations and remediation work are carried out in a satisfactory manner, and where appropriate, are independently verified by site audits.
5. To ensure that Council exercises its functions relating to the development of contaminated land with a reasonable standard of care and diligence.
6. To facilitate the provision of consistent and reliable information to the public about land contamination.
7. To ensure that ongoing responsibility for management and monitoring of contaminated land is clearly and legally assigned.
8. To ensure the community is not unduly disadvantaged by increased health and environmental risks or increased management costs when accepting the dedication of public assets.

5.02.01 Plan making and development assessment

A. Initial evaluation

Objectives

1. Identify whether contamination needs to be investigated as part of the planning proposal.

Controls

The following controls apply when preparing or determining a Local Environmental Plan, a Development Control Plan, a Plan of Management for Community Land, a Development Application (including modification) or an activity under Part 5 of the *Environmental Planning and Assessment Act 1979*

1. Where the proposal involves a change of use of land, or the carrying out of earthworks, Council is to undertake an initial evaluation generally in accordance with the relevant *Contaminated Land Planning Guidelines*.
2. 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 preparation of the plan, or determination of the matter and whether a site investigation process is required to be carried out.
3. The evaluation is to be based upon records held by Newcastle City Council 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. Matters to be considered are described in the Technical Manual for this section (Newcastle Contaminated Land Management Technical Manual).

B. Determining if a site investigation is required

Objectives

1. Identify whether a site investigation is required.

Controls

The following controls apply when preparing or determining a Local Environmental Plan, a Development Control Plan, a Plan of Management for Community Land, a Development Application (including modification) or an activity under Part 5 of the *Environmental Planning and Assessment Act 1979*

1. If after initial evaluation there is nothing to suggest that the land might be contaminated, or that further enquiry is warranted, Council and the proponent may proceed without further reference to this Section 5.02 Land Contamination.
2. If there are indications that:
 - (a) the land is or may be contaminated land, or
 - (b) 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*.

Note: 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 (listed in part 8 of the Technical Manual) during periods in which such uses could be lawfully carried out.

3. The circumstances in which a site investigation process is required also include those specified in clauses 6 and 7 of *State Environmental Planning Policy No 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:
 - (a) land that is within an investigation area
 - (b) land on which potentially contaminating land use is being, or is known to have been carried out
 - (c) land on which it is proposed to carry out development for residential, educational, recreational or child care purposes, or for a hospital:
 - (i) where there is no knowledge (or incomplete knowledge) as to whether potentially contaminating development has been carried out on the land, and
 - (ii) 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).

C. Site investigation process

Objectives

1. Outline the site investigation process.
2. Ensure adequate information is available to inform the decision making process.

Controls

The following controls apply when preparing or determining a Local Environmental Plan, a Development Control Plan, a Plan of Management for Community Land, a Development Application (including modification) or an activity under Part 5 of the *Environmental Planning and Assessment Act 1979*

1. The appropriate level of investigation will depend on the specific circumstances and may involve one or more of the following stages as described in *Guidelines for Consultants Reporting on Contaminated Sites* (NSW EPA) and section 3.4 of the *Contaminated Land Planning Guidelines*.
 - Stage 1 - Preliminary investigation
 - Stage 2 - Detailed investigation
 - Stage 3 - Remedial action plan
 - Stage 4 - Validation and site monitoring.

The proponent is responsible for undertaking and paying for the site investigation process.

2. Reports submitted to Council must include an electronic copy consisting of a single PDF document or similar. Reports consisting of multiple files will not be accepted. Reports and associated drawings and tables must be legible when printed in black and white.

D. Decision to proceed with draft plans

Objectives

1. Avoid a change of land use that would increase the risk to human health or the environment.
2. Avoid inappropriate restrictions on land use.

Controls

The following controls apply when preparing a Local Environmental Plan, a Development Control Plan or a Plan of Management for Community Land

1. Following consideration of the findings of the site investigation process, Council may:
 - submit a draft Local Environmental Plan to the Minister for approval, or
 - make a Development Control Plan, or
 - adopt a plan of Management for Community Landonly if it is satisfied that:
 - (a) the land is suitable (or will be suitable after remediation) for all purposes that are permitted to be carried out under the draft plan, and
 - (b) the land will be remediated before it is subdivided or used for particular purposes where remediation is necessary to make the land suitable for such purposes.
2. For draft plans, Council is to consider the need to include special provisions in the draft plan requiring certain matters to be taken into consideration by Council when granting development consent or otherwise authorising any use of the land.

E. Determination of development applications

Objectives

1. Ensure development does not increase the risk to human health or the environment.
2. Ensure the management and monitoring of contaminated land is clearly and legally assigned.
3. 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.

Controls

The following controls apply when determining a Development Application (including modification) or an activity under Part 5 of the *Environmental Planning and Assessment Act 1979*

1. Following consideration of the findings of the site investigation process, Council may grant consent or otherwise authorise the matter only if it is satisfied that:
 - (a) the land is suitable (or will be suitable after remediation) for the purpose for which the development is proposed to be carried out, and
 - (b) the land will be remediated before it is subdivided or used for the proposed purpose where remediation is necessary to make the land suitable for that purpose.
2. In determining development applications, Council is to consider:
 - (a) the need to impose conditions relating to the remediation issues outlined in Section 5.02.03,
 - (b) whether it would be appropriate to issue a deferred commencement consent or a staged consent, and
 - (c) the management of below surface contamination to ensure that the community is not unduly disadvantaged by accepting the dedication of public assets that have increased human health or environmental risks or have potentially higher asset management costs due to contamination.

F. Site audit statements

Objectives

1. Ensure information submitted is reliable for the purposes of decision making.

Controls

The following controls apply when preparing or determining a Local Environmental Plan, a Development Control Plan, a Plan of Management for Community Land, a Development Application (including modification) or an activity under Part 5 of the *Environmental Planning and Assessment Act 1979*

1. Before satisfying itself that it can proceed, Council is to consider the contents of a site audit statement if any of the following circumstances prevail:
 - (a) Council believes on reasonable grounds that the information provided by the proponent is incorrect or incomplete,
 - (b) Council wishes to verify that the information provided by the proponent adheres to appropriate standards, procedures and guidelines, or
 - (c) Council does not have the internal resources or expertise to conduct its own technical review.

Note: Council may require the proponent to furnish and pay for the site audit statement.

5.02.02 Dedication of assets to Council

Objectives

1. Ensure the management and monitoring of contaminated land is clearly and legally assigned.
2. 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.

Controls

1. Preliminary investigation - Where an asset is intended to be dedicated to Council, a preliminary contamination investigation of the land by a suitably qualified environmental consultant is required to be submitted to Council.
2. Site investigation process - If there is nothing to suggest that the asset to be dedicated may be contaminated, or that further enquiry is warranted, further reference to this section may not be required. 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 (see Section 5.02.01). See the Technical Manual (Newcastle Contaminated Land Management Technical Manual) for Council's specific investigation requirements for roads, footpaths, open space areas and other assets intended to be dedicated.

3. Remediation - If a detailed investigation indicates that contamination in soil or groundwater exceeds the appropriate guidelines then remediation is required prior to Council accepting the asset.

Remediation in general must comply with Section 5.02.03. However, Council may impose site specific remediation requirements to ensure that there are no unacceptable ongoing contamination management requirements.

Roads shall be remediated to the depth of the lowest service at a minimum.

Open space areas and footpaths are to be remediated in such a way so that future maintenance activities such as the accessing of services, tree planting and landscaping are not impacted by contamination.

If remediation of the site cannot be achieved to Council's satisfaction, Council may not accept the dedication of the asset and other alternatives such as placing the asset under community title in accordance with the Local Government Act 1993 and the Community Land Management Act 1989 may be required.

4. Site audit statement - Should contamination of soil or groundwater remain at the site after remediation, or if Council believes it is otherwise necessary, then a site audit statement prepared by a NSW accredited site auditor is required. The site audit must specifically address the portion of land to be dedicated to Council stating that it is suitable for its intended land use (in accordance with Section 5.02.01F).

5. Contamination management plan - Where an asset is to be dedicated to Council and contamination that exceeds the appropriate land use criteria has been identified in soil or groundwater following remediation, a contamination management plan is to be prepared to the satisfaction of Council (and the Site Auditor where appropriate). The plan is required to be submitted to Council prior to acceptance of the asset.
6. Ongoing management requirements - There should be no ongoing management requirements for the asset regarding contamination to ensure the community is not unduly disadvantaged by increased health and environmental risks or increased management costs when accepting the dedication of public assets.

5.02.03 Remediation work

Objectives

1. Ensure the management and monitoring of contaminated land is clearly and legally assigned.
2. Ensure land is remediated appropriately for the current or proposed land use.
3. Ensure remediation is carried out in a manner which will not result in an unacceptable risk to human health or the environment.

Controls

1. Remediation of land to be subdivided or developed is completed consistent with the proposed or current zoning and land use, so that it does not place any future land owner or occupier in a position where further remediation of contaminants is required. In the case of subdivision, all remediation work including site capping is to be completed on the development lots prior to the issue of a subdivision certificate.
2. Remediation of land to be subdivided or developed does 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 Council, that any further remediation required as a result of ongoing management or monitoring requirements can be legally and practically enforced.
3. Remediation of land is carried out in accordance with this section, unless specific Council consent is granted for the remediation proposal which allows a variation.
4. Remediation of land aims to remediate land to the highest land use possible under the current or proposed zoning without the need for site specific ongoing management controls such as capping.
5. Remediation of land is carried out and completed in a manner which will not result in an unacceptable level of risk to human health or the environment.
6. Remediation of land aims to remediate groundwater to a level that allows the maximum reuse of the resource into the future.

5.02.04 Information management

This section applies to the recording and keeping of information by Council about land contamination, and the supply of such information to the public. Council records include:

- documents, reports, registers and files
- maps and plans
- computerised land and geographical information systems.

Objectives

1. Information relating to land contamination or the likelihood of land contamination is gathered, kept and disseminated in such a manner as to:
 - provide a basis for informed planning decisions that consider land use history
 - facilitate the provision of reliable information to the community
 - minimise risk to human health and the environment
 - avoid unnecessary restrictions on development
 - enable the Council to exercise its duties with reasonable care and diligence
 - acknowledge any limitations on information, such as its degree of uncertainty or accuracy, collection date and purpose of collection.

Controls

1. To exercise its planning functions generally in accordance with the Contaminated Land Planning Guidelines, Council is to keep sufficient and appropriate records relating to the existence or likelihood of land contamination. The sorts of records that this may include are listed in the 'Newcastle Contaminated Land Management Technical Manual'.
2. Information about land contamination held within the Council's records is to be supplied to the public only by the means described in the 'Newcastle Contaminated Land Management Technical Manual'.