

Contaminated Land Policy

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Strategic Pillar	Development & Environment
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1 OUTCOMES

The objective of this policy is to provide a framework to assist Council, residents and proponents of development to respond proactively to contaminated land-based hazards and risks. This Policy is to be read in conjunction with the *QPRC Contaminated Land Guideline*.

2 POLICY

Council will responsibly and proactively respond to contamination hazards and risks, through the land use planning framework, and facilitate economic development of contaminated or potentially contaminated land. Proactive measures to prevent possible contamination can have significant environmental and financial benefits for Council and the community.

To achieve this, Council will:

- maintain a database of contaminated or potentially contaminated land (CPCL Database), and record any relevant information on remediation, abatement, or site audits of work undertaken in the Queanbeyan-Palerang Regional Council (QPRC) area;
- ensure information provided by the NSW Environment Protection Authority (EPA) in respect of the EPA Register of Significantly Contaminated Land (and other information as appropriate), or information held in Council's Contaminated or Potentially Contaminated Land Database (CPCL Database), is noted on any relevant section 10.7 (2) Planning Certificate, including advice that further information is available from Council;
- develop and implement educational material and a formal communications strategy to translate the policy into operational guidelines for Council officers and the community.
- ensure appropriate consideration of contamination issues is made during the rezoning and development assessment process, including:
 - identification of the presence of, or the potential for, contamination on the land;
 - consideration of the outcomes of any land contamination study;
 - consideration of any remediation or abatement that has occurred on the land;
 - the application of requirements set out in the Contaminated Land Management Act (1997), SEPP (Resilience and Hazards) 2021, Contaminated Land Management Guidelines, Ministerial Directions under the EP&A Act, local environmental plan (LEP).

The Queanbeyan-Palerang Regional Local Environmental Plan 2022, came into effect on 30 November 2022. There are also applicable Development Control Plans, policies and guidelines.

3 SCOPE OF THE POLICY

Land contamination and its effects on human health and the environment can remain untouched within the existing natural environment for long periods of time. By developing a Contaminated Land Policy, QPRC is provided a framework to integrate and manage land contamination within the planning and development process.

This policy establishes the best practice methods for QPRC officers in relation to:

- Identifying, evaluating, and managing contaminated land through the use of land use planning instruments;
- Recording and managing contaminated land information using a contaminated land information system;
- Disclosing contaminated land information to the public;
- Preventing or minimizing the potential for land contamination; and
- Reporting contamination to the NSW EPA.

In accordance with the planning guidelines, this policy aims to:

- Ensure any land use changes will not increase the risk to human health and the environment;
- Avoid inappropriate restrictions on land use; and
- Provide information to support decision making and to inform the community of Council's requirements.

The content of this Policy is relevant to:

- QPRC officers;
- Contaminated land practitioners.
- Landowners;
- Developers; and
- The general public.

4 DEFINITIONS

See the QPRC Contaminated Land Guideline.

5 LEGISLATIVE OBLIGATIONS AND/OR RELEVANT STANDARDS

This policy forms the basis for the management of land, which is either contaminated or potentially contaminated, within QPRC. The management of contaminated land is a shared responsibility between the EPA, NSW Planning and Environment (DPE), and Council - in very broad terms:

- The EPA, which uses its powers under the Contaminated Land Management Act (1997) to deal with site contamination that is significant enough to warrant regulation under the Act given the site's current or approved use.
- QPRC deal with other contamination issues under the planning and development framework, including SEPP (Resilience and Hazards) 2021 and the Contaminated Land Guidelines, on sites which, though contaminated, do not pose an unacceptable risk under their current or approved use. In these cases, the planning and development process determines what remediation is needed to make the land suitable for a different use.

Under the provisions of this policy, Council has developed a framework to manage contaminated or potentially contaminated land within the LGA in accordance with the EP&A Act and SEPP (Resilience and Hazards) 2021.

Note - Schedule 6 of the EP&A Act provides that planning authorities that act substantially in accordance with SEPP (Resilience and Hazards) 2021 and related guidelines are taken to have acted in good faith when carrying out planning functions.

6 CONTENT

6.1 The decision-making process

When carrying out planning functions under the *EP&A Act*, Council must consider the possibility that a previous land use, or an adjoining/nearby land use, has caused contamination of the site; as well as the potential risk to health or the environment from that contamination. The general principle of contamination management under SEPP (Resilience and Hazards) 2021, and the related guidelines, is that a precautionary approach be adopted when exercising a planning function, and that the identification of land contamination issues occurs at an early stage in the planning process in order to prevent harm and reduce delays and costs.

Upon receipt of an LEP amendment request or a development application, relevant staff undertake a review of the application to determine if the land warrants further investigation in relation to contamination. If this review identifies evidence of potential or actual contamination, further assessment of contamination must be conducted in accordance with the QPRC Contaminated Land Guideline.

6.2 Rezoning land

The *EP&A Act* requires consideration of contamination issues when rezoning land. Council must determine, at an early stage in the development process, if zoning could allow a change of use that may increase the risk to health or the environment from contamination. Council must be satisfied that the land is suitable for the proposed use or can be remediated to ensure its suitability. This includes considering the history of land that is adjacent to the land being considered for rezoning, as this may have a bearing on the potential or effect of contamination to the land proposed for rezoning. A Stage 1 preliminary site investigation (PSI) will be required at the rezoning stage to assess if the land is potentially contaminated land.

Assessment of rezoning applications on contaminated land will be conducted in accordance with Council's *Contaminated Land Guideline*.

7 DEVELOPMENT

SEPP (Resilience and Hazards) 2021 and section 4.15 (c) of the *EP&A Act* requires Council to consider the suitability of the site for the proposed development.

Council and the EPA may apply conditions of consent that may limit or restrict the use of the land to ensure the delivery of appropriate outcomes on the land are not detrimental to the user's health or the environment.

Assessment of Development Applications on contaminated land will be conducted in accordance with Council's *Contaminated Land Guideline*.

Council will not approve a Development Application or Planning Proposal unless it is satisfied that, based on the information available to it:

- Contamination has been considered;
- If the land is contaminated, that the land is suitable in its contaminated state (or will be suitable following remediation) for all of the uses permissible under the approval; or
- If the land is contaminated, that conditions can be placed through planning instruments or on development consents and approvals under Part 4 of the Environmental Planning and Assessment Act 1979 that will ensure any contaminated land can be remediated to a level appropriate to its intended use, prior to, or during the development stage.

8 CONTAMINATED LAND CERTIFICATION REQUIREMENTS

Contaminated land reports are to be prepared or reviewed and approved by an appropriately qualified and certified Environmental Consultant. Currently, the certification schemes recognised by NSW EPA and QPRC are (noting other schemes may become recognised):

- Site Contamination Practitioners Australia (SCPA) scheme;
- Environment Institute of Australia and New Zealand's (EIANZ) Contaminated Land Assessment Specialist Certified Environmental Practitioner (CLA Specialist CEnvP) scheme; or
- Soil Science Australia (SSA) Certified Professional Soil Scientist Contaminated Site Assessment and Management (CPSS CSAM) certification.

9 SITE AUDIT

A Site Audit is an independent review of any or all stages of the site investigation process, conducted by a Site Auditor accredited by the NSW EPA in accordance with the *Contaminated Land Management Act 1997*. Engaging a Site Auditor can provide greater certainty about the information on which the planning authority bases its decision, particularly where sensitive uses are proposed, and / or where contamination and remediation is complex.

Council may require a Site Audit to be carried out where QPRC:

- Believes on reasonable grounds that the information provided by the Proponent is incorrect or incomplete;
- Wishes to verify whether the information provided by the Proponent has adhered to appropriate standards, procedures and guidelines; or
- Does not have the internal resources to conduct its own internal technical review.
- All costs associated with providing a Site Audit Report (SAR) or Site Audit Statement (SAS) are to be borne by the proponent. A Site Audit Report must be accompanied by a Site Audit Statement (SAS), which outlines the conclusions of the Site Audit Report (SAR).

10 INVESTIGATING AND REPORTING

It is essential that consultants reporting on contaminated land sites complete their investigations and reports in accordance with the NSW EPA prepared and adopted guidelines.

To assist QPRC staff when assessing planning applications, an accompanying report summary, presenting project background, qualifications relevant to scope of work, objectives, key issues, investigation findings and recommendations is to be provided with each report.

10.1 Initial Evaluation

An initial evaluation of potential site contamination is to be completed by QPRC. The initial evaluation will determine whether contamination needs to be addressed during the assessment of a Planning Application, and to determine whether further information is required for QPRC to conduct its planning functions in good faith.

10.2 Preliminary Site Investigation

A Preliminary Site Investigation (PSI) is to be provided by the proponent when an Initial Evaluation indicates that contamination is or may be present on the site. The main objectives 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 Detailed Site Investigation.

Properties in Captains Flat Village can assume due to past mining activities, a risk of contamination is likely and may request consultants to go straight to a DSI.

10.3 Detailed Site Investigation

A Detailed Site Investigation (DSI) is to be provided by the proponent where a Preliminary Site Investigation identifies that further investigation is required. The main objectives are to define the nature, extent and degree of contamination, to assess potential risk posed by contaminants to human health and the environment, and to obtain sufficient information to develop a Remedial Action Plan, if required. It should be noted that the Detailed Site Investigation Stage of the process may entail several investigations and reports.

11 REMEDIAL ACTION PLAN

A Remedial Action Plan (RAP) is required where the DSI identifies that remediation or management is needed to render the site suitable for its intended use. A RAP must be provided by the Proponent. The objectives are to set remediation objectives and formally document the process to remediate the site. The proposed remediation is to (as a minimum) reduce the risk from contamination to acceptable levels for the proposed land use scenario. The Remedial Action Plan should be based on the information from previous investigations.

For existing dwellings in Captains Flat, the Captains Flat Lead Management Taskforce has commissioned a 'Standard Remediation Action Plan' for ancillary development dated December 2022.

12 VALIDATION AND ONGOING MONITORING

Validation and / or Environmental Monitoring Reports are to be provided by the Proponent.

The objective of Validation is to demonstrate whether the objectives stated in the RAP and any conditions of development consent have been achieved. At times, this may include ongoing monitoring following the completion of remediation. Monitoring undertaken for a limited time is typically incorporated into the Validation Report. In situations where full clean-up is not feasible or on-site containment of contamination is proposed, the need for an On-going Environmental

Management Plan including monitoring, maintenance and management measures should be determined by both the Proponent's Consultant and Environmental Health Officer.

12.1 Notice of Completion

State Environmental Planning Policy (Resilience and Hazards) 2021 requires a Notice of Completion to be provided to QPRC for all remediation work. The Notice of Completion is to include the Validation Report (with monitoring results if monitoring was undertaken).

13 MAINTAINING A RECORD OF REMEDIATION WORK

A Validation Report (including monitoring results where applicable) is required to validate the completion and effectiveness of all remediation works for which consent has been provided by Council (i.e. Category 1 Remediation Works). Category 1 works are Remediation works requiring Development Consent.

A person who proposes to carry out Category 2 remediation work, without a development application, must give 30 Days notice of the proposed work to QPRC. A Notice of Completion must also be provided to Council for any Category 2 remediation works, which must include the Validation Report and be notified to QPRC within 30 days of completion.

14 ENVIRONMENTAL MANAGEMENT PLAN

An On-going Environmental Management Plan is required to be provided to Council and implemented where contamination remains on site, and there is uncertainty as to its potential to migrate; and / or the effectiveness of the management measures implemented to contain the contamination following remediation and validation; and / or monitoring and ongoing management forms part of the remediation strategy.

15 SALE OF LAND

QPRC has a responsibility to provide the community information relating to land contamination, land use history and remediation and validation works. QPRC also has a statutory responsibility to include certain information on planning certificates issued for the purpose of s10.7 of the Environmental Planning and Assessment Act 1979. The information required to be provided by QPRC on planning certificates includes:

- Section 59 of the Contaminated Land Management Act 1997 (i.e. information provided to QPRC by either the NSW EPA or EPA Accredited Site Auditors).
- Schedule 4 of the Environmental Planning and Assessment Regulation 2000 (i.e. whether there is a policy adopted by QPRC or any other public authority that restricts the development of the land, in this case due to actual or potential contamination).

NOTE: SCHEDULE 4 CONTINUES TO APPLY UNTIL THE END OF 30 SEPTEMBER 2022.

15.1 Council's Contaminated Land Information System

The development and maintenance of an accurate Contaminated Land Information System aids QPRC in meeting its legislative requirements. Whilst there is no legislative requirement for QPRC to notify a land owner when their parcel of land is included as 'potentially contaminated' in a Contaminated Land Information System, notifying the landowner or prospective landowner via a Section 10.7(2) Planning Certificate provides the opportunity for them to conduct further investigation into the contamination status of the land, should they wish to.

Information contained within QPRCs Contaminated Land Information System is also available to the public via access to documents on request in accordance with the requirements of the Government Information (Public Access) Act 2009. This includes making publicly available and free of charge land contamination consultants reports filed within the system.

15.2 10.7(2) Planning Certificates

Under the EP&A Act, a Section 10.7(2) Planning Certificate is mandatory when purchasing a property. It is a certificate that details the development potential of a parcel of land including planning restrictions that apply. A Section 10.7(2) Planning Certificate details the contaminated land status of a property in the QPRC area in accordance with Queanbeyan DCP (2012).

15.3 10.7(5) Planning Certificates

Under section 10.7 (5) of the Environmental Planning and Assessment Act 1979, Council may include advice on such other relevant matters affecting the land on which it may be aware.

16 DUTY TO REPORT

The duty to report contamination to the NSW EPA is a requirement under the Contaminated Land Management Act 1997, with updates provided in the Contaminated Land Management Amendment Act 2008.

The following people are required to report contamination as soon as practical after they become aware of any contamination that meets the triggers for the duty to report:

- Anyone whose activities have contaminated land; or
- An owner of land that has been contaminated.

It should be noted that although the above people have the duty to report contamination, anyone can at any time report suspected contamination to the NSW EPA. Where QPRC reasonably believes that contamination on a site triggers the duty to report contamination, and it is not clear if the polluter or site owner has reported the contamination, it may notify the EPA for possible action under the Contaminated Land Management Act 1997.

17 PREVENTING CONTAMINATION

Proactive measures to prevent possible contamination at its source can help to reduce the need for remedial action in the future. Preventing contamination occurring in the first place can therefore have significant environmental and financial benefits for QPRC and the community.

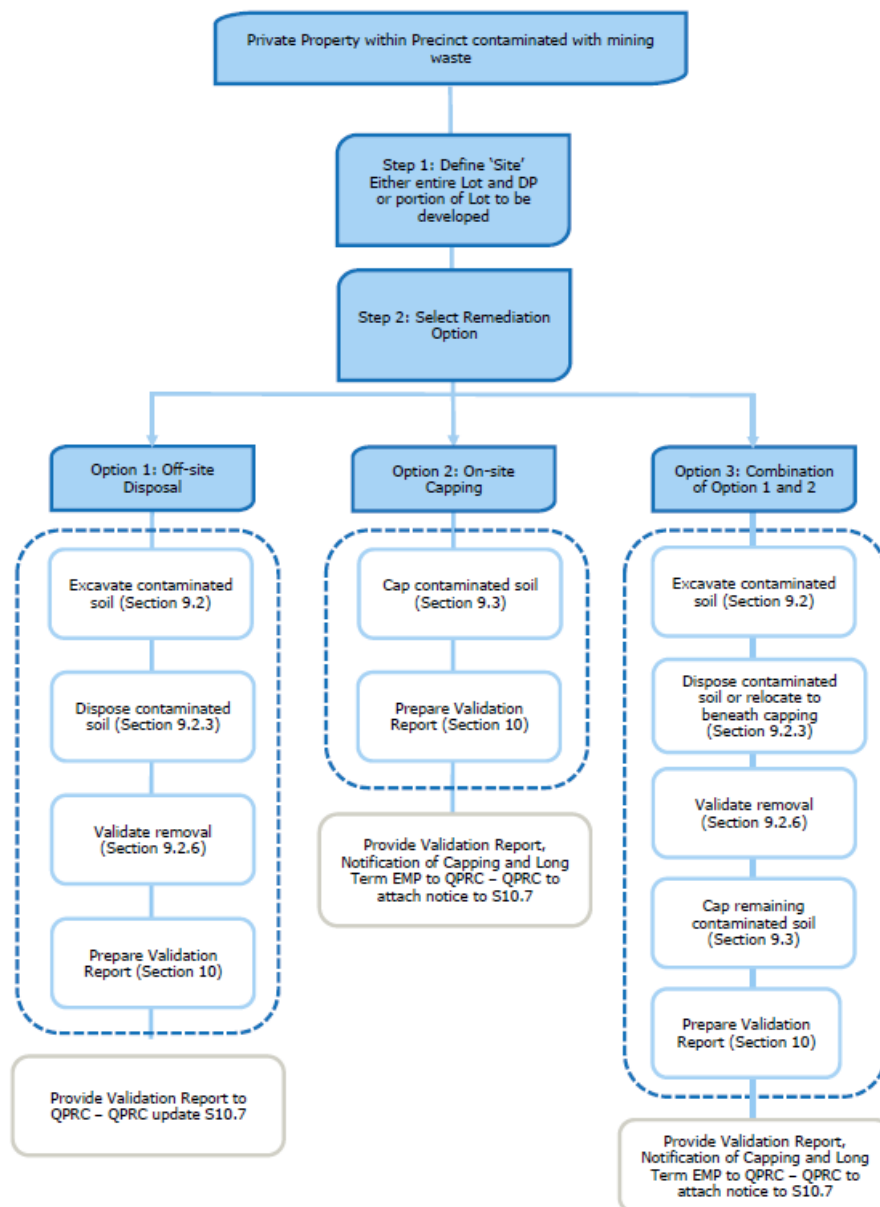
For potential pollution activities, QPRC will apply and enforce conditions of development consent in accordance with the Environmental Planning and Assessment Act 1979 and Council's Compliance and Enforcement Procedure to ensure effective and ongoing control measures are implemented.

Where resources permit, Council will proactively audit sites where the risk of potential contamination warrants pre-emptive enforcement action.

18 CAPTAINS FLAT CONTAMINATION MANAGEMENT

Land in and around Captains Flat is known to be potentially contaminated with legacy atmospheric lead, contaminated fill or black slag from the former Lake George Mine. A Standard Remedial Action Plan (the Standard RAP) was coordinated by Department of Regional NSW (DRNSW) in collaboration with Queanbeyan Palerang Regional Council (QPRC). The *Standard Remedial Action Plan, Land Impacted by the former Lake George Legacy Mine*, RAP provides an alternative to preparation of site-specific RAPs for the remediation of private land where an existing dwelling relates and where lead contamination from the former Lake George Legacy Mine may exist.

The Standard RAP has been prepared for ancillary development, to provide a streamlined approach for the assessment of soil contamination, by assuming a level of contamination based on existing information, in order to reduce the cost of the development assessment process. The goal of remediation as described in the Standard RAP is to remove or manage human health risk from lead contamination such that the site is suitable for future land use and to ensure that development work does not result in an unacceptable exposure to lead.



Remediation options – Captains Flat Standard RAP

19 REVIEW

- 19.1 This policy will be reviewed every four years or earlier as necessary if:
- a) legislation requires it, or
 - b) Council's functions, structure or activities change