



7. PLANNING

Policy 7.10

CONTAMINATED LAND POLICY

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INTRODUCTION:

- Under *Environmental Planning & Assessment Act 1979* and *Environmental Planning & Assessment Regulations 2021* a Section 10.7 Planning Certificate requires details of contaminated land as per Section 59 of the Contaminated Land Management Act 1997.
- Under *State Environmental Planning Policy (Resilience and Hazards) 2021* any Development Application must consider contamination as part of the assessment process.
- Under *Protection of the Environment Operations (Underground Petroleum Storage Systems) Regulation 2019* Council is the authority to ensure systems are compliant with the Regulation.

This policy provides the framework and register of lands to facilitate adequate identification and procedure for the above.

OBJECTIVE:

The objectives of the Policy are to describe how Council will keep relevant records, provide information to interested parties and make decisions regarding contaminated land. Specifically, this policy will describe:

- how information about potentially contaminated land is collected;
- how information is to be maintained in a Land Use Information System (LUIS).
- how Council will use information to appropriately manage the use of land and what information is required for the development of the land;
- how information will be provided to owners of affected land and the public;
- how information will be provided on S10.7 planning certificates;
- how Council will use contaminated land standards and principles to address illegal land filling;

POLICY

1.0 POTENTIALLY CONTAMINATING LAND USES

This policy will identify those land uses that have a reasonable potential to result in land contamination (Appendix A) that may need to be addressed during development.

2.0 INFORMATION MANAGEMENT

2.1 Contaminated Land Information System Definition

Where a property has been identified as having been associated with one or more of these land uses or activities (Appendix A), it will be included in the Land Use Information System (LUIS) so that relevant information can be recorded and used for the purpose of this Policy.

Council will maintain a Land Use Information System (LUIS) to record relevant information regarding land, its historical uses and activities carried out on it, assessments for contamination, remediation and Site Audits.

Areas of agricultural land such as fuel storages and stock dips will be considered for contamination assessment when a DA is received however, the whole land parcel will not be included in the LUIS unless specific reports are provided to Council.

2.2 What the information used for

Specifically the information will be used to:

- Provide information on S10.7 planning certificates;
- Inform development applications, complying development certificate applications and assessments, including pre-DA meetings and assessment;
- Inform strategic planning and the preparation of Planning Proposals;
- Monitor and regulate remediation of contaminated land; and
- Administer the UPSS Regulation.

2.3 Including land on Council's Land Use Information System (LUIS)

Council will notify landowners in writing when their land is added to the LUIS.

As it is a requirement that Council review its records every time it issues a S10.7 planning certificate and considers land contamination before determining a development application, a record of land must not be removed from the LUIS unless Council is satisfied that the information held does not relate to the land, or that any potentially contaminating activity has not taken place on the land.

Where land is subdivided or consolidated, information about the former land uses on the land will be carried onto the new property description(s).

2.4 Including land on Council's Land Use Information System (LUIS)

The general release of information on the LUIS is considered not to be in the public interest other than via a Planning Certificate. Only the owner of the land can otherwise request additional information held in the LUIS, through an Information Access Application under the *General Information (Public Access) Act 2009* (GIPA Act) request.

2.5 Including land on Council's Land Use Information System (LUIS)

S10.7 Planning Certificates provide a range of information regarding the rights and restrictions placed on a parcel of land.

Council is obliged to provide certain information on the S10.7 Planning Certificate as specified in Schedule 2 and Section 290 of the *Environmental Planning and Assessment Regulation 2021* and S59 of the *Contaminated Land Management Act 1997*.

That is:

- 1 Section 290 of the *Environmental Planning and Assessment Regulation 2021* requires that the certificate identify whether or not the land is affected by any policy (adopted by Council or by a public authority for the express purpose of its adoption being referred to in S10.7 certificates issued by Council) that restricts the development of land because of the likelihood of any risk.; and
- 2 Section 59 of the *Contaminated Land Management Act 1997* requires that the certificate address the specific matters relating to the management of contaminated land set out in that section. This Policy intends to be an adopted policy of the kind referred to above, that restricts the development of land because of the likelihood of contamination risk as set out in the Section 1. above.

3 INFORMATION MANAGEMENT

The rezoning of land is controlled by Part 3 Division 3.4 of the EP&A Act. A planning proposal is prepared by the Council and submitted for consideration and determination by the Minister (gateway determination). A gateway determination will determine what further studies may be required.

Section 9,1(2) of the EP&A Act sets Local Planning Directions requires the consideration of contamination before preparing a planning proposal that would have the effect on the zoning or rezoning land. In order to assess the potential for land contamination, Council will need a thorough land use history for the site with reference to the potentially contaminated land uses and activities defined in this policy.

Preliminary Site Investigations may be required prior to the preparation of the planning proposal if such an investigation can reasonably be carried out. A planning proposal may also recommend that further contamination investigations are carried out.

If a preliminary site investigation indicates that contamination would make land unsuitable for particular uses, and:

1. The land may be appropriately remediated for those uses, provisions are needed in the local environmental plan or development control plan to require the remediation before those uses can occur.
2. Where remediation may not be appropriate for those uses, either the planning proposal should not proceed or the range of permissible uses should be restricted in the local environmental plan for that land use zone; that is, the land use options should be reconsidered.

Information on contamination possibilities can be used to locate uses according to land suitability, for example, sensitive uses only being allowed in areas of low contamination probability.

See also Section 3.4.1 of the Lithgow DCP 2021.

4 DEVELOPMENT APPLICATIONS

4.1 Development Assessment Consideration of Contamination

Upon receipt of a Development Application in respect of any land, SEPP (Resilience and Hazards) 2021 Clause 4.6 requires that land contamination must be considered. Any Statement of Environmental Effects or Environmental Impact Statement must address the historical uses of the land.

4.2 Triggers for preliminary site investigation

As a minimum requirement, a preliminary site investigation will be required when considering a development application for land on which Council:

- 1 Has knowledge of a potentially contaminating land use specified in Appendix A having occurred; or
- 2 Has reasonable grounds to believe the land may be contaminated because of the land's history, condition or other information known to Council,

and one or more of the following circumstances have occurred:

- a) The circumstances suggest that the past use could reasonably have significantly contaminated the site;
- b) The proposed development will involve any disturbance of soil including boring or trenching for foundations or services;
- c) The contaminating activity that potentially caused contamination on the land involved illegal or unauthorised work;
- d) The proposed development will include construction over land that may be contaminated;
- e) The proposed development will interfere with groundwater; or
- f) The potential contamination is from an underground storage tank (UST) (not including operating sites subject to the UPSS Regulation).

The triggers specified above are in addition to the minimum assessment criteria set by the SEPP (Resilience and Hazards) 2021 in Clause 4.6(1), (2) & (3).

Note: land used for extensive agriculture should be assessed for site contamination where development applications relate to redevelopment in the vicinity of stock yards, stock dip or farm sheds where fuel or chemicals have been stored or handled.

5 CONTAMINATED LAND STANDARDS FOR POLLUTION

Individual pollution incidents, illegal dumping or spills of hazardous materials do not necessarily constitute contamination. Pollution incidents and waste offences should primarily be managed under the legislative framework set out in Chapters 4, 5, 7 and 8 of the *Protection of the Environment Operations Act 1997* (POEO Act) and Part 9 of the *Environmental Planning and Assessment Act 1979*.

Such offences include but are not limited to:

- Filling land without consent;
- Filling land with material that is not approved i.e. where a development consent specifies that imported fill must meet certain standards;
- Water or land pollution as described in the POEO Act; or
- Unlawful waste facility ss143,144 POEO Act

Waste is defined in the POEO Act and may include any type of soil with or without contaminants.

When dealing with matters of waste or pollution, it is not appropriate to use the NEPM as the basis for investigation. Waste classification (as per EPA guidelines) should be used.

When considering clean-up criteria for pollution incidents, illegal dumping or spills of hazardous materials, the original state of the land or "background" levels of contaminants should be used as the clean-up goal.

Only if the land cannot be returned to its original condition or the pollution or waste activities are deemed to be no longer current, may it be considered a potentially contaminated site.

6 THE PROTECTION OF THE ENVIRONMENT OPERATIONS (UNDERGROUND PETROLEUM STORAGE SYSTEM (UPSS) REGULATION (2019) ENFORCEMENT

The *Protection of the Environment Operations (Underground Petroleum Storage Systems) Regulation 2019* requires that the local Council is to be advised of certain matters including the validation reports for UPSS removal or modification and the notification of environmental harm.

The requirement of the UPSS regulation is generally to ensure that:

- 1) Infrastructure and equipment are properly designed installed, commissioned and operated;
- 2) A secondary loss detection system is in place; and,
- 3) An environmental protection plan is in place.

The regulatory authority (Lithgow City Council) has the right under the POEO Act to enter the property and request to view records at any reasonable time.

Council may schedule routine inspections of UPSS sites to ensure compliance with the Regulation. A fee may be charged in line with Council's Schedule of Fees and Charges.

Council is able to issue penalty infringement notices for any non-compliance with the Regulation.

Council will consider the requirements of the UPSS Regulation in regard to Development Applications for removal, modification or installation of underground petroleum storage systems.

7 REVIEW

This policy shall be reviewed within 12 months of the election of a new Council.

Maintained by Department:	Environment and Development	Approved by:	Council		
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APPENDIX A - POTENTIALLY CONTAMINATING LAND USES

The following land use definitions generally relate to the land use definitions used in the *Standard Instrument—Principal Local Environmental Plan*. Additional definitions and comments are included in the table to assist in identifying the potential to contaminate land from that land use.

Should only be used where specific information about the site is available.

** Table 1 activities where a Preliminary Investigation is mandatory for change of use DA.*

See cl 4.6 SEPP(Resilience and Hazards) 2021.

Grouping	Potentially contaminating land use	Definition or comments
Agriculture	Aquaculture	Cultivating or keeping fish or marine vegetation for commercial purposes; Fisheries Management Act 1994
	* Extensive agriculture [#]	Used to capture farm shed activities such as chemical storage and handling
	Food manufacturing	All types of food and drink manufacturing that may have included boilers or cooking, needs to be at reasonable scale
	* Intensive livestock agriculture	Feed lots, piggeries, dairies, concentrated waste products Designated development triggers
	* Intensive plant agriculture	Vineyards, orchards, irrigated cropping, turf farming
	Livestock processing industries	Production of products derived from the slaughter of animals (including poultry) or the processing of skins or wool of animals, and includes abattoirs, knackeries, tanneries, wool scours and rendering plants.
	Rural supplies	Store large quantities of chemicals but should be only applied where chemicals are decanted or repackaged on site
	* Sheep and cattle dips	Public or private facilities
	Stock and sale yards	Associated with waste, wash-down facilities and stock dips or other pest treatments
	* Tanning and associated trades	
Asbestos	Asbestos Disposal [#]	Where asbestos containing material has been buried for permanent disposal
	* Asbestos production and disposal	Includes mining and asbestos product manufacturing
	Demolition without asbestos clearance	A building with significant ACM demolition without providing an asbestos clearance
Chemical	* Acid/alkali plant and formulation	
	Battery manufacture, storage and recycling	Commercial scale storage of used batteries

Grouping	Potentially contaminating land use	Definition or comments
	Chemical storage facilities	Includes the bulk storage and handling of chemical in association with other activities
	* Chemicals manufacture and formulation	
	* Defence works	UXOs, fuels and chemical use or storage
	* Dry cleaning establishments	
	Hospitals	Incinerators and boilers, radioactive wastes
	Laboratory	Place equipped to conduct scientific experiments, tests, investigations, etc., or to manufacture chemicals, medicines, or the like. Includes large scale photographic labs etc.
	* Paint formulation and manufacture	
	Paper and printing works	Commercial printeries with significant stores of ink and solvents
	* Pesticide manufacture and formulation	
	* Wood preservation	
Fuel	Liquid fuel depots	
	* Oil production and storage	Oil refineries
	* Service stations	
	Store and dispense 450l or more of fuel or oils	Fuel storage on land where primary land use is not otherwise listed
Industry	Cement works	
	* Drum re-conditioning works	
	* Electrical manufacturing (transformers)	
	* Electroplating and heat treatment premises	
	* Engine works	Manufacture of engines
	* Explosives industry	Includes explosives magazines, ammunition and fireworks manufacture and testing.
	* Gas works	
	Heavy industrial storage establishment	Storage of goods, materials, plant or machinery for commercial purposes
	Heavy industrial workshops and metal fabrication	Includes welding, sand blasting, spray painting
	* Iron and steel works	
	* Metal treatment	

Grouping	Potentially contaminating land use	Definition or comments
	* Mining and extractive industries	Including mineral or ore processing or coal washing etc.
	Paper pulp or pulp products industries	
	Pet food manufacturing	As distinct from food manufacturing
	* Power stations	
	Sawmill or log processing works	Relating to often being off grid using steam or liquid fuel driven machinery, also drying kilns and use of pesticides
	Small engine service and repairs	Lawnmowers and other small engine not considered motor vehicles
	* Smelting and refining	
	Storage of plant and equipment	Generally informal storage of equipment that may lead to land contamination
	Vehicle body repair workshops	Panel beaters and spray painting
Transport	* Air transport facilities	Includes heliports and all ancillary buildings
	Emergency services facilities	Police, Ambulance Fire, SES have often included fuel storage
	Freight transport facility	
	Motor vehicle service and repairs	Including cars sales yards and tyre shops
	* Railway yards	
	Truck or transport depots	Place used for the servicing and parking of trucks, earthmoving machinery and the like
	Vehicle washing	Where involved in truck washing or engine degreasing for the public or as a standalone operation
Waste	Contaminated soil and groundwater treatment works	
	Junk yard	land used for the collection, storage, abandonment or sale of scrap metals, waste paper, bottles or other scrap materials or goods, or land used for the collecting, dismantling, storage, salvaging, or abandonment of cars or other vehicles or machinery or for the sale of their parts.
	* Landfill sites	Sites use for the disposal of waste
	Oil Recycling	
	* Scrap yards	
	Sewage treatment plants	
	Site used for illegal waste disposal	

Grouping	Potentially contaminating land use	Definition or comments
	Use of uncertified fill	Land has been levelled or reshaped with fill material that has not been certified as suitable and or the filling has not been approved
	* Waste storage and treatment	
Other	Commercial or industrial fixed plant with liquid fuels, e.g. generator sets.	
	Rifle or shooting range	
	Site that includes large electrical transformers or switch gear	Including electrical substations and transformers or switchgear for large industrial premises.
	Site that is impacted by off-site contamination [#]	Sites that would require contamination assessment due to the impacts of contamination derived from land that is being regulated by the EPA under Part 3 of the CLM Act.