

## APPENDIX 4 Annotations for section 10.7 planning certificates on contaminated land

Council is required to include contaminated land information on section 10.7 planning certificates. This requirement is anchored in:

- the *EP&A Act*
  - o section 10.7(2), as elaborated by the *Environmental Planning and Assessment Regulation 2021*
  - o section 10.7(5), in relation to advice on other matters affecting the land
  - o section 10.7(6), in relation to furnishing of contaminated land information in good faith with Schedule 6 of the *EP&A Act*
- section 10(1) in schedule 2 of the *Environmental Planning and Assessment Regulation 2021* in relation to whether an adopted Council policy restricts the development of land because of site contamination
  - the *CLM Act*
    - o section 10(1)(a)–(b), in relation to preliminary investigation orders issued by the EPA for the land
    - o section 44, in relation to the EPA's repeal or revoking of orders and notices issued under section 10 of the *CLM Act*
    - o section 59(2), in relation to matters that are to be included in section 10.7 planning certificates.

The information required to be included on a planning certificate is outlined in Table A4.1. Council must note that information prescribed under section 59(2) of the *CLM Act* pertains to land that 'is' subject – not 'was' subject – to the prescribed regulatory processes. However, Council can elect to include this historical information on planning certificates in accordance with its *Contaminated Land Policy*.

**Table A4.1:** Contaminated land information required on section 10.7 planning certificates

PLANNING CERTIFICATE	CONTAMINATED LAND INFORMATION
<b>Section 10.7(2)</b>	A statement that Council has adopted a policy to restrict the development of land because of the actual or potential likelihood of that land being contaminated.  See Table A4.2 for annotations that Council can use.
	At the date of issue of the planning certificate, a statement that the land to which the planning certificate relates is: <ul style="list-style-type: none"> <li>• significantly contaminated land within the meaning of the <i>CLM Act</i>, including whether only part or all of the land is significantly contaminated</li> <li>• subject to a management order under the <i>CLM Act</i></li> <li>• the subject of an approved voluntary management proposal under the <i>CLM Act</i></li> <li>• subject to an ongoing maintenance order under the <i>CLM Act</i></li> <li>• the subject of a site audit statement under the <i>CLM Act</i>.</li> </ul>
	Council may elect to include information on the potential of site contamination because the historical use of that land is known or reasonably suspected by Council to be an activity identified in Appendix 2.  See Table A4.2 for annotations that Council can use.
<b>Section 10.7(5)</b>	Information provided on section 10.7(2) planning certificates and additional information Council may elect to disclose pertaining to the actual or potential contamination of the land.  See Table A4.2 for annotations that Council can use.

**Table A4.2:** Annotations for additional information on section 10.7 planning certificates for land that is or may be contaminated

SITUATION	ANNOTATION
<p>Council has identified that the land:</p> <ul style="list-style-type: none"> <li>• has a previous land-use history that could have involved the use of contaminants on the site (for example, the land may have been used for an activity listed in Appendix 2)</li> <li>• is known to be contaminated but has not been remediated.</li> </ul>	<p>‘Council has adopted by resolution a policy on contaminated land that may restrict the development of the land.</p> <p>This policy is implemented when zoning or land-use changes are proposed on lands that have previously been used for certain purposes.</p> <p>Consideration of Council’s adopted policy and the application of provisions under relevant State legislation is warranted.’</p>
<p>Council has identified that the land is known to contain contaminants but that it has been remediated for a particular use or range of uses, and some contamination remains on the site (for example, encapsulated).</p>	<p>‘Council has adopted by resolution a policy on contaminated land that may restrict the development of the land.</p> <p>This policy is implemented when zoning or land-use changes are proposed on lands that are considered to be contaminated or on lands that have been remediated for a specific use.</p> <p>Consideration of Council’s adopted policy and the application of provisions under relevant State legislation is warranted.’</p>
<p>Council records do not contain a clear site history without significant gaps in information, and Council cannot determine whether the land is contaminated and, therefore, the extent to which Council’s policy should apply.</p>	<p>‘Council has adopted by resolution a policy on contaminated land that may restrict the development of the land.</p> <p>This policy is implemented when zoning or land-use changes are proposed on lands that have previously been used for certain purposes. Council records do not have sufficient information about the previous use of this land to determine whether the land is contaminated.</p> <p>Consideration of Council’s adopted policy and the application or provisions under relevant state legislation is warranted.’</p>

**Note:** The information in this table applies where Council has adopted a policy to restrict the development of land because of the actual or potential likelihood of that land being contaminated.