

POL 030 – Contaminated Land Management Policy 2020

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Policy owner: Manager Development Assessment & Building Certification

Next review: 2024

This policy will require management and review every 4 years or as legislation and regulations are updated. Any change must be made in accordance with the relevant legislation and regulations applicable at the time, and/or any regulatory changes.

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- RAMROC Executive Officer
- REROC Executive Officer
- Project Officer RCLM Program
- Albury City Council Director Planning and Environment
- Coolamon Shire Council Manager Planning and Environmental Services
- Project Manager RCLM Program

Document contributions were also made by the Contaminated Land Working Group made up of the following councils:

- Albury City Council
- Coolamon Shire Council
- Former Corowa Shire Council (Federation Council)
- Former Deniliquin Shire Council (Edward River Shire Council)
- Griffith City Council
- Temora Shire Council
- Former Tumbarumba Shire Council (Snowy Valleys Council)
- Former Tumut Shire Council (Snowy Valleys Council)
- Wagga Wagga City Council

About this policy

This policy, known as the Contaminated Land Management Policy, outlines requirements relating to the use and / or development of land that is or may be contaminated.

This policy has been developed under the provisions of the *Contaminated Land Management Act 1997* (CLM Act), is associated State Environmental Planning Policy No. 55 – Remediation of land and the Managing Land Contamination – Planning Guidelines in regards to the principles of:

- i. Ensuring that changes of land use, or new development proposals, will not increase the risk to human health or the environment;
- ii. Avoiding inappropriate restrictions on land use; and
- iii. Providing information to support decision making and to inform the community.

Land to which policy applies

All land in the City of Wagga Wagga Local Government Area (LGA).

Purpose

This policy provides a framework for the management of contaminated or potentially contaminated land in the City of Wagga Wagga LGA. The policy identifies how the management of contaminated land is integrated into Council's planning and development processes.

Objectives

The integration of contaminated land management into the local planning and development control process will enable Council to:

- Ensure that the Council exercises its functions in relation to the development of contaminated land with a reasonable standard of care and diligence and that decisions are made in good faith;
- Ensure that the likelihood of land contamination is considered as early as possible in the planning and development control process;
- Ensure that planning and development decisions take into account available information relating to the likelihood of land contamination;
- Link decisions about the development of land with the information available about contamination possibilities;
- Ensure that any development of contaminated land will not result in unacceptable levels of risk to human health or the environment;
- Avoid inappropriate restrictions on the development of contaminated land;
- Ensure that site investigations and remediation work are carried out in a satisfactory manner, and where appropriate, are independently verified by site audits;
- Facilitate the provision of consistent and reliable information to the public about land contamination;
- Ensure that ongoing responsibility for management and monitoring of contaminated land is clearly and legally assigned;

- Ensure that the community is not unduly disadvantaged by increased health and environmental risks or increased management costs when accepting the dedication of public assets;
- Adopt a policy approach that will provide strategic and statutory planning options based on the information about contamination; and
- Exercise statutory planning function with a standard of care.

Policy application

This policy applies to the following planning functions of Council:

- The preparation and amendment of Local Environmental Plans
- The preparation, approval and amendment of Development Control Plans
- The preparation and adoption of Plans of Management for Community Land
- The determination of Development Applications
- The modification of Development Consents
- The determination of activities pursuant to Part 4 of the Environmental Planning and Assessment Act 1979; and
- The storage and sharing of contaminated land information through Section 10.7 planning certificates.

Guidelines

This policy has been developed from the State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55) and in conjunction with the *Contaminated Land Management Act 1997* (CLM Act) and Wagga Wagga Local Environmental Plan 2010.

Effective management of contaminated land in land-use planning is necessary in managing risk of harm potentially posed by land contamination to human health and the environment

In the context of land contamination, councils are the planning and consent authorities and are thereby expected to act in “good faith” and in accordance with the requirements of the NSW CLM Act. “Good faith” provisions also extend to the subordinate State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55), and its Planning Guidelines.

Councils have responsibilities under the *Environmental Planning and Assessment Act 1979* (EP&A Act) in regard to the early identification of contaminated sites, the consideration of land contamination issues in planning functions, data and information management regarding land contamination, and to inform the public on contamination matters (e.g. Section 10.7 planning certificates).

Under the CLM Act, the Environment Protection Authority (EPA) regulates contaminated sites where the contamination is significant enough to warrant regulation. Contaminated sites that are not regulated by the EPA are managed by local councils through land-use planning processes.

Obligations

Duty to report

The CLM Act requires persons to notify the EPA if they become aware that their activities have contaminated land so as to present an unacceptable risk to human health or the environment.

The Act also requires landowners to notify the EPA if they become aware that their land has been contaminated so as to present an unacceptable risk of harm to human health or the environment. This requirement applies whether the contamination occurred before or during the current owner's tenure of the land and the notification must be made as soon as practicable after becoming aware of the risk (See Appendix – Activities that may cause contamination).

To assess the requirement to notify the site to the EPA, the land owner and/or persons who have caused the contamination should consult Guidelines on the Duty to Report Contamination under the CLM Act.

Section 60 of the CLM Act imposes a duty on owners of land, and persons who have contaminated land, to immediately notify the EPA as soon as practicable after becoming aware of the contamination that does, or may, pose a significant risk to human or environmental health.

According to the Guidelines on the Duty to Report Contamination under the *Contaminated Land Management Act 1997*, a person is taken to be aware of the contamination if it is considered that they are aware or should have reasonably become aware of the contamination. Factors taken into account in determining when a person should reasonably have become aware of the contamination are;

- i. The persons' abilities, including their experience, qualifications and training
- ii. Whether the person could reasonably have sought advice that would have made them aware of the contamination
- iii. The circumstances of the contamination

Consultants

Contaminated land consultant certification schemes have been developed to ensure any consultants dealing with contaminated sites have the necessary competencies to carry out the work. The certification schemes recognised by the EPA under the Consultants and Site Auditor Scheme are detailed on the EPA website.

When reports are required to be submitted to the EPA and/or Council they must comply with the requirements of the CLM Act to be prepared, or reviewed and approved, by a practitioner certified under an EPA recognised scheme. This requirement includes reports associated with a:

- Preliminary investigation order
- Management order
- Voluntary management proposal
- Ongoing maintenance order
- Duty to report contamination

Where required to be submitted to Council, reports must be prepared in accordance with the current relevant guidelines approved under the CLM Act and in accordance with SEPP 55. Council may require the following to be submitted:

- Preliminary investigation
- Detailed investigation
- A Remediation Action Plan

- Validation, monitoring and remediation reporting

The front cover of the submitted report must include the details of the consultant's certification. For a CLA Specialist CEnvP this involves affixing the CEnvP logo and for SCPA the certified practitioner is to affix their seal.

Any requirements for reporting undertaken after 1 July 2017 must be prepared, or reviewed and approved, by a certified consultant.

Council records and information management

Council has a responsibility to provide information regarding land use history, land contamination and remediation.

The SEPP 55 Guidelines emphasises the importance of local government information systems in ensuring that adequate information is available to Council staff and the community in relation to both actual and potential land contamination.

Council also has a statutory responsibility to include certain information regarding land contamination on planning certificates issued under Section 10.7 (2) and 10.7(5) of the EP&A Act.

Council's records regarding contaminated land are dynamic and will change over time as land is investigated, remediated and validated, and as new sites of potential contamination are identified. Existing records in relation to contaminated land should be kept on individual property files for each parcel of land. To assist Council in the management of information the following are (without limitation) records for individual parcels of land (where available / known):

- a) Site contamination reports submitted to Council (i.e. Preliminary Investigation, Detailed Investigation, Remedial Action Plans Validation and Monitoring Reports);
- b) Site Audit Statements received;
- c) EPA declarations and orders issued under the CLM Act (including voluntary management proposals approved by the EPA);
- d) Development Applications for Category 1 remediation works;
- e) Prior notification to Council of Category 2 remediation works;
- f) Notification of completion of Category 1 and Category 2 remediation works;
- g) Information regarding previous or current land uses which are likely to have resulted in land contamination; and
- h) Written complaints to Council about contamination.

Notations may be made on Council's property information system in relation to investigations and remediation work carried out for individual properties. This will assist staff to identify land that has been fully remediated or remediated for specific land uses. Some properties listed on the information system may be subject to legal notices under legislation administered by the EPA. The public should also consult with the EPA for up-to-date information on any such land in the local government area.

Planning (Section 10.7) Certificates

Under Section 10.7 of the EP&A Act a person may request from Council a planning certificate that contains advice on land contamination matters about a property from Council. For example, a planning certificate would show the existence of a council policy to restrict the use of land.

Such matters relating to land contamination that must be included on section 10.7(2) planning certificates are as set out in section 59(2) of the CLM Act will also include:

- a) Whether Council has adopted a policy to restrict the use of land due to the risk of land contamination;
- b) Whether the land is an investigation area or remediation site;
- c) Whether the land is subject to an investigation order or remediation order; and
- d) Whether a site audit statement of the land is held by Council.

Council is formally advised whenever a notice is issued under the CLM Act and accordingly annotates its planning certificates. Section 10.7(2) planning certificates will not include specific information about actual or potential contamination (such as the types, extent and level of contamination) on a parcel of land.

Council may also elect to provide additional information on Section 10.7(5) certificates regarding the contamination status of a property

Legislative Context

- Environmental Planning and Assessment Act 1979
- Contaminated Land Management Act 1997
- State Environmental Planning Policy No. 55 – Remediation of Land
- Managing Land Contamination – Planning Guidelines

Related Documents

- Contaminated Land Management Procedure

Definitions

Term	Definition
Category 1 Remediation Work under SEPP 55 <i>As defined in the SEPP 55 guidelines.</i>	Remediation work that requires development consent.
Category 2 Remediation Work under SEPP 55 <i>As defined in the SEPP 55 guidelines.</i>	Remediation work that does not require development consent under SEPP 55.
CLM Act	<i>Contaminated Land Management Act 1997</i>
Contaminated Land <i>As defined in the SEPP 55 guidelines.</i>	Land in, on or under which any substance is present at a concentration above that naturally present in, on or under the land that poses, or is likely to pose, an immediate or long-term risk to human health or the environment.
Contaminated Land <i>As defined in the SEPP 55 guidelines.</i>	Land in, on or under which any substance is present at a concentration above that naturally present in, on or under the land that poses, or is likely to pose, an immediate or long-term risk to human health or the environment.
Contamination <i>As defined in the CLM Act.</i>	The presence in, on or under the land of a substance at a concentration above the concentration at which the substance is normally present in, on or under (respectively) land in the same locality being a presence that represents a risk of harm to human health or any other aspect of the environment.
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
Investigation Order <i>As defined in the SEPP 55 guidelines.</i>	An order by the EPA under the Contaminated Land Management Act 1997 to investigate contamination at a site of within an area.
Notice of completion <i>As defined in the SEPP 55 guidelines.</i>	A notice to Council in accordance with the State Environmental Planning Policy No. 55 – Remediation of Land that remediation work has been completed.
Preliminary Investigation <i>As defined in the SEPP 55 guidelines.</i>	An investigation to identify any past or present potential contaminating activities and to provide a preliminary assessment of any site contamination.

	The preliminary investigation typically contains detailed appraisal of the site history and a report based on visual site inspection and assessment.
Remedial Action Plan <i>As defined in the SEPP 55 guidelines.</i>	A plan that sets remediation goals and documents that outline the process required to remediate a site.
Remediation Order <i>As defined in the SEPP 55 guidelines.</i>	A direction from the EPA under the <i>Contaminated Land Management Act 1997</i> to remediate.
Remediation Site <i>As defined in the SEPP 55 guidelines.</i>	A site declared by the EPA under the Contaminated Land Management Act 1997 as posing a significant risk of harm.
Remediation Work <i>As defined in the SEPP 55 guidelines.</i>	Work in, on or under contaminated land, being work that: <ul style="list-style-type: none"> • Removes the cause of contamination of the land; or • Disperses, destroys, reduces, mitigates or contains the contamination of the land; or • Eliminates or reduces any hazard arising from the contamination of the land (including by preventing the entry of persons or animals on that land).
SEPP 55	State Environmental Planning Policy No. 55 – Remediation of Land
Site Audit <i>As defined in the CLM Act.</i>	<p><i>A review</i></p> <p>(a) That relates to management of the actual or possible contamination of land; and</p> <p>(b) That is conducted for the purpose of determining any one or more of the following matters</p> <p>The nature and extent of any contamination of the land</p> <p>i. The nature and extent of any management of actual or possible contamination of the land</p> <p>Whether the land is suitable for any specified use or range of uses</p> <p>What management remains necessary before the land is suitable for any specified use or range of uses</p> <p>The suitability and appropriateness of a plan of management, long-term management plan or a voluntary management proposal.</p>
Site Auditor	A person accredited by the EPA under the <i>Contaminated</i>

<p><i>As defined in the SEPP 55 guidelines.</i></p>	<p><i>Land Management Act 1997</i> to conduct site audits.</p>
<p>Site History</p> <p><i>As defined in the SEPP 55 guidelines.</i></p>	<p>A land use history of a site that identifies activities or land uses that 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.</p>
<p>Site Investigation Process</p> <p><i>As defined in the SEPP 55 guidelines.</i></p>	<p>The process of investigating land that may be, or is, contaminated, for the purpose of providing information to a planning authority.</p>
<p>Validation</p> <p><i>As defined in the SEPP 55 guidelines.</i></p>	<p>The process of determining whether the objectives for remediation and any development consent conditions have been achieved.</p>

Revision History

Revision number	Council resolution	Council meeting date
1	Res No: TBC (this review)	TBC

Appendix: Activities that may cause contamination

Activities that may cause contamination, as listed by the Planning Guidelines SEPP 55 – Remediation of Land, are listed below. This should be used as a guide only. A conclusive contaminated or non-contaminated status can only be determined after a site history investigation and sampling analysis (where required).

- 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
- wood preservation
- clandestine laboratories and hydroponic plantings*

Source: Department of Urban Affairs and Planning & Environment Protection Authority. 1998. Managing Land Contamination Planning Guidelines. Table 1.

* Not currently listed in SEPP 55 Guidelines Remediation of land.