

CONTAMINATED LAND MANAGEMENT

Objective

- To provide a framework to assist Council, residents and proponents of current and proposed development to respond positively and proactively to contaminated land based hazards and risks, both past and present
- To ensure that changes to land use will not result in an increased risk to human health or the environment
- To consider the likelihood of land contamination as early as possible in the planning and development control process
- To provide information to support decision making, and to inform the community of potential restrictions on property arising from contaminated land matters
- To ensure Council exercise its functions relating to the development of contaminated land with a reasonable standard of care and diligence
- To ensure that site investigations and remediation works are carried out by duly qualified persons, and where appropriate, are independently verified by a Site Auditor, and
- To avoid placing inappropriate restrictions on land uses due to land contamination

Scope

This policy applies to all land within the Gilgandra Shire LGA and includes:

1. Where Council is duly exercising one of the following planning functions:
 - a) Preparation of a planning proposal
 - b) Processing and determination of a development application (DA) or the modification of a development consent
 - c) Processing and determination of an application for a complying development certificate
 - d) Furnishing of advice in a planning certificate under Section 10.7
 - e) Acquisition of land by Council whether by purchase or dedication; and/or
 - f) Contaminated Land Information (CLI) that is received by Council or
2. Where Council is:
 - a) Investigating or remediating illegal land filling; or
 - b) Administering the [Protection of the Environment \(Underground Petroleum Storage System\) Regulation 2019](#).

Note: the functions described in paragraph 2 above are not 'planning functions' to which Council is afforded protection from liability under Schedule 6 of the EP&A Act. All contaminants with the potential for creating contamination of land are encompassed by this policy, refer to [SEPP 55 guidelines](#) for a list of some potentially contaminating activities. Please note that it is up to the proponent to decide if the activity they undertake has the potential to pollute the environment.



Policy

1. Information Access and Management

Council will develop and maintain a Contaminated Land Information System or Register to facilitate compliance with statutory obligations, support its planning functions, and provide relevant and accurate information on contaminated land to the community in accordance with the *NSW Government Information (Public Access) Act 2009*.

While Council will endeavour to develop and maintain a comprehensive collection of relevant information, it does not guarantee the completeness or accuracy of all the information held. In the case of information which is not required to be provided to Council or hitherto has not been required to be kept by Council, Council may not be in possession of all the relevant information for any given property at any given time.

2. Information Provided on Planning Certificates

The responsibility for investigating the potential for contamination during the sale of land rests with the vendor and purchaser, however Council will make available any relevant information held on potential contamination should it be requested in an appropriate manner.

Section 10.7(2) Planning Certificates

Information to be disclosed on a Section 10.7(2) Planning Certificate is specified in the Environmental Planning and Assessment Regulation 2000 (Schedule 4) and s59(2) of the Contaminated Land Management Act 1997. Council has a legal obligation to provide certain information through Section 10.7(2) Planning Certificates in relation to land contamination.

Section 10.7(5) Planning Certificates

Section 10.7(5) Planning Certificates are governed by s10.7(5) of the Environmental Planning and Assessment Act 1979, which states that “a council may include advice on such other relevant matters affecting the land of which it may be aware”. As such, there is no specific legislative requirement for Council to provide information pertaining to land contamination issues on s10.7(5) Certificates. However, this needs to be balanced with the fact that the Council owes the applicant a duty to take reasonable care when issuing planning certificates.

3. Restriction of Land

Where Council is aware of any past or present potentially contaminating land uses or activities (as described in this policy), it will retain any relevant information in the Contaminated Land Information System or Register about the land on which that use or activity occurred or is occurring to ensure:

- That land owners and other interested parties may be made aware of those uses; and
- Council can assess land contamination issues and monitor remediation under *State Environmental Planning Policy 55 Remediation of Land (SEPP 55)*.

The information held is intended to aid decision-making regarding contaminated land investigations, land use planning and development consents. This policy will restrict the use of land by:

1. Prescribing the circumstances where land is required to undergo some level of assessment for land contamination, or remediation, before consent can be granted for any development on that land or the land can be rezoned; and
2. Enforce the restrictions that, in the opinion of the consultant or auditor, are required through the imposition of a Site Management Plan that may be imposed on the land following remediation.

4. Remediation

Council will set standards for the conduct of remediation and reporting of contaminated land matters to ensure that contamination and remediation can be effectively managed and monitored for the benefit of the community. Remediation specifications are based on the [State Environmental Planning Policy No. 55 – Remediation of Land, \(SEPP 55\) 1998](#).

Category 1 Remediation requires development consent from Council and Category 2 does not. SEPP 55 specifies the criteria for each, if the proposed remediation is considered to be Category 1 remediation, a Development Application must be made to the appropriate consent authority, generally Council. Category 2 remediation must be notified to Council according to the requirements under SEPP 55.

5. Contamination Reports

5.1 Consultants' Reports

All reports regarding the assessment of site contamination must be prepared or reviewed and approved by a suitably qualified Environmental Consultant and be completed in accordance with the relevant reporting guidelines; currently, the *Consultants Reporting on Contaminated Land. Contaminated Land Guidelines*, EPA 2020.

All reports submitted to Council after 1 April 2017 for the purposes of fulfilling the SEPP 55 and the UPSS Regulation are to be prepared, or reviewed and approved, by a consultant who is certified under a [contaminated land consultant certification scheme recognised by the EPA](#).

Third party reviews may be requested by Council and are to be completed by a suitably qualified Environmental Consultant.

5.2 Summary Reports

Council requires that any Assessment of Site Contamination Report be accompanied by a Summary Report which provides a succinct overview of the site investigation or remediation on the parcel of land. A Summary Report cannot be relied upon solely for decision making under SEPP 55.

5.3 Site Audits

Council can request a Site Audit Statement (SAS) for reports on sites where:

- Modified investigation threshold levels are used
- A risk assessment is relied upon for determination of suitability
- A groundwater assessment (in accordance with UPSS Guidelines) is not carried out where underground tanks or infrastructure has been identified
- A Site Management Plan is required
- Council does not accept the consultant’s recommendation, or
- Council considers it necessary

All costs associated with providing a Site Audit are to be borne by the proponent.

5.4 Site Management Plan

A Site Management Plan (SMP) is required when contamination is to remain onsite. The SMP should be developed in consultation with Council to determine that it can be reasonably complied with and enforced. It should make provisions for Council to carry out checks of relevant compliance.

Where there is an SMP and where Council is able to do so, Council will require the owner or proponent to register a covenant on title requiring compliance with the SMP.

Definitions:

CLI	Contaminated Land Information Information that can assist a suitably qualified expert in determining the risk of land contamination on a site.
Contaminating Activities	The activities listed in Table 1 of the Contaminated Land Planning Guidelines .
Contamination	The condition of land or water where any chemical substance or waste has been added as a direct or indirect result of human activity at above background level and represents, or potentially represents, an adverse health or environmental impact.
Contaminated Land Planning Guidelines	NSW Managing Land Contamination Planning Guidelines - SEPP 55 Remediation of Land (1998)
CLM Act	Contaminated Land Management Act 1997
EP&A Act	Environmental Planning and Assessment Act 1979
EPA	Environment Protection Authority
LEP	A Local Environmental Plan made under the EP&A Act .
Planning Application	A Development Application or Planning Proposal made to Council in accordance with the EP&A Act .
Planning Certificate	A Planning Certificate under Section 10.7 of the EP&A Act .
Reporting Guidelines	NSW Guidelines for Consultants Reporting on Contaminated Sites
SAS	Site Audit Statement A statement in a form approved by the EPA , which contains the Site Auditor’s findings in relation to their Site Audit .
Site Auditor	An environmental professional accredited by the EPA in accordance with the requirements of the CLM Act .

Relevant Legislation

Legislation	Context
National Environment Protection (Assessment of Site Contamination) Measure, 1999	Sets a national standard and provides comprehensive technical details for the assessment of land contamination.
Environmental Planning and Assessment Act, 1979 and the Environmental Planning and Assessment Regulation, 2000	Provides the legislative framework under which planning applications and planning certificates are managed.
Contaminated Land Management Act, 1997	Provides the legislative framework for the management of significantly contaminated land and/or the site auditor scheme.
Local Government Act, 1993	Provides the legislative framework for the operation of Council including provisions related to the acquisition of real property.
State Environmental Planning Policy No 55 – Remediation of Land	Places requirements on planning and consent authorities to consider land contamination as a part of every planning application.
NSW Managing Land Contamination Planning Guidelines (under) SEPP 55 Remediation of Land (1998)	Provides a high level framework for the assessment and management of land contamination including a list of land uses that are potentially contaminating.
Protection of the Environment Operations Act 1997	Enables the EPA, and Councils, to regulate pollution and waste in NSW
Protection of the Environment Operations (Waste) Regulation 2014	Regulation of waste in NSW
Protection of the Environment Operation (Underground Petroleum Storage Systems) Regulation 2019	Self-regulation regime of underground fuel storage in NSW

Associated Documents

NSW Guidelines for Consultants Reporting on Contaminated Sites, 1997	Provides technical requirements for the reporting of contaminated land information.
Guidelines for the NSW Site Auditor Scheme (3rd Edition), 2006	Provides technical requirements for the operation of the Site Auditor Scheme.
NSW Waste Classification Guidelines, 2008	Provides technical requirements for the classification and management of waste.
Gilgandra Local Environment Plan 2011	Guides planning decisions for the Gilgandra Shire Local Government Area.

Responsible Officer:	Director Planning & Environment		
Date Adopted:	20/4/16 21/3/17 20/3/18 19/3/19 21/9/21	Resolution No:	107/16 51/17 48/18 38/19 145/21
Version:	5	Review Date:	February (annually)