

Western Plains Regional Council Policy

Document Type Council Policy

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1. Objective

The Contaminated Land Policy is made under the Managing Land Contamination Planning Guidelines, 1998 as notified in accordance with Section 145C of the Environmental Planning and Assessment Act, 1979. Council is taken to have acted in good faith where it acts substantially in accordance with these Guidelines.

The Policy will, together with the Contaminated Land Management Plan (CLMP):

- Restrict the use of land under particular circumstances;
- Determine how information is managed;
- Identify when potential contamination is notified on Section 149 Planning Certificates;
- Outline requirements for remediation;
- Set standards for consultants that report on contaminated land; and
- Define when a Site Audit is required.

2. Applicability

The Policy will apply to all land with respect to the investigation and remediation of land contamination in relation to making planning decisions, keeping and providing relevant information and the monitoring of remediation.

3. Principles

3.1 Restriction of land

Where Council is aware of any past or present potentially contaminating land uses or activities (as described in the CLMP) it will maintain relevant information 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
- That 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:

- Requiring remediation or assessment of land contamination before consent can be granted for any development on that land or before the land can be rezoned; and
- Enforcement of 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.

This Policy relates to those land uses that have a reasonable potential to result in land contamination and which therefore may need to be addressed during development. The list of potentially contaminating land uses and activities are listed in Appendix A.

3.2 Information access and management

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. Information that has not been required to be provided to, or kept by, Council may not be available for any given property at any given time.

Council will hold information in a dedicated information system known as the Contaminated Land Register (the Register). Land will be included on the Register on the basis of past land use. In accordance with the information held, each parcel on the Register will be classified into one of five investigation statuses (Identified, Assessed, Site Management Plan, Suitable for Limited Use or Unrestricted).

Information on the Register may be provided to any person in the form of a Section 149 Planning Certificate in accordance with the Environmental Planning and Assessment Act, 1979 or a person with a valid interest may seek to view:

- Information contained in the Register; and
- Contamination reports held by Council.

However, due to Council's privacy requirements and copyright restrictions (including the legislative requirements of the Government Information (Public Access) Act, 2009 and Privacy and Personal Information Protection Act, 1998), Council may not be able to provide all information it holds.

Information provided on the Section 149 (2) Planning Certificate shall include the restriction on the land as relevant to the investigation status on the Register.

A notice will be placed on the Section 149(5) Planning Certificate where:

- The site is known to be subject to the UPSS regulation as regulated by Council;
- The land has been used for specific purposes listed in Appendix A;
- Council is in possession of contamination assessment reports;
- Council is in possession of a Site Audit Statement;
- Remediation has been approved in accordance with SEPP55; and
- Remediation has been notified in accordance with SEPP55.

Other information pertaining to the Contaminated Land Management Act, 1997 will be provided as required by that Act and the State Environmental Planning Policy (Exempt and Complying Development Codes), 2008.

As a minimum requirement for all development applications and planning proposals, a list of former land uses should be provided to the best of the applicant's knowledge.

3.3 Remediation

To ensure that contamination and remediation can be effectively managed and monitored for the benefit of the community, Council's standards for the conduct of remediation and reporting of contaminated land matters are as detailed below.

Any remediation carried out as Category 2 remediation (carried out without consent, SEPP 55) must:

- Be notified to Council in writing, including all information required by clause 16 of SEPP 55;
- Be accompanied by a copy of the Remediation Action Plan (RAP); and
- Comply with the Conduct of Remediation as detailed in the Contaminated Land Management Plan.

Underground Storage Tanks (USTs) that are not regulated by the Protection of the Environment (Underground Petroleum Storage Systems) (UPSS) Regulation, 2014 must not be removed without validation sampling and laboratory analysis in accordance with appropriate guidelines.

Following any remediation, it is required that:

- 1 A validation report be provided within 30 days of completion of the work (except where legislation or a development consent permits another time period); and
- 2 As specified in Clause 18, SEPP55, a Notice of Completion is provided (which may be incorporated into the Summary Report, as specified in the Contaminated Land Management Plan, if provided with a complete validation report).

3.4 Consultants' Reports

All reports regarding the assessment of site contamination must be prepared by a suitably qualified person and be completed in accordance with the relevant reporting guidelines; currently, the Guidelines for Consultants Reporting on Contaminated Sites, EPA 2011.

All reports must reference Council's Policy and Contaminated Land Management Plan and specifically refer to any conditions for remediation and should not have liability exclusions that prevent Council from relying on the information provided for carrying out its functions including maintaining and sharing information in accordance with this Policy.

Reports provided to Council should contain factual information and avoid subjective opinion, language or analysis that has the potential to mislead Council or a third party to whom the report may be disclosed under Section 149 (5) of the Environmental Planning and Assessment Act.

All reports submitted to Council after 1 April 2017 for the purposes of fulfilling the SEPP55 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.

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 SEPP55.

Site Audits

Under this Policy, a Site Audit Statement will be required 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 to be imposed;
- Council does not accept the consultant's recommendation; or
- Council considers it necessary.

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 Site Management Plan.

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

| 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 |

| Grouping | Potentially contaminating land use | Definition or comments |
|-----------------|--|---|
| | 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 |
| | 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 |

| Grouping | Potentially contaminating land use | Definition or comments |
|-----------------|--|--|
| | 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 | |
| | Mining and extractive industries | Including mineral or ore processing or coal washing etc. |
| | Paper pulp or pulp products industries | |

| Grouping | Potentially contaminating land use | Definition or comments |
|------------------|---|---|
| | 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 | |

| Grouping | Potentially contaminating land use | Definition or comments |
|--------------|--|---|
| | 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 use for illegal waste disposal | |
| | 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 | |