

### 1. Purpose

This purpose of this policy is to provide a guide for the community and practitioners in relation to delivering Council's requirements relating to the use and/or development of land that is or may be contaminated.

### 2. Objectives

This policy relates to Council's responsibility in contaminated land matters as the regulatory authority for land use planning and applies to all land within the Local Government Area (LGA). Council will:

- maintain a register of known contaminated land.
- ensure information provided by the NSW EPA in respect of the EPA Register of Significantly Contaminated Land or information held in Council's register, is noted on any relevant section 10.7(2) Planning Certificate
- ensure probity, accountability and transparency in the way it manages contaminated land
- act in good faith, and to the best of its ability, so that changes of land use will not increase the risk to human health or the environment
- provide information to support decision-making
- comply with the requirements of relevant legislation and guidelines.

### 3. Policy Scope

This policy applies to all land within the Warrumbungle 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 or the modification of a development consent;
  - c. Processing and determination of an application for a complying development certificate; and
  - d. Furnishing of advice in a certificate under Section 10.7; or
2. Where Council is:
  - a. Investigating or remediating illegal dumping and land filling; or
  - b. Administering the *Protection of the Environment Operations (Underground Petroleum Storage Systems) Regulation 2019*.

*Note: the functions described in 2. above are not 'planning functions' to which Council is afforded protection from liability under Schedule 6 of the EP&A Act.*

### 4. Legislation and Associated Documents

<b>ASSOCIATED POLICIES</b>	<ul style="list-style-type: none"> <li>• <i>Warrumbungle Shire Council Compliance and Enforcement Policy</i></li> </ul>
<b>ASSOCIATED LEGISLATION</b>	<ul style="list-style-type: none"> <li>• <i>Environmental Planning and Assessment Act 1979</i></li> <li>• <i>Environment Planning and Assessment Regulation 2021</i></li> </ul>

	<ul style="list-style-type: none"> <li>• <i>National Environmental Protection (Assessment of Site Contamination) Measure 1999</i></li> <li>• <i>Protection of the Environment Operations Act 1997</i></li> <li>• <i>Protection of Environment Operations (Waste) Regulation 2014</i></li> <li>• <i>Protection of the Environment Operations (Underground Petroleum Storage Systems) Regulation 2019</i></li> <li>• <i>State Environmental Planning Policy (Resilience and Hazards) 2021</i></li> <li>• <i>Contaminated Land Management Act 1997</i></li> </ul>
<b>ASSOCIATED DOCUMENTS</b>	<ul style="list-style-type: none"> <li>• <i>Warrumbungle Local Environmental Plan 2013</i></li> <li>• <i>Central NSW Regional Contaminated Land Policy</i></li> <li>• <i>Managing Land Contamination – Planning Guidelines</i></li> </ul>

### 5. Definitions

<b>Term</b>	<b>Definition</b>
category 1 remediation work	remediation work that needs development consent
category 2 remediation work	remediation work that does not need development consent, but Council needs to be notified of
contaminated land	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	concentration of substances above that naturally present that poses, or is likely to pose, an immediate or long-term risk to human health or the environment
remediation work	Includes: (a) preparing a long-term management plan (if any) for the land, and (b) removing, dispersing, destroying, reducing, mitigating or containing the contamination of the land, and (c) eliminating or reducing any hazard arising from the contamination of the land (including by preventing the entry of persons or animals on that land)
Site Audit	An independent review by a site auditor of any or all stages of the site investigation process conducted in accordance with the <i>Contaminated Land Management Act 1997</i>
Site Auditor	A person accredited by the NSW EPA under the <i>Contaminated Land Management Act 1997</i> to conduct site audits
Site Audit Statement	A certificate issued by a Site Auditor stating for what use the land is suitable
suitably qualified person	Means a person who has such competence and experience in relation to the assessment of site contamination as is recognised as appropriate by the contamination land management industry. They will also be, or be reasonably able to be, or supervised under a consultant who is, certified under a contaminated land consultant certification scheme recognised by the NSW EPA.

### 6. Policy Statement

This policy forms the basis for the management of land, which is either contaminated or potentially contaminated with the Warrumbungle Shire.

#### 6.1 The legislative framework

The management of contaminated land is a shared responsibility between the EPA, NSW Planning and Environment, and Council – in very broad terms:

- The EPA, which uses its powers under the *Contaminated Land Management Act 1997* to deal with site contamination that is significant enough to warrant regulation under the Act given the site's current or approved use
- Local councils who deal with contamination under the planning and development framework, including *State Environmental Planning Policy (Resilience and Hazards) 2021* and the *Managing Land Contamination - Planning Guidelines*, on sites which, though contaminated, do not pose an unacceptable risk under their current or approved use. In these cases, the planning and development process determines what remediation is needed to make the land suitable for a different use.

From a legal perspective, Council is taken to have acted in good faith where it acts substantially in accordance with the *Managing Land Contamination - Planning Guidelines* as notified in accordance with Schedule 6, Clause 3 of the *Environmental Planning and Assessment Act, 1979*.

#### 6.2 The decision-making process

When carrying out planning functions under the *Environmental Planning and Assessment Act 1997*, Council must consider the possibility that a previous land use, or an adjoining/nearby land use, has caused contamination of the site; as well as the potential risk to health or the environment from that contamination. The general principle of contamination management under *State Environmental Planning Policy (Resilience and Hazards) 2021*, and the related guidelines, is that a precautionary approach be adopted when exercising a planning function, and that the identification of land contamination issues occurs at an early stage in the planning process in order to prevent harm and reduce delays and costs.

Upon receipt of a development application or planning proposal, relevant staff undertake a review of the application to determine if the land warrants further investigation in relation to contamination. If this review identifies evidence of potential or actual contamination, further assessment of contamination will be conducted.

#### 6.3 Contaminated Land Register

Council will maintain a Contaminated Land Register for land within the LGA.

The register will identify properties known to Council, which have history of contamination, or have been associated with uses that may have resulted in contamination. Council may not

be aware of all properties that have a history of contamination. Private enquiries or investigations into whether land is contaminated or potentially contaminate should be considered. The register will record details of any site remediation or abatement that has been undertaken, validation records, and audits of remediation work as required by the *Managing Land Contamination - Planning Guidelines*. Information regarding individual properties will be recorded in the register. Any enquiries associated with a property should be checked against information contained in the register.

#### 6.4 Restriction of land

Where Council is aware of any past or present potentially contaminating land uses or activities, it will retain any relevant information about the land on which that use or activity occurred or is occurring to ensure:

- 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 (Resilience and Hazards) 2021*

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 the 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 rezoning of the land; and
2. enforcing 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.

#### 6.5 Consultants reports

All reports regarding the assessment of site contamination must be prepared or reviewed and approved by a suitably qualified consultant and be completed in accordance with the relevant reporting guidelines stipulated by the NSW EPA.

#### 6.6 Site Audits and third-party consultant reports

A Site Audit is an independent review of a contaminated land consultant's work by a Site Auditor accredited by the EPA under the *Contaminated Land Management Act 1997*.

A Site Audit Statement is issued when it is determined by the Site Auditor that the land is suitable for specified uses based on the extent of the contamination and the appropriateness of the investigation/remedial action, and environmental management plan.

A Site Auditor must be an independent third-party, and is not permitted to be in partnership with, or employed by, the same person or company carrying out the contaminated site investigation. Council officers may request a Site Audit Report and/or a Site Audit Statement, during the development application and planning proposal assessment process.

A third-party review, is an independent review of contamination related documentation by a competent and qualified contamination consultant. Council officers may request, or commission, a third-party review of contamination related documentation at any stage of the remediation process, or otherwise as needed.

The Site Audit Report and/or third-party review report, shall be reviewed by Council staff for compliance with Council's requirements concerning contaminated land. If the documents do not meet Council's requirements, the author may be requested for further information or an additional report.

#### **6.7 Site Management Plan**

A Site Management Plan is required when contamination is to remain onsite. The Site Management Plan is to 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 a Site Management Plan, 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.

#### **6.8 Contaminated land investigation threshold**

The contaminated land investigation thresholds applied by Council are consistent with the Health-based Investigation Levels prescribed in the National Environment Protection (Assessment of Site Contamination) Measure 1999; this document prescribes acceptable thresholds for a range of contaminants and land uses.

#### **6.9 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 (Resilience and Hazards) 2021*. Category 1 remediation requires development consent from Council and Category 2 does not.

*State Environmental Planning Policy (Resilience and Hazards) 2021* 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 prior to works commencing.

### **6.10 Maintaining a record of remediation work**

*State Environmental Planning Policy (Resilience and Hazards) 2021* requires the relevant consent authority be notified prior to, and at the completion of, remediation work. This notification is required regardless of whether or not consent is required. This information will be recorded in the Contaminated Land Register.

### **6.11 Duty to report contamination**

The duty to report contamination to the EPA is a requirement under the *Contaminated Land Management Act 1997*. The following parties are required to report contamination as soon as practical after they become aware of any contamination that meets the triggers for the duty to report:

- Anyone whose activities have contaminated land
- An owner of land that has been contaminated.

It should be noted that although the above parties have the duty to report contamination, anyone can, at any time, report suspected contamination to the EPA.

Where Council considers contamination on a site triggers that duty to report under the *Contaminated Land Management Act 1997*, and it is not clear if the polluter or site owner has reported the contamination, Council will notify the EPA for further action. Guidelines on reporting contamination under section 60 of the *Contaminated Land Management Act 1997* can be found on the EPA website.

### **6.12 Section 10.7 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.

## **7. Responsibilities**

The Manager Planning and Regulation will hold responsibility over this policy.

## **8. Getting Help**

The staff member/s who can assist with enquiries about the policy:

Position: Manager Planning and Regulation, Town Planner and Environment Compliance Officer

Department: Environment and Development Services

### 9. Version Control

<b>DEPARTMENT</b>	<b>ENVIRONMENT AND DEVELOPMENT</b>		
<b>RESPONSIBILITY</b>	MANAGER PLANNING AND REGULATION		
<b>VERSION CONTROL</b>			
<b>Policy Name</b>	<b>Id No and Version</b>	<b>Resolution</b>	<b>Date Adopted</b>
Contaminated Land Policy	1	278/1415	19/03/2015
Contaminated Land Policy	2	Reviewed	01/04/2016
Contaminated Land Policy	3	224/1617	16/03/2017
Contaminated Land Policy	4	26/2324	20/07/2023
<b>Next Review Date</b>	By September 2025		