



**Armidale Dumaresq
Development Control Plan 2012**

Section 2 Site Analysis and General Controls

Chapter 2.5 Contaminated Land

Contact Details

Armidale Dumaresq Council

135 Rusden Street, Armidale

New South Wales 2350

Telephone +61 2 6770 3600

Email council@armidale.nsw.gov.au

Part 1	General Provisions	1
1.1	Introduction.....	1
1.2	Objectives	1
1.3	Land to which this chapter applies.....	1
1.4	Addressing the guidelines of this chapter	1
1.5	Relevant legislation and guidelines	1
1.6	State government planning guidelines.....	1
Part 2	State Environmental Planning Policy (SEPP) No. 55 - Remediation of Land - Requirements for Category 2 Work.....	2
Part 3	Rezoning or development on contaminated or potentially contaminated land	2
3.1	Rezoning requests, development applications and remediation proposals	2
3.2	Development proposals and changes of use.....	2
3.3	Conditions of Consent	3
Part 4	Consultant reports on individual sites – minimum requirements for consultant competency	3
Part 5	Council Information System – identification of contaminated or potentially contaminated land.....	4
5.1	Objective and purpose	4
5.2	Legislative basis for the information system.....	4
5.3	Basis for inclusion of properties in the information system	5
5.4	Maintenance and amendment of the information system.....	5
5.5	Removal of properties from information system.....	6
5.6	Duty to disclose information on contamination	6
Part 6	Responses to request for information.....	6
6.1	Information available to all enquirers	6
6.2	Information available to property owners or their agents	6
6.3	Other enquiries - certificates under Section 149, EP&A Act	6
Part 7	Audit and review reports and the NSW Site Auditor Scheme	8

Part 1 General Provisions

1.1 Introduction

This chapter outlines the required approach to identifying and managing land that is identified as contaminated, or which may be potentially contaminated, as a result of existing or previous site conditions and/or land uses.

1.2 Objectives

The objectives of this chapter are:

- O.1 To fulfil Council's legal obligations and its duty of care to citizens by ensuring that land use changes will not increase the risk to human health or to the environment.
- O.2 To minimise the potential for adverse social and economic consequences which may arise from a failure to identify and respond to issues of potential or actual contamination.
- O.3 To provide effective risk management for Council and the community by reference to the law, industry best practice literature and protocols.

1.3 Land to which this chapter applies

This chapter applies to land in the Armidale Dumaresq local government area.

1.4 Addressing the guidelines of this chapter

The guidelines for managing contaminated and potentially contaminated land are set out in this chapter. These are expressed in the form of objectives which need to be addressed for each development proposal. Alternative approaches may be proposed, provided these adequately address the relevant objectives and comply with legislation.

1.5 Relevant legislation and guidelines

Council and the community are subject to relevant State legislation and guidelines in relation to contamination issues, in particular:

- a) *Environmental Planning and Assessment (EP&A) Act 1979*;
- b) *Contaminated Land Management Act 1997*;
- c) *State Environmental Planning Policy (SEPP) No 55 - Remediation of Land*;
- d) *Managing Land Contamination Planning Guidelines SEPP 55 – Remediation of Land* administered/issued by the NSW Department of Planning and Infrastructure (DP&I) for the purposes of s.145C of the *EP&A Act 1979* ('the State planning guidelines');
- e) *Guidelines for Consultants Reporting on Contaminated Sites* - administered/issued by the NSW Environment Protection Authority (EPA);
- f) *Guidelines for the NSW Site Auditor Scheme and other technical guides* - administered by the EPA (see <http://www.environment.nsw.gov.au/clm/guidelines.htm>).

1.6 State government planning guidelines

The current *Managing Land Contamination Planning Guidelines SEPP 55 – Remediation of Land (the Guidelines)* cover key issues for NSW Councils' involvement in land use planning, development and the provision of technical and property advice to the public, including:

- a) identification of contaminated or potentially contaminated land;
- b) recording and use of such information;

- c) a consistent basis for planning responses in relation to contaminated or potentially contaminated land, including rezoning of land, and decision-making processes for development control and land remediation;
- d) preventing future contamination.

This chapter contains additional information in relation to contaminated or potentially contaminated land issues in Armidale Dumaresq that is to be considered together with the State planning guidelines.

Part 2 State Environmental Planning Policy (SEPP) No. 55 - Remediation of Land - Requirements for Category 2 Work

SEPP 55 provides a State-wide approach to the remediation of Contaminated Land, and in particular specifies where Development Consent may be required for remediation work (Category 1 work).

In many instances remediation work may be relatively minor in its extent and undertaken separately from other, related, development activity. In such cases, and provided the site is not environmentally sensitive, no consent will be required under the SEPP (Category 2 work). In such cases the proponent must still give Council at least 30 days' written notice of the intention to carry out remediation. The work must, as a minimum, be undertaken in accordance with the State planning guidelines.

Where this is not the case, Clause 9(f) of SEPP 55 would require Council to treat the matter as a Category 1 Remediation Work and require the submission of a Development Application for the proposed work. Notice of completion of Category 1 work is required under Clause 18 of the SEPP.

Where Category 2 work is completed, Council requires a similar confirmation to be supplied by the responsible Consultant so that, where required, the amendment of the Council Information System of Contaminated or Potentially Contaminated Land may be undertaken.

For further details in relation to Category 1 and 2 works, SEPP 55 should be consulted. A copy of the SEPP is available at www.legislation.nsw.gov.au

Part 3 Rezoning or development on contaminated or potentially contaminated land

3.1 Rezoning requests, development applications and remediation proposals

Council will follow the process outlined in the State planning guidelines and SEPP No 55 – Remediation of Land in relation to the assessment of rezoning requests, Development Applications and remediation proposals (Category 1 work).

A distinction is to be drawn between major, area wide rezonings or forward planning exercises where detailed investigation may be impractical in advance of site specific development proposals, and 'spot' rezonings where land should normally be proven suitable for its intended use.

For further information, see Part 4 of the State planning guidelines and also State Environment Planning Policy No 55 – Remediation of Land.

3.2 Development proposals and changes of use

Council decisions on development control matters are operational decisions where a significant duty of care applies. In each case, staff involved in assessments will consult:

- Council's Information System in relation to the site or adjacent sites where the potential may exist for off-site migration of contaminants;
- Council property file records;
- Information supplied by applicants or property owners;
- The list of 'Potentially Contaminating Activities' in the State planning guidelines.

- and, if there is an identified potential for contamination:
- The list of potential contaminants for different land uses in Appendix A of the State planning guidelines. This can then inform the required investigation and reporting process dealt with in Part 3.5 of those guidelines.

If there is no basis to conclude that contamination may be a concern, the assessment may proceed. If, however, potential for contamination is identified, an investigation will be required before the determination of an Application to establish that the site is suitable, or can readily be made so, for its intended use in terms of the potential risk to human health and/or the environment.

For further information, see Part 4.3 of the State planning guidelines.

3.3 Conditions of Consent

Where potential contamination has been identified, Council will need to be satisfied that the site has been investigated to establish its suitability for a proposed use, either with or without remediation. If any agreed remediation and related validation work has not been undertaken before determination of an Application, Council will require this to be done as a condition of Development Consent before other work commences on the land or before occupation commences, as appropriate.

An outline of conditions dealing with required remediation work is set out in Appendix C of the State planning guidelines and will be considered as necessary in individual cases. Proposed actions to ensure that remediation is carried out without risk or undue disturbance to neighbouring property owners should be contained in remediation action plans submitted by or on behalf of developers.

Part 4 Consultant reports on individual sites – minimum requirements for consultant competency

Council staff do not hold suitable qualifications to carry out scientific investigations of contaminated or potentially contaminated land. Council requires that Category 2 work is undertaken in accordance with a proposal developed by a competent Consultant and the current EPA *Guidelines for Consultants Reporting on Contaminated Sites*.

Consultants undertaking investigations and providing reports to Council in relation to contaminated (or potentially contaminated) land must certify and provide details of qualifications and experience against the following:

- a) Demonstrated experience and expertise in the following:
 - i) Contaminated land assessment.
 - ii) Soil sampling, design and methodology.
 - iii) Groundwater sampling, design and methodology.
 - iv) Interpretation of analytical data.
 - v) Quality control/assurance procedures.
 - vi) Assessment of contaminant exposure pathways and risks.
- b) Demonstrated understanding of the impact of contaminated land on the environment, public and workplace health and safety.
- c) Demonstrated understanding of NSW legislation relating to contaminated sites and environmental protection, and in particular, a good understanding of the current State planning guidelines regarding contaminated land.
- d) Demonstrated relevant expertise in the following areas:
 - i) Geotechnology/hydrogeology.
 - ii) Environmental chemistry.
 - iii) Soil science.

- iv) Ecotoxicology.
 - v) Contaminant transport and exposure assessment.
 - vi) Sampling and analysis.
 - vii) Risk evaluation, and
 - viii) Remedial technologies and associated requirements.
- e) Provide evidence of full membership in an appropriate professional organisation, such as the Australian Contaminated Land Consultants' Association.
- f) Evidence of an ability to conduct contaminated land investigations and validations or associated reviews or audits in a logical fashion and able to critically review information and compile reports of a high scientific/engineering standard for contaminated land assessments.
- g) CVs for key project personnel (Project Director, Project Manager) and evidence that the individual approving issue of any report to Council is appropriately experienced and qualified, and has reviewed the report.
- h) Evidence in the form of a certificate of currency for professional indemnity and public liability insurance, for \$5 and 10 Million coverage respectively, or such amount as may be advised from time to time by Council's Insurance Officer or by reference in the case of professional indemnity insurance to the NSW Government's current Guidelines under its Site Auditor Scheme pursuant to the Contaminated Land Management Act 1997.

The submission of reports by Consultants meeting the above criteria does not remove the requirement for Council staff to consider these submissions and ensure that they address relevant issues for each case. A fundamental requirement is that information provided by Consultants should be in accordance with current EPA guidelines for consultants reporting on contaminated land and / or site auditors.

In some cases, an independent audit or review of consultant work may be required by Council, as outlined in Part 7 below.

Part 5 Council Information System – identification of contaminated or potentially contaminated land

Council's information systems (the Information System) record information for contaminated or potentially contaminated land. The Information System has been prepared to assist Council officers in addressing the issue of land contamination in land use planning and development matters and in providing information to the public, specifically through the provision of certificates under Section 149 of the EP&A Act. Given the sensitive nature of this subject and potential legal liabilities, it is important that any such information is prepared and used in good faith and with due diligence.

5.1 Objective and purpose

The Information System (hosted on Council's 'Pathway' software) has been prepared to assist Council officers in addressing the issue of land contamination in land use planning and development matters and in providing information to the public, specifically through the provision of planning certificates for conveyancing purposes, under Section 149 of the EP&A Act.

5.2 Legislative basis for the information system

The Information System has been prepared having regard to the State planning guidelines but also Council's State of the Environment reporting obligations under Section 428A of the Local Government Act 1993. The production and intended use of the Information System is also consistent with the Council's Charter, set out in Section 8 of that Act, and the objects in Section 5(a) of the EP&A Act.

5.3 Basis for inclusion of properties in the information system

The majority of land recorded in the Information System has not been specifically assessed to determine the actual existence of contamination, but rather included to identify that further investigation is appropriate in connection with development proposals, as a result of information of which Council is aware in relation to current or former land uses. Properties where Council is not (as yet) aware of any history of potentially contaminating land uses are not included in the Information System.

Development of the Information System has involved consideration of the schedule of 'Activities that may cause Contamination' in Table 1 (Part 3.2.1) of the State planning guidelines and consultation with current and former staff of the Council. Council has also consulted with Government Departments, including the Public Health Unit of NSW Health in Tamworth, the NSW Environment Protection Authority, Rural Lands Protection Board (now LHPA) and NSW Department of Primary Industries. Finally, Council has consulted confidentially with the owners of individual properties identified in the Information System about its purpose and intended use.

Historic aerial photographs of Armidale, topographic maps and some of Council's property file records have also been used in the compilation of the Information System.

Because of resource constraints, an exhaustive review of all Council's property records and archives has not been carried out in connection with the development of the Information System. However, files accessed in connection with relevant land use and development activity (including related correspondence and processing of development applications) are routinely reviewed for any relevant file history. Likewise, where such enquiries occur in relation to sites known to be contaminated, or with reasonable potential for contamination having regard to Table 1 of the State planning guidelines, relevant documentary records will be consulted for use in connection with the enquiry.

The list of sites in the Information System has been prepared in good faith in the interests of responsible planning for the area and will be used as a first point of reference by Council staff. However, the Information System is not necessarily comprehensive or definitive and does not claim to deal thoroughly with the issue of contamination of properties adjacent to those listed. It should therefore be viewed as one starting point for more detailed investigations and will necessarily evolve as more information comes to hand from third parties or from detailed investigations of particular sites - for example, in connection with a specific Development Application.

Likewise, inclusion of a property on the list does not necessarily imply the actual existence of contamination on the property. This can only be determined as a result of a sampling and analysis program carried out in accordance with appropriate protocols, depending on the expected nature of contamination (see Bibliography of the State planning guidelines and current internet resources provided by the DP&I and EPA).

The Information System makes provision for notations in relation to investigations and remediation activities carried out for individual properties (see Maintenance and Amendment of the Information System, below). This will enable staff to identify land which has been fully remediated or remediated for specific land uses only.

A limited number of properties listed in the Information System are subject to legal notices under legislation administered by the EPA. Further information on such properties of which Council has been made aware has been provided through Council's State of the Environment reporting. However, the public should always consult with the EPA for up-to-date information on any such land within Armidale Dumaresq.

5.4 Maintenance and amendment of the information system

The Council's Information System is maintained on a computer database. Authorised officers may amend the Information System over time having regard to additional information which may be

received by Council, including consents granted for potentially contaminating uses, and the DP&I Guidelines. Where sites are added to the Information System, the affected landowners are to be notified in writing. The Information System is also linked to a computer-based Geographic Information System.

Council officers may become aware of sites which should be added to or removed from the current list through routine applications assessment, checking site history through file records, or as a result of submissions received. In addition, Council's standard Development Application form includes a question as to whether the applicant is aware of any activities on the subject land which may have led to soil contamination.

5.5 Removal of properties from information system

Any alterations and date(s) thereof will be recorded in the Information System for future reference. If any person is concerned about the inclusion or omission of a site on Council's Information System they should be advised to discuss the matter in the first instance with Council's environmental planning staff.

5.6 Duty to disclose information on contamination

Section 60 of the Contaminated Land Management Act 1997 places a duty on owners of land or persons who have caused contamination to notify the EPA in writing if they become aware of any contamination of land. If concerns are justified, Council would expect to be notified by the EPA so that the need for amendment to the Council's Information System can be considered.

Part 6 Responses to request for information

Council's Policy in relation to public access to information from the Information System is set out below. This section of the Policy has been prepared having regard to Part 5 of the State planning guidelines and from legal advice provided to Council.

6.1 Information available to all enquirers

Details of sites subject to notices and orders under the Contaminated Land Management Act 1997 and related previous legislation can be provided to any enquirer as a matter of public record (see also <http://www.environment.nsw.gov.au/prclmapp/searchregister.aspx>). Further, contaminated land reports submitted in connection with development applications are 'open access information' under the Government Information (Public Access) Regulation 2009 and must be made available for perusal on request.

6.2 Information available to property owners or their agents

Property owners, or persons authorised by the owners in writing, may be provided with information from the Information System, if there is any, in relation to their own property. In any case, owners of properties identified in the Information System should be aware of their use from previous correspondence or information provided in planning certificates under Section 149 of the EP&A Act, in relation to subsequent property transactions.

6.3 Other enquiries - certificates under Section 149, EP&A Act

All other enquiries in relation to potentially contaminated land should be dealt with through the property enquiry system under Section 149 of the EP&A Act. Responses in relation to these certificates are set out below:

- a) The answer on 149(2) certificates relating to Council's adoption of any policy in relation to 'risk' matters in land development (ref. Schedule 4, Item 7(a) of the Environmental Planning

and Assessment Regulation 2000) is to be as follows, except where the site is identified in the Information System (see below):

'Council has adopted by resolution a Policy on Contaminated Land which may restrict the development of the land. The Policy is implemented when zoning, development or land use changes are proposed on lands which have been used for certain purposes. Council records do not have sufficient information about previous uses of this land to determine whether the land is contaminated. Consideration of Council's adopted Policy and the application of provisions under relevant State legislation is warranted.'

- b) Where a site is potentially contaminated because of former land uses and so identified in Council's Information System, the answer to Question 7(a) on 149(2) Certificates relating to Council's adoption of any policy in relation to 'risk' matters in land development (ref. Schedule 4, Item 7 of the Environmental Planning and Assessment Regulation 2000) is to be as follows:

'Council has adopted by resolution a Chapter in Development Control Plan 2007 on contaminated land. This may restrict the development of the land. The relevant policy is triggered when zoning, development or land use changes are proposed on lands which have been remediated for a specific use only. Consideration of Council's adopted DCP and the application of provisions under relevant State legislation is warranted.'

Note: Council can supply additional information from its records for this site in response to a request for a certificate under s.149(5) of the Environmental Planning and Assessment Act 1979. Such advice is provided in good faith and Council does not incur liability for advice so given.'

- c) The answer on 149(2) Certificates relating to the following matters prescribed by the Contaminated Land Management Act 1997 will be dependent on the information for any relevant sites held by Council:
- *that the land to which the certificate relates is significantly contaminated land within the meaning of that Act—if the land (or part of the land) is significantly contaminated land at the date when the certificate is issued;*
 - *that the land to which the certificate relates is subject to a management order within the meaning of that Act - if it is subject to such an order at the date when the certificate is issued);*
 - *that the land to which the certificate relates is the subject of an approved voluntary management proposal within the meaning of that Act - if it is the subject of such an approved proposal at the date when the certificate is issued);*
 - *that the land to which the certificate relates is subject to an ongoing maintenance order within the meaning of that Act—if it is subject to such an order at the date when the certificate is issued;*
 - *that the land to which the certificate relates is the subject of a site audit statement within the meaning of that Act - if a copy of such a statement has been provided at any time to the local authority issuing the certificate.*
- d) Responses in relation to Applications for Section 149(5) Certificates should include information as follows:
- i) where a site is listed in Council's Information System as potentially contaminated, include information from the system and related records as follows:
- Relevant site history in relation to potential contamination from Council's property file or other relevant records.
 - Investigations undertaken, testing results and remediation works carried out,

together with information on site suitability for future uses.

- Partial remediation where the site is still above threshold levels of suitability for certain uses.

Part 7 Audit and review reports and the NSW Site Auditor Scheme

The issue of independent review of consultant investigations and remediation programs is discussed in the State planning guidelines.

With the introduction of the Contaminated Land Management Act 1997, provision was made by the Government for an independent review of site investigation processes by 'site auditors'. These are consultant specialists accredited under the NSW Site Auditor Scheme administered by the EPA. The EPA maintains a list of consultants who are currently accredited for the purposes of independent audits of consultant investigation of contaminated sites, and relevant information, including guidelines for auditors, is available from that Authority.

While a rigorous system of State or national consultant accreditation and appropriate protocols on this issue could limit the need for independent validation by another consultant, under the current system in NSW Council will require independent reviews or formal audits by EPA accredited consultants of local investigations, remediation and validation, where:

- a) Council has reasonable grounds to believe that information provided by an owner's or developer's consultant is incomplete or incorrect, or
- b) Contamination is extensive or complex in its nature, or
- c) Council does not have the internal resources to conduct its own internal review of the material supplied by an owner's or developer's consultant, or
- d) Council wishes to verify that information or conclusions as to suitability of sites for future uses provided by an owner's or developer's consultant adhere to appropriate standards, procedures and guidelines.

In some cases, a site audit by an accredited person is required under the Contaminated Land Management Act 1997.

In cases where a formal site audit is required by Council, that site auditor is to be selected by the developer or landowner from the current EPA list and engaged by Council. The consultant shall report directly to Council although costs will be borne by the applicant/developer.

In addition, the auditor shall, prior to engagement, submit to Council:

- a) Written acknowledgment that the reviewer / auditor will provide a service for Council (as opposed to the site owner, applicant or developer) and is to report direct to Council Staff as part of the undertaking; and

A written undertaking to the effect that the reviewer / auditor, or his/her firm has no commercial or other connection to the applicant/developer or site owner.