



## NAMBUCCA SHIRE COUNCIL

### CONTAMINATED LAND POLICY NO: DE 10

#### *Our Vision*

Nambucca Valley ~ Living at its best

#### *Our Mission Statement*

'The Nambucca Valley will value and protect its natural environment, maintain its assets and infrastructure and develop opportunities for its people.'

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#### History

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This Model Contaminated Land Policy has been prepared for members of the Mid North Coast Regional Organisation of Councils (MIDROC) as part of the MIDROC Contaminated Land Program. This program has been assisted by the New South Wales Government through the NSW Environmental Protection Authorities (EPA) Contaminated Land Management Program under funding provided by the NSW Environmental Trust.

**Produced by**

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**Acknowledgments**

## FOREWORD

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MIDROC recognises that the appropriate assessment and management of contaminated land matters is an important function of local government. The MIDROC Contaminated Land Program has been developed to provide MIDROC members with the technical training and resources needed to appropriately respond to these issues.

This Model Contaminated Land Policy (the 'Policy') forms part of a suite of regional contaminated land management resources and tools. This Policy outlines the Councils commitments and practices used in dealing with land contamination matters.

This policy has been developed in consultation with relevant staff from each of the MIDROC member Councils, with oversight and support from the General Managers Advisory Committee to MIDROC.

## COUNCIL DISCLAIMER

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Whilst every effort has been made to ensure the accuracy of the information in this publication, Nambucca Shire Council disclaims any liability to any person in respect of anything done or not done as a result of the contents of these Policy Guidelines.

The Policy Guidelines should be read in conjunction with relevant legislation, guidelines and codes of practice. Where inconsistencies exist the most recent legislation should prevail.

These Policy Guidelines do not constitute legal advice and should not be relied on. Legal advice should be sought in relation to particular circumstances, and liability will not be accepted by Nambucca Shire Council for losses incurred or damage suffered as a result of reliance on these Policy Guidelines.

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# 1. INTRODUCTION

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## 1.1. PURPOSE

Land contamination stemming from the improper use and storage of hazardous substances can leave a broad range of complex and lasting impacts on the land. Contamination and its effects can often remain unnoticed within the environment for long periods of time, and can have serious implications on a sites ability to sustain healthy ecosystems and communities. In dealing with this issue it is important that Planning Authorities and land managers consider contamination and its potential impacts on the ways that land can be used.

In New South Wales the EPA and local government preform various key roles in dealing with contaminated lands matters. The role of the EPA is to regulate and enforce management action on sites where contamination is considered significant. Local government on the other hand manage contamination whilst performing duties as a planning authority, public land manager and as regulatory authority.

This Policy provides a framework through which Council will manage land contamination within the Local Government Area. The Nambucca Shire Council Contaminated Land Policy defines the principles that Nambucca Shire Council are committed to upholding when performing Council functions. This Policy observes a cautionary approach and promotes processes that ensure land contamination is identified and dealt with at the earliest possible opportunity whilst carrying out planning, regulatory and land management activities.

Under section 145B of the NSW *Environmental Planning and Assessment Act 1979 (EP&A Act)*, Council are provided with exemptions of liability for planning decisions made in 'good faith'. To qualify for this good faith status the Act requires that Council act substantially in accordance with 'Managing Land Contamination - Planning Guidelines (Planning Guidelines)'. This Policy has been developed in accordance with the Planning Guidelines and its requirements.

## 1.2. POLICY SCOPE

This Policy applies to all land within the Nambucca Shire Council Local Government Area.

The content of this Policy is relevant to:

- Local government staff
- Contaminated land management practitioners
- Property developers
- Land managers
- The general public

This Policy does not provide procedural guidance on how to satisfy policy statements. Additional information on suitable approaches, procedures and considerations for implementing policy statements can be found in:

- Nambucca Shire Council Contaminated Land Policy Guidelines
- Nambucca Shire Council Asbestos Management Plan
- Other relevant legislation, guidelines and codes of practices including but not limited to those listed under Appendix C – Contaminated Land Planning and Legislative Framework

## 2. INTERPRETATION

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Terms used in this Policy are as they are defined in the relevant legislation.

Abbreviations provided in Appendix A.

Definitions provided in Appendix B.

## 3. STATUTORY FRAMEWORK

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Key documents that make up the contaminated land planning and legislative framework are:

- *Environmental Planning and Assessment Act 1979*
- *Contaminated Land Management Act 1997*
- *Protection of Environmental Operations Act 1997(POEO Act)*
- State Environmental Planning Policy No 55 – Remediation of Lands(SEPP 55)
- Managing Land Contamination - Planning Guidelines (Planning Guidelines)

A more detailed review of the framework and its effects can be found in Appendix C.

## 4. POLICY OBJECTIVES

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The objectives of this policy include:

- To ensure that contamination is being appropriately considered and dealt with at the earliest possible stage whilst carrying out Council regulatory, land management, or planning activities
- To provide a contaminated land policy framework that follows the practices and standards of relevant legislation(s), guidelines and codes
- To facilitate an approach to assessing and dealing with contaminated land issues that is regionally consistent and cooperative
- To ensure Council maintains suitable contaminated land information management systems and provides the community and stakeholders with reliable information on contamination where applicable
- To ensure contamination is appropriately considered prior to approving changes to land uses
- To avoid placing inappropriate restrictions on land uses due to land contamination

## 5. POLICY STATEMENT

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### 5.1. Local Government Commitment to Dealing With Land Contamination

Council will consider and respond to the presence of land contamination in all instances where it is the appropriate:

- Planning Authority
- Regulatory Authority
- Public lands/assets manager

When performing these roles, Council will adhere to the requirements of this Policy and the Policy Guidelines in addition to the requirements of applicable legislation, guidelines and standards (see Appendix C).

## 5.2. Executing Councils Planning Decision Making Processes

Whilst performing roles as a planning authority Council will ensure that land contamination is being appropriately considered, identified, assessed and managed in accordance with the requirements of this Policy and the Policy Guidelines. In instances where the Policy and Policy Guidelines do not apply, a review of applicable legislation, guidelines and standards should be undertaken by Council.

In its function as a Planning Authority Council will:

- Consider the likelihood of land contamination as early as possible in the planning and development control process
- Link decisions about the development of land with the information available about contamination possibilities
- Adopt a policy approach that will provide strategic and statutory planning options based on the information about contamination
- Exercise statutory planning functions with a reasonable standard of care

If contamination status of land is unknown, no change in use should occur which may increase the risk of harm until the land has been investigated. If contamination causes an unacceptable risk of harm, the use of the land should be restricted to reduce the risk to accepted levels.

## 5.3. Initial Evaluation by Planning Authority

An initial evaluation of contamination is performed by Council to assess whether contamination may be an issue at a site and if sufficient information is available to carry out a planning function in good faith. Council will perform an initial evaluation of contamination, in the first possible instance, when assessing the suitability of a planning proposals and development applications. This internal evaluation should be performed in accordance with the objectives and processes outlined in the Policy Guidelines as well as the Managing Land Contamination Planning Guidelines.

Further information on the initial evaluation process is provided in Section 5.3 of the Policy Guidelines.

## 5.4. Review of Environmental Factors (REF)

Where undertaking or reviewing environmental assessments performed under Part 5 of the *EP&A Act*, Council will ensure that contamination is being appropriately assessed and managed. If contamination has the potential to be a factor at a site that is the subject of an REF then further investigations and management processes should be carried out in accordance with this Policy and the Policy Guidelines. *See Figure 1 and Figure 2 of the Policy Guidelines for site assessment and management processes.*

## 5.5. Preliminary Investigation

Stage 1 – Preliminary Investigations are undertaken to identify any past or present potentially contaminating activities performed at a site, provide a preliminary assessment of any site contamination and, if required, provide a basis for a more Detailed Investigation. This stage of a site assessment must be undertaken by a 'suitably qualified and experienced contaminated land practitioner' (see Section 5.12 and 5.13).

Prior to exercising a planning function Council may request a Preliminary Investigation Report be provided by the proponent in instances where:

- Past land uses have the potential to have caused site contamination (refer to Appendix D)
- Site records do not outline a clear or complete site history
- Gaps exist in knowledge of past land uses
- Site history information provided by the applicant is not reliable or verifiable
- Land surrounding the site has the potential to be contaminated

- The site is within 50m of underground storage tank(s) or below ground infrastructure used for storing hazardous substances i.e. petroleum products or chemicals

Further information on the Preliminary Investigation stage is provided in Section 5.4 of the Policy Guidelines.

### **5.6. Detailed Investigation**

Stage 2 - Detailed Investigations are undertaken to identify the nature, extent and degree of contamination at a site that is known or suspected of being contaminated. This is a highly technical phase of the site assessment process and must only be performed by a 'suitably qualified and experienced contaminated land practitioner' (see Section 5.12 and 5.13).

Prior to exercising a planning function Council may request a Detailed Investigation Report be provided by the proponent in instances where:

- Indications of contamination have been acknowledged in a Preliminary Investigation
- Contamination has been previously identified on the site during a site assessment
- Pathways exist between the site and a known source of contamination (i.e. surface or groundwater)
- Contamination is considered to occur at the site and a Preliminary Investigation is deemed not necessary
- Changes to land uses may increase exposure of the community or the environment to hazardous contaminants (eg a proposed land-use change from industrial land use to residential land use)
- To accompany a remediation proposal that requires Development Consent

Further information on the Detailed Investigation stage is outlined in Section 5.5 of the Policy Guidelines.

### **5.7. Remedial Action Plan (RAP)**

In instances where remedial actions are required to make a site suitable for its current or intended uses, a RAP may be required by Council. A RAP outlines the objectives and methods that a contaminated land practitioner intends to employ when remediating a site to a suitable standard. This plan can only be developed by a 'suitably qualified and experienced contaminated land practitioner' (see Section 5.12 and 5.13).

Council shall request that a RAP be provided by the proponent in instance where:

- Contamination has been identified during a site assessment and remedial actions are required to make the site suitable for any proposed or approved land uses
- The remediation works are considered Category 1 Remediation works (see clause 5.11 below)
- The remediation works are being undertaken in preparation for a future Development Application or Planning Proposal

Further information on Remedial Action Plans are provided in Section 5.6 of the Policy Guidelines.

### **5.8. Site Validation**

Where remedial actions have been carried out under the guidance of a RAP a validation assessment must be undertaken to confirm whether the objectives of the RAP have been achieved. If the remedial targets have not been achieved the Validation Report must explain why and outline any additional works required to satisfy the requirements of the RAP. This assessment must only be undertaken by a 'suitably qualified and experienced contaminated land practitioner' (see Section 5.12 and 5.13).

Further information on Validation Reports are outlined in the Section 5.7 of the Policy Guidelines.

### 5.9. Ongoing Site Monitoring

Ongoing Site Monitoring Plans are created in circumstances where contamination may not be suitable for remediation or is to be controlled on site.

Council shall request an Ongoing Site Monitoring Plan be provided for its consideration in instances where:

- A full clean-up of a site is not feasible
- Contamination is to be contained on the site

This plan must only be developed by a 'suitably qualified and experienced contaminated land professional' (as outlined in Section 6.11).

Further information on Ongoing Site Monitoring Plans are outlined in Section 5.8 of the Policy Guidelines.

### 5.10. Site Audit

A Site Audit is an independent review of any or all stages of the site investigation processes conducted in accordance with the CLM Act and associated EPA Guidelines. Site Audits are only to be performed by auditors accredited under the EPA administered Site Auditors Scheme. Council may request a Site Audit where:

- It is believed that the information provided by the proponent is incorrect or incomplete
- Verification is required to confirm that information provided by the proponent adheres to appropriate standards, procedures and guidelines
- Council does not have the internal resources or expertise needed to conduct its own technical review
- Land use is proposed to change to a more sensitive land use (for example, rezoning commercial to residential)

In circumstances where an audit may not be necessary, Council may request that a formal review be conducted on a contaminated land practitioner's reports, works and/or advice by another suitably qualified practitioner. See Section 6 of Policy Guidelines for further information on Site Audits.

### 5.11. Remediation of lands

SEPP 55 sets contaminated land remediation works into two key categories to help ensure that works are performed in an appropriate and responsible manner. In instances where a proposed remedial activity is classed as Category 1 works, consent must be sought from a consent authority such as Council. Remedial activities that are classed as Category 2 do not require consent from a consent authority, however certain information must be provided to Council on their nature and scope prior to them being performed (see Clause 16-18 of SEPP 55 for further information).

Note: If remediation has reduced all risks to human health and the environment to an acceptable level, no restriction on land use will be placed on the site.

#### Category 1 – Remediation Works

Category 1 remediation works are works that require planning consent due to their scope, type or potential impacts that they can pose on the community and/or environment. SEPP 55 outlines Category 1 works as works that:

- Form part of designated development
- Are to be conducted on land declared to be a critical habitat
- Are likely to have a significant effect on a critical habitat or a threatened species, population or ecological community
- Are associated with development for which another SEPP or a regional environmental plan requires development consent

- Are to be carried out in an area classified under Clause 9(e) of SEPP 55

In accordance with the provision of Clause 9(f) of SEPP 55, Council requires all Category 1 works to be performed in line with applicable Council policy, including where:

- Restrictions are placed on the hours of operation for work
- Restrictions are placed on the vehicle routes that can be used when performing work
- Restrictions are placed on parking
- Restrictions are placed on the disposal of contaminated spoil removed from remediated land

#### Category 2 – Remediation Works

Category 2 remediation works are all remediation works that are not classified as Category 1 under Clause 9 of SEPP 55 or works identified in this Council Contaminated Land Policy.

Person undertaking Category 2 remediation works must act in accordance with SEPP 55 which requires the proponent to:

- Notify Council of the commencement of works 30 days prior to their commencement
- In accordance with Clause 16(3) of SEPP 55 provide detail on the site and works to be undertaken
- Notify Council of the completion of works within 30 days of their conclusion

#### **5.12. Contaminated Land Practitioner Standards**

Prior to considering information provided by a contaminated land practitioner, the practitioner must be able to suitably demonstrate to council that they have the necessary competencies and experience in the field that they intend to offer services in.

Prior to 1 April 2018 the attributes that should qualify a person as a 'suitably qualified and experienced practitioner' are:

- At least five years of experience in contaminated land services that are relevant to those being offered
- Relevant Bachelor Degree or similar tertiary qualifications
- Regular professional development training in the contaminated land field
- Record of strong ethical and professional conduct

As of the 1 April 2018, Nambucca Shire Council will only accept services, reports or advice from contaminated land practitioners accredited under an EPA supported accreditation scheme (*information on contaminated land practitioner schemes can be found on the EPA website*).

See Section 7 of the Policy Guidelines for further information on Contaminated Land Practitioners and their use.

#### **5.13. Professional contaminated land reports, plans and advice**

All professional contaminated land related reports, plans or official advice to be considered by Council must be accompanied by a cover letter that includes the following information:

- Company/practitioners contact details
- Scope of works to be overseen by the practitioner
- Qualifications relevant to services being provided
- Past professional experience in comparable projects
- Two references from past clients that have received similar services

A practitioner may choose to include a copy of their CV to Council with initial correspondence or documents.

#### **5.14. Council Contaminated Land Records**

Contaminated land issues can be dynamic, changing over time as site assessments and remedial actions are performed, and new sites are identified. Due to this nature of contamination Council do not hold a definitive 'register' of contaminated sites.

Keeping an accurate, reliable and up-to-date record of information on land contamination can be a valuable resource for Council to use when performing various planning, regulatory and land management functions.

Wherever possible Council's records shall maintain accurate and reliable information on sites that:

- Have been assessed or regulated by the EPA under the provision of the CLM Act
- Have undergone previous contaminated land assessments or management actions and reports have been provided to Council
- Have undergone a site audit by an accredited site auditor
- Are known by Council to be contaminated
- Have had a development applications accepted for Category 1 remediation works
- Have provided notifications of Category 2 remediation works

Information pertaining to contaminated land matters should be recorded and managed by Council in line with the Policy Guidelines and other applicable standards.

##### **5.14.1. Section 149 Planning Certificates**

A planning certificate issued under Section 149 of the EP&A Act, is specific to a certain property and provides information about how the site may be used and if land use restrictions apply. Information on land contamination must be included in Section 149 planning certificates in line with the requirements of Section 59(2) of the CLM Act and the Policy Guidelines. If land use restrictions are placed on the land due to contamination this will be reflected within Section 149 planning certificates.

##### Section 149(2) Planning Certificates

Section 149(2) Planning Certificates issued by Council will provide information, relevant to the property on the date the certificate is issued:

- a) Identified as significantly contaminated
- b) Subject to a management order
- c) The subject of an approved voluntary management proposal
- d) Subject to an ongoing maintenance order
- e) Site has been subject to a site audit where a Site Audit Statement has been produced and provided to Council
- f) Whether or not the land is affected by an adopted policy of the Council or any other public authority that restricts the development of land because of the likelihood of any risk of contamination

Further information including standard 149(2) entries and explanations are provided in the Policy Guidelines Appendix J.

##### Section 149(5) Planning Certificates

In Instances where Councils records indicate that a site is or has the potential to be impacted by contamination, a special note will be added to the Section 149(5) planning certificate declaring that certain restrictions may apply to a site due to contamination. In instances where this declaration is present on the planning certificate a proponent should contact Council to seek further information on the nature and consequences of potential contamination issues at the site.

Council may also choose to add other specific information on contaminated land matters into the Section 149(5) planning certificate, including where:

- a) The site is known to have been used for a land use listed in Table 1 of Appendix D
- b) A Statement of Environmental Effect has identified that the contamination may be a factor at the site
- c) A contaminated land assessment report has been produced and provided to Council
- d) A validation of remediation has been undertaken and report provided to Council
- e) Remedial actions have been approved for the remediating of the site
- f) Council have been notified of remediation that is to be undertaken at the site
- g) Historic or unvalidated remediation is known to have been undertaken at the site
- h) Underground Petroleum Storage System are known to be present on the site
- i) Advice that is associated with information provided under a 149(2) certificate

Further information including standard 149(5) entries and explanations are provided in the Policy Guidelines Appendix J.

#### **5.15. Preventing Contamination**

Measures to prevent possible pollution at its source may help to reduce future land contamination issues. Council will endeavour to prevent the occurrence of pollution and associated land contamination, where applicable, by:

- Applying appropriate controls on development and rezoning to reduce polluting activities and impacts
- Proactively investigate and regulate land use activities that may cause contamination
- Manage public land and assets in line with the requirements of this policy and relevant regulation
- Promote the adoption of environmental practices that reduce the potential for contamination

## **6. COMPLIANCE WITH THE POLICY**

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This Policy provides a best practice approach for dealing with contaminated land matters in the Nambucca Shire Council Local Government Area. The processes and standards provided in this document adhere to and exceed the requirements of the contaminated land legislative frameworks and associated planning guidelines.

Planning decisions made in compliance with this Policy should be considered to be performed in good faith and are afforded exemption from liability under Part 7A of the EP&A Act.

Council staff should seek legal guidance wherever they are uncertain about the application of this Policy.

## **7. POLICY REVIEW**

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This Policy may be reviewed, varied or revoked at the discretion of Council.

This Policy is to undergo an annual review by a regional working group made up of appropriate staff from all member Councils. This review process is to commence in June 2018.

Where changes occur to relevant legislation, guidelines and standards, appropriate amendments must be made to the Policy document.

## Appendix A: Acronyms

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ARA	Appropriate Regulatory Authority – used in regulation
ANZECC	Australian and New Zealand Environment and Conservation Council
CLM Act	Contaminated Land Management Act 1997
DA	Development Application
DCP	Development Control Plan
DP&E	Department of Planning & Environment
EPA	Environment Protection Authority
EP&A Act	Environmental Planning and Assessment Act 1979
LEP	Local Environmental Plan
LGA	Local Government Area
NSW	New South Wales
POEO	Protection of the Environment Operations
RAP	Remedial Action Plan
SEPP	State Environmental Planning Policy
UST	Underground Storage Tanks
UPSS	Underground Petroleum Storage Tanks

## Appendix B: Definitions

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Category 1 remediation work	has the same meaning as in SEPP55, and is remediation work that needs development consent
Category 2 remediation work	has the same meaning as in SEPP55, and is remediation work that does not need development consent
CLM Act	means the <i>Contaminated Land Management Act 1997</i> (NSW) as amended from time to time.
Contamination of land	<p>depending on the context:</p> <p>has the same meaning as in section 5(1) of the CLM Act, being the presence in, on or under the land of a substance at a concentration above that normally present in, on or under the land in the same locality, being a presence that presents a risk of harm to human health or any other aspect of the environment, and “Contaminate” and “Contaminated” are to be construed accordingly. The words “land”, “harm” and “environment” are defined as in the CLM Act.</p> <p>OR</p> <p>has the same meaning as in section 145A of the EP&amp;A Act, being land in, on or under which any substance is present 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 presents a risk of harm to human health or any other aspect of the environment. The words “land” and “environment” are defined as in the EP&amp;A Act.</p>
Detailed investigation	means an investigation to define the extent and degree of contamination, to assess potential risk posed by contaminants to health and the environment, and to obtain sufficient information for the development of a remedial action plan if required.
EP&A Act	means the <i>Environmental Planning and Assessment Act 1997</i> (NSW) as amended from time to time.
Independent review	means an evaluation by an independent expert required by a planning authority of any information submitted by a proponent, conducted at the proponent’s expense.
Initial evaluation	means an assessment of readily available factual information to determine whether contamination may be an issue relevant to the decision being made.
Preliminary investigation order	means a preliminary investigation order issued by the EPA under s 10 of the CLM Act to investigate whether specified land is Contaminated, and the nature and extent of any such Contamination.

Notice of completion	means a notice to the Council (or Minister for Planning where the Minister is the consent authority) in accordance with SEPP 55 that remediation work has been completed.
Notification of remediation	means prior notice of a category 2 remediation work given to the Council in accordance with SEPP 55.
Planning authority	means a public authority or other person responsible for exercising a planning function.
Planning Certificate	means a planning certificate issued under s149 of the EP&A Act.
Planning function	means a function exercised by the Council as a planning authority under the EP&A Act, including the functions listed in s145B EP&A Act such as the preparation or making of an environmental planning instrument and the determination of a development application.
Preliminary investigation	means an investigation to identify any past or present potentially contaminating activities and to provide a preliminary assessment of any site contamination.
Remedial Action Plan	means a plan which sets remediation goals and documents the process to remediate a site.
Management Order	means a management order issued by the EPA under section 14 of the CLM Act, requiring the carrying out of specified actions in relation to the management of contaminated land (including remediation).
Significantly Contaminated Land	means a site declared by the EPA under section 11 of the CLM Act to be significantly contaminated land.
Remediation	has the same meaning as in the CLM Act and includes: <ul style="list-style-type: none"> <li>(a) preparing a long-term management plan (if any) for the land;</li> <li>(b) removing, dispersing, destroying, reducing, mitigating or containing the contamination of the land; and</li> <li>(c) eliminating or reducing any hazard arising from the contamination of the land (including by preventing the entry of persons or animals on the land).</li> </ul>
SEPP 55	means the <i>State Environmental Planning Policy No 55 – Remediation of Land</i>
Site audit	has the same meaning as in the CLM Act, being a review: <ul style="list-style-type: none"> <li>(a) that relates to management (whether under this Act or otherwise) of the actual or possible contamination of land; and</li> <li>(b) that is conducted for the purpose of determining</li> </ul>

any one or more of the following matters:

- i. the nature and extent of any contamination of the land,
- ii. the nature and extent of any management of actual or possible contamination of the land,
- iii. whether the land is suitable for any specified use or range of uses,
- iv. what management remains necessary before the land is suitable for any specified use or range of uses,
- v. the suitability and appropriateness of a plan of management, long-term management plan or a voluntary management proposal.

Site auditor	has the same meaning as in the CLM Act, being a person accredited by the EPA under the CLM Act to conduct site audits.
Site audit statement	means a site audit statement issued by a site auditor in accordance with Part 4 of the CLM Act.
Site audit report	means a report prepared by a site auditor containing the key information and the basis of consideration which leads to the issue of a site audit statement.
Site history	means a land use history of a site which identifies activities or land uses which 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. See (Edwards et al 1994)
Site investigation process	means the process of investigating land which may be, or is, contaminated, for the purpose of providing information to a planning authority.
Validation	means the process of determining whether the objectives for remediation and any conditions of development consent in relation to the remediation have been achieved.

## Appendix C- Contaminated Land Planning and Legislative Framework

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The key legislation and planning instruments that make up the contaminated land planning and legislative framework are:

- *Environmental Planning and Assessment Act 1979*
- *Contaminated Land Management Act 1997*
- *Protection of Environmental Operations Act 1997*
- SEPP 55 – Remediation of Lands
- Managing Land Contamination Planning Guidelines - SEPP 55 – Remediation of Lands

Other relevant legislation and planning instruments that affect the way that local government deal with contaminated land matters include:

- *Local Government Act 1993*
- *NSW Health and Safety Act 2011*
- *Pesticides Act 1999*
- *Dangerous Goods (Road and Rail Transport) Act 2008*
- *Environmentally Hazardous Chemicals Act 1985*
- Environmental Planning and Assessment Regulation
- Protection of Environmental Operations (General) Regulation
- Protection of Environmental Operations (Waste) Regulation
- Protection of Environmental Operations (Clean Air) Regulation
- Protection of Environmental Operations (Underground Petroleum Storage Systems) Regulation
- SEPP (Exempt and Complying Development Codes) 2008

Guidelines made under CLM Act:

- Guidelines for the Vertical Mixing of Soil on Former Broad-acre Agricultural Land
- Sampling Design Guidelines
- Guidelines for Assessing Banana Plantation Sites
- Guidelines for Consultants Reporting on Contaminated Sites
- Guidelines for Assessing Former Orchards and Market Gardens
- Guidelines for the NSW Site Auditor Scheme, 2nd edition
- Guidelines for the Assessment and Management of Groundwater Contamination
- Guidelines on the Duty to Report Contamination under the CLM Act

Relevant National Standards

- National Environmental Protection Measures
- Australian and New Zealand Guidelines for Fresh and Marine Water Quality

Overview of Contaminated Land Planning and Legislative Framework effects

### **Contaminated Land Management Act 1997**

Provide powers to the EPA to:

- Regulate sites that are significantly contaminated (or assumed to be)
- Issue orders to a public authority to carry out certain regulatory functions
- Creates guidelines for the assessment and management of contaminated sites
- Administer the NSW Site Auditor Scheme
- Impose penalties and cost recovery actions
- Duty of land owners to notify EPA of contamination
- Offsets program that may allow those responsible for significant contamination to implement offsets to mitigate its impacts

Provides Site Auditors with:

- Legal framework for undertaking statutory site audits

Requires local planning authorities to:

- Provide advice in planning certificates made under section 149(2) of the EP&A Act that outline where a site has undergone EPA regulatory actions or site audits in accordance with the provisions of the CLM act.

### **Environmental Protection and Assessment Act 1979**

Provides powers to Department of Planning and Environment to:

- Develop environmental planning instruments such as State Environmental Planning Policies

Provides planning authorities with legal framework for:

- Planning and development control process including
  - Developing Local Environmental Plans that are to be approved by the Minister
  - Developing and implementing Development Control Plans
- Exemptions from liability for planning authorities if they are acting substantially in accordance with contaminated land planning guidelines and guidelines developed under provisions of CLM Act
- Planning certificates for the recording and presenting of contaminated land information
- Issuing orders that cease activities that do not align with conditions of a development consent

### **Protection of Environment Operations Act 1997**

Provides planning authorities with legal framework for:

- Issuing notices for the assessment and clean-up of contaminated lands and associated pollution issues
- Regulation of waste materials
- Prevent or prohibit certain land use activities that have the potential to exacerbate or contribute to land contamination issues

### **State Environmental Planning Policy 55 – Remediation of Lands**

SEPP 55 sets out a state-wide planning approach to remediating lands. This SEPP:

- Requires remediation works to be carried out in accordance with the contaminated land planning guidelines and other guidelines created under the CLM Act

- Specifies when consent is required for remediation works and remediation processes
- Outlines contaminated land consideration relevant during planning processes
- Specifics notices to be provided to Council when carrying out remediation works

#### **Managing Land Contamination Planning Guidelines - SEPP 55 – Remediation of Lands**

Provides local government with:

- Outline of best practice contaminated land assessment, remediation and site management practices
- Information on the Site Audit process and when they should be considered
- Planning and land management decision making approaches and considerations
- Approaches for recording and managing contaminated land information
- Recommendations to develop a formal policy for dealing with contaminated land issues
- List of land uses that have the potential to cause contamination

#### **SEPP (Exempt and Complying Development Codes) 2008**

This SEPP:

- Overrides provisions of SEPP 55 and applicable LEP
- Provides streamlined assessment processes for development that complies with specified development standards, including
  - Development that is considered exempt from planning approvals
  - Development that complies with the code and can be conducted in accordance with a complying development certificate without the need to planning approvals

#### **National Environmental Protection Measures (NEPM)**

Implemented in NSW under the National Environmental Council (NSW) Act 1995, the NEPM establishes national standard for:

- Acceptable thresholds for contaminants in soil, air and water.
- Processes and standards for assessing contaminated sites
- Processes and standards monitoring ambient air quality
- Standards for moving controlled waste materials

## Appendix D: Potentially Contaminating Land Uses

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List of land use activities that may cause contamination (as identified in Table 1 of the Planning Guidelines).

Table 1. Some Activities that may Cause Contamination

- 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

Note: It is not sufficient to rely solely on the contents of this Table to determine whether a site is likely to be contaminated or not. The Table is a guide only. A conclusive status can only be determined after a review of the site history and, if necessary, sampling and analysis.

## Appendix E: Relevant Contacts

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**Nambucca Shire Council**

Development & Environment Section: 65682555

Email: [council@nambucca.nsw.gov.au](mailto:council@nambucca.nsw.gov.au)

**NSW Environmental Protection Authority**

Environmental Line Phone: 131 555 or 9995 5999

Email: [info@environment.nsw.gov.au](mailto:info@environment.nsw.gov.au)

**MIDROC Contaminated Land Services**

Phone: (02) 6655 7382

Email: [bhooper@bellingen.nsw.gov.au](mailto:bhooper@bellingen.nsw.gov.au)

**WorkSafe NSW**

Phone: 131 050

Email: [contact@safework.nsw.gov.au](mailto:contact@safework.nsw.gov.au)

**Health NSW –Public Health Unit**

Phone: 1300 066 055