



Contaminated Site Policy

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| Reference Number: | 2.27 |
| Type: | Council Policy |
| Category: | Corporate Governance |
| Relevant Community Plan Outcome: | <ul style="list-style-type: none">Greenhouse gas emissions significantly reduce, and we adapt to our changing climateOur city is greener to reduce heat island effects and enhance our biodiversityCharles Sturt is recognised as a leading partner and educator in pursuing a sustainable future with our community |
| Responsible Officer(s): | General Manager Asset Management Services |
| First Issued/Approved: | December 2013 |
| Minutes Reference: | CoS 4/03/2024, Item 4.11 |
| Last Reviewed: | March 2024 |
| Next Review Due: | March 2026 |
| Applicable Legislation: | National Environment Protection Council Act 1994 National Environment Protection (Assessment of Site Contamination) Measure 1999 Environment Protection Act 1993 Environment Protection Regulations 2009 Planning, Development and Infrastructure Act 2016 Local Government Act 1999 |
| Related Policies: | Environmental Sustainability Policy Risk Management Policy Disposal of Assets Policy Community Gardening Policy Media, Communications & Social Media Policy |
| Related Procedures: | Maintenance Guidelines – UPDATED 9 February 2021 (Ref: CM B7352 21/36322) |

1. Purpose

The purpose of this Policy is to ensure site contamination detected is appropriately and consistently managed by Council for the protection of the natural environment and human health on land owned, occupied or managed by Council.

To assist in the implementation of this Policy Council will:

- ensure that all employees and volunteers are familiar with this policy and the responsibilities that arise from it;

- integrate relevant aspects of this policy into Council induction sessions and environmental awareness programs for employees;
- ensure Council does not knowingly undertake activities that cause or contribute to site contamination on land it owns, occupies or manages; and
- ensure contractors and suppliers, when working for Council on land owned, occupied or managed by Council, adopt appropriate procedures and environmental standards consistent with this Policy.

2. Scope

This Policy is applicable to all land within the Council area where Council has responsibilities as a landowner, occupier or manager.

In particular, the Policy provides a framework for Council to appropriately manage site contamination risks to the environment, human health, and the Council in the following areas:

- Council owned and/or occupied land;
- Council managed public land – Crown Land, Community Land and Public Roadways; and
- Acquisition, transfer and divestment of land to and from Council.

This Policy excludes the management of groundwater contamination, which is separately dealt with under the provisions of the Environment Protection Act 1993.

This Policy does not extend to site contamination on privately owned land (as such contamination is dealt with under various State and Commonwealth Acts).

3. Policy Statement

Site contamination exists when chemical substances are detected on or below the surface of the site in concentrations above the background concentrations and the chemical substances have, at least in part, come to be present there as a result of an activity at the site or elsewhere, and the presence of the chemical substances in those concentrations has resulted in actual or potential harm to public health, safety, and/or the environment, including water bodies.

Site contamination is an issue that is faced around the world in both urban and regional areas – it is usually the result of historic industrial activities when work practices around the disposal of industrial waste and chemical substances were not carried out to the standards they are today. It can exist for many years without being detected. This is the case for some areas within the Council area given its extensive industrial heritage and significant changes to the urban landscape.

Today, site contamination is often identified when there are plans for a site to be re-developed and an assessment of the site is conducted. Australia has nationally agreed standards about how site contamination is assessed.

The discovery of chemical substances does not necessarily mean there is a risk of harm to public health, safety, and/or the environment, including water bodies. When chemical substances are found, site specific investigations are needed to determine the extent and nature and level of risk associated with each case and accordingly whether site contamination as defined by the Environment Protection Act 1993 exists. Following the completion of investigations, there are many techniques used to contain or remove contamination.

The South Australian Environment Protection Authority (EPA) regulates site contamination through the provisions of the *Environment Protection Act 1993* and *Environment Protection Regulations 2009*. These set the processes and standards on how site contamination should be identified and managed by responsible parties.

The EPA oversees this system, ensuring that responsible parties, including polluters and landowners, meet their obligations.

This Policy is consistent with the provisions of the *Environment Protection Act 1993* and *Environment Protection Regulations 2009*.

GUIDING PRINCIPLES

Compliance

Council commits to comply (as a minimum) with the relevant legislation and standards with respect to the detection and management of site contamination.

To the extent necessary, Council will obtain appropriate legal and expert advice about the existence and management of any actual or potential site contamination.

Land fit for purpose

Council commits to ensure its land is fit for its current purpose and/or intended use with regard to site contamination.

Minimisation of Waste to Landfill

Council commits to adopt environmentally sustainable methods when managing and remediating land and will, where reasonable and practicable, treat site contamination onsite.

Disposal of contaminated soils to landfill as a method of remediation will be considered as a last resort where no other environmentally effective method of remediation exists at the time of discovery, or where the costs of alternatives are disproportionately high.

Safety

Council commits to ensuring its staff and contractors, as well as the general public, are not exposed to risks from site contamination that have the potential to negatively impact human health.

Co-operation

Council commits to co-operate with regulators and both internal and external stakeholders on land contamination issues.

Risk

Council will ensure that appropriate practices and procedures of internal control and risk management are in place for its management of land including risk identification, assessment and implementation of controls.

Polluter pays principle

Council adopts the 'polluter pays principle' from the Environment Protection Act 1993. This means that wherever possible, the person who caused the site contamination should be held responsible for implementing and funding the assessment, remediation and, if necessary, independent auditing by a site contamination auditor.

Liability for contamination

The Environment Protection Act 1993 stipulates that the original polluter has liability for contamination caused on and off the source site regardless of when it was caused. However, if it is not possible to find that person (because the person has died or a business no longer exists, for example), then liability may pass to the site owner. However, the site owner's liability may be limited to the boundaries of the owner's site and liability is dependent on the owner's knowledge of the site contamination at the time of purchase.

Council, where reasonable and practicable, will undertake to improve the quality of Council's land with the development of sound procedures in assessing, managing and assisting both internal and external stakeholders on land contamination issues.

Council recognises it owes a duty of care at common law to its neighbours and will aim to remove or reduce hazards and prevent or minimise reasonably foreseeable harm arising from the contamination of land owned, occupied or managed by Council.

Purchase, Transfer and Divestment of Ownership of Land

Council will not purchase, divest or accept responsibility for land which is contaminated or has been partially or fully remediated unless:

- a. Legislative and human health risks are established; and
- b. Full disclosure is made, and an acceptably prudent transfer of any financial and environmental risks can be established; and
- c. In the case of purchase by Council, site management and remediation costs and risks are fully covered by the vendor or a third party; or an acceptably prudent transfer of any financial and environmental risks can be established

Council Land for Community Leasing or other form of Occupation of Council Land

Council will not enter into a community lease or other form of occupation of Council land which is contaminated and has not been remediated unless the land is appropriate for the intended form of occupation or will be made so by remediation (or by some other approved method), and appropriate disclosures have been made to those parties who are considering occupying the land in question.

Council will, at its discretion, decide the most appropriate course of action which may include but not limited to offering alternate land(s) for the proposed purpose.

Site Contamination Data

Council will establish and maintain data pertaining to land owned, occupied or managed by Council where site contamination (as defined by the Environment Protection Act 1993) exists. The data will be used as a tool to assist in achieving a systematic and consistent approach to the management of contaminated sites.

Public Notification of Site Contamination

The EPA is responsible for managing public notification of contamination matters. Council will co-operate with the EPA to facilitate their notification process.

4. Responsibilities

The **Chief Executive** has ultimate responsibility for site management across Council in accordance with this Policy.

The **General Manager Asset Management Services** has responsibility for the development of appropriate management practices and a proactive culture across Council including the review and implementation of this Policy.

Each member of the **Leadership Team** will be responsible for ensuring appropriate standard operating practices and procedures for internal controls and risk management are developed, implemented, monitored for compliance, reviewed for adequacy and updated. They are responsible for creating an environment where each staff member is responsible for and actively involved in managing site contamination.

All relevant **employees** need to be alert to the detection of actual or potential contamination issues prior to any work or activity commencing on any land owned, occupied or managed by Council.

The **Asset Management Committee** is responsible for considering matters relating to site contamination on Council owned land.

5. Definitions

| Key Term – Acronym | Definition |
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| EPA | The Environment Protection Authority established under the <i>Environment Protection Act 1993</i> |
| Contaminated Site | As defined by the Environment Protection Act 1993 (EP Act), where the site is owned, occupied or managed by Council. |
| Site Contamination | <p>Site Contamination has a specific definition under the Environment Protection Act 1993.</p> <p>The <i>Environment Protection Act 1993</i> (EP Act) defines site contamination in section 5B as follows:</p> <p>(1) For the purposes of this Act, site contamination exists at a site if—</p> <p>(a) chemical substances are present on or below the surface of the site in concentrations above the background concentrations (if any); and</p> <p>(b) the chemical substances have, at least in part, come to be present there as a result of an activity at the site or elsewhere; and</p> <p>(c) the presence of the chemical substances in those concentrations has resulted in—</p> |

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| | <ul style="list-style-type: none">(i) actual or potential harm to the health or safety of human beings that is not trivial, taking into account current or proposed land uses; or(ii) actual or potential harm to water that is not trivial; or(iii) other actual or potential environmental harm that is not trivial, taking into account current or proposed land uses. <p>(2) For the purposes of this Act, environmental harm is caused by the presence of chemical substances—</p> <ul style="list-style-type: none">(a) whether the harm is a direct or indirect result of the presence of the chemical substances; and(b) whether the harm results from the presence of the chemical substances alone or the combined effects of the presence of the chemical substances and other factors. |
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