



# Whitehead & Associates

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The General Manager  
Kempsey Shire Council  
PO Box 3078  
West Kempsey NSW 2440

Date: 24 February 2017

### **Submission on 2017 Draft Contaminated Land Policy (and Guideline)**

Dear Sir/Madam

#### **1. Introduction**

Whitehead & Associates Environmental Consultants (W&A), are pleased to present this submission on the Kempsey Shire Council (KSC) draft Contaminated Land Policy (the Policy) and draft Contaminated Land Policy Guidelines (the Guideline). Please find following our comments on these.

#### **2. Contaminated Land Policy**

The Policy is a generalised document that has been prepared by MIDROC for use by all MIDROC member Councils. As such it is fairly generic, lengthy and overly prescriptive. Care will need to be undertaken in the sensible application of the Policy, and the Policy will only be as good as the intelligence and experience of KSC staff that apply it, and Contaminated Land Practitioners that work within it.

Following is a list of modifications suggested for the Policy including typos and rewording.

Page Number	Comment
4	S5.7 Ref is to 6.13, should be 5.11
5	S5.10 Too much emphasis on completing a statutory site audit as an independent review. It is understandable that Council may wish to seek an independent review if Council does not have the skills in-house to judge the adequacy of a site

Page Number	Comment
	<p>contamination assessment but reliance on a Site Audit conducted by an EPA accredited auditor will have significant implications for progressing development in the shire if not applied intelligently (See further comments below). Suggest the following changes</p> <p>Heading change to: "Independent Review"</p> <p>Text change to: Council may request an Independent Review where:</p> <ul style="list-style-type: none"> <li>• It is believed that the information provided by the proponent is incorrect or incomplete</li> <li>• Verification is required to confirm that information provided by the proponent adheres to appropriate standards, procedures and guidelines</li> <li>• Council does not have the internal resources or expertise needed to conduct its own technical review</li> <li>• Land use is proposed to change to a more sensitive land use (for example, rezoning commercial to residential)</li> </ul> <p>Council may request that an Independent Review be conducted on a contaminated land practitioner's reports, works and/or advice by another suitably qualified practitioner. In cases of particular sensitivity of the site or proposed landuse, significance of historical landuse, or degree or complexity of contamination, a Statutory Site Audit may be requested as the Independent Review. A Statutory Site Audit is an independent review conducted by an auditor accredited under the EPA administered Site Auditors Scheme that follows a rigid review and reporting process, including reporting to the EPA. See Section 6 of Policy Guidelines for further information on Site Audits.</p>

- 7 S5.13 The final two bullet points requiring past professional experience in comparable projects and two references to be included in the cover letter is onerous and duplicates the requirement for contaminated land practitioner accreditation. Suggest deleting the last two bullet points.

As of 1 April 2018 all contaminated land practitioners submitting reports will be required to registered through a NSW EPA accreditation scheme, which will verify the experience and suitability of the consultant to undertake such investigations. In addition, NSW EPA accredited auditors are not even required to present this information to the NSW EPA in their site audit statements, which carry a much higher risk due to the nature of the sites that the auditor is involved with.

The NSW EPA accreditation scheme for auditors was originally implemented when the NSW EPA realised it could not be providing contamination advice on contaminated sites (previously consultants or proponents had been able to request the NSW EPA to provide information or in circumstances review reports) without exposing the NSW Government to litigation risks associated with contaminated sites. Accreditation of auditors ensured a high level of control by the NSW EPA and a high reporting threshold.

Currently there are only 45 EPA accredited auditors in NSW, all based out of Sydney except one from Adelaide, one from Victoria two from Blue Mts/Southern Highlands, and two from Byron Bay. They are highly skilled and paid, and are generally quite busy with third party oversight of complex remedial projects. An auditor will generally charge

between \$10,000-20,000 for a statutory site audit of a detailed investigation report, with fees increasing as the review process develops through Remedial Action Plan, Validation Reporting, and Site Monitoring Plan phases.

These costs are ontop of the fees charged by the contaminated land practitioner to actually undertake the investigations, laboratory analyses and reporting. All costs are to be borne by the proponent and generally substantial costs (up to RAP) stage must be completed prior to actual DA approval. As such the cost and risk to proponents can be high. These costs may be borne in capital cities or CBD areas, but land values are not as high in regional NSW towns and villages, and there is a risk that the absolute implementation of the Policy will sterilise marginally contaminated land from development. Development is the process enshrined in the EP&A Act that forces the assessment, planning and in some cases the remediation of land, to the betterment of the community and environment. If a property is posing potential Significant Risk of Harm the assessment, planning and remediation of land can be forced on polluters/owners by the NSW EPA, but for marginal lands this is only possible by development.

As such, care must be taken in the recommendation of an "Independent Review", and if required the planning authority should look at a third party review by a suitably qualified contaminated land practitioner first (remembering that by 1 April 2018 these will be registered also under the new scheme), with a statutory site audit by a NSW EPA accredited auditor as a last option.

It is noted that SEPP55 Planning Guidelines S3.5 and S3.6.1 allows for an Independent Review by a suitably qualified contaminated land practitioner.

### 3. Contaminated Land Policy Guideline

The Guideline is also a generalised document that has been prepared by MIDROC for use by all MIDROC member Councils. As such it is fairly generic and lengthy, and similar comments apply to it as we commented for the Policy.

Following is a list of modifications suggested for the Guideline including typos and rewording.

Page Number	Comment
13	S5.4 Ref is to 5.11 but should be 5.12
15	S5.9 Delete the text in { } parenthesis or reword. The wording seems to be for the Planning Authority by the author.
16	S6.3 Ref is to 5.11 but should be 5.12
17	S7.1 Ref is to 5.11 but should be 5.12 in two locations in text.
18	S8.2 Ref is to 5.12 but should be 5.13

## 4. Closure

W&A thank you for the opportunity to provide this submission on the draft Contaminated Land Policy (and Guideline).

yours faithfully

Whitehead & Associates



Strider Duerinckx

Office Manager