



Incorporating Contaminated Land in the Integrated Planning and Reporting Framework



Regional Contaminated Land Capacity Building Program



Proudly led by the Councils of the Hunter Region

This publication was produced by the Hunter Joint Organisation with the assistance of StellaNord Consulting:
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Acknowledgement of Country

The Hunter Joint Organisation acknowledges the country and history of the traditional custodians of the lands upon which we work and live. We pay our respects to the Elders past, present and emerging, of our region, and of Australia.

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Introduction

Management of contaminated land is essential to protect human health and the environment. Since land contamination can restrict development and use of land, there are also economic, legal and planning implications for the community and for regulatory authorities.

Incorporating contaminated land in the Integrated Planning and Reporting (IP&R) framework promotes proactive management and allocation of resources. Following the approach outlined in this document ensures that holistic contaminated land management is embedded through the IP&R framework, covering all of councils' areas of responsibilities for contaminated land. This document also links the focus areas suggested for the IP&R framework to available resources and information which can support councils embed and sustain the concepts in their organisation.

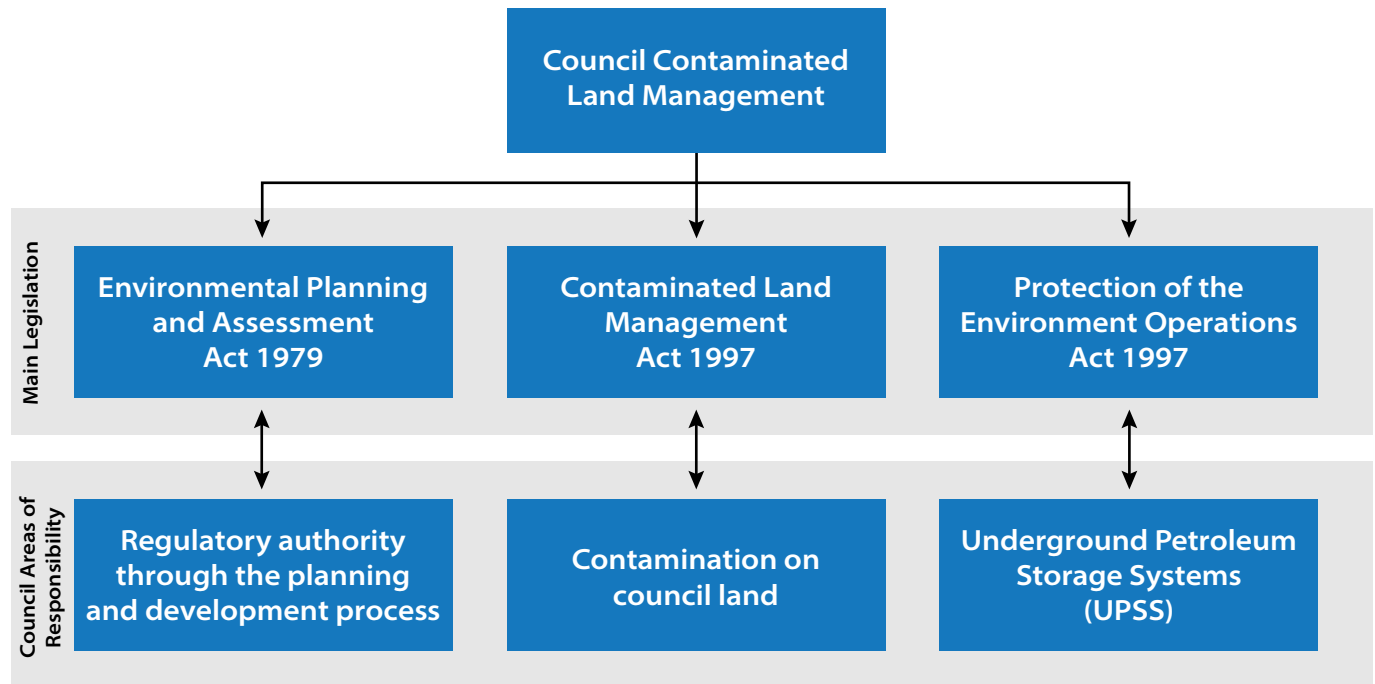
What is Contaminated Land?

“Contaminated land” refers to sites where substances are present at concentrations causing actual or potential risk of harm to human health or the environment.

Typically, contamination results from current and historical industrial and agricultural land uses. Contamination can also come from improper storage, handling and disposal of chemicals or biological substances, or use of contaminated fill on a site. The field of contaminated land also includes contamination in groundwater, surface water, dust, vapour, and hazardous ground gases, and their potential to migrate onto and off a site.

Councils' roles in contaminated land

There are three key areas of responsibility for councils' contaminated land management, as outlined below. The areas will overlap at times but have different legal frameworks and associated obligations and will be treated as separate areas for inclusion in the IP&R framework. Note that councils responsibilities addressed in this document under the Protection of the Environment Operations Act 1997 are limited to Underground Petroleum Storage Systems (UPSS) as it is considered a field closely linked to contaminated land management.



Regulatory authority through the planning and development process

There are two primary avenues of regulation for contaminated land in New South Wales (NSW):

- Where contamination is considered significant enough to warrant regulation, sites are the regulatory responsibility of the NSW Environment Protection Authority (EPA) through the powers provided to it under the Contaminated Land Management Act 1997.
- Other sites are regulated by councils (or other planning authorities) via planning and development instruments through the powers provided to it under the Environmental Planning and Assessment Act 1979.

Where council is the regulator through the planning process it must consider contamination when making rezoning and development decisions and when providing information on Section 10.7 certificates. Council also controls remediation works through the State Environmental Planning Policy (Resilience and Hazards) 2021 (Resilience and Hazards SEPP).

Contamination on council land

Typical examples of council owned and managed lands are public parks, sport fields, road reserves, council depots, landfill sites, former night soil sites and (for some councils) wastewater treatment plants. Common historical land uses contributing to contamination of council-managed lands include former landfills, gasworks, mines, uncontrolled fill, chemical use and storage, and derelict underground petroleum storage systems (UPSS).

Councils' responsibilities for contaminated land as landowners and land managers fall mainly under the *Contaminated Land Management Act 1997*. The legislative framework specifies obligations for landowners and polluters on the duty to report contamination to the NSW EPA when certain triggers are met, outlined in the Guidelines on the Duty to Report Contamination under the Contaminated Land Management Act 1997.

However, there are other requirements such as the Local Government Act which requires local government to provide a system that is accountable to the community and enables councils to carry out their functions in a way that facilitates strong, healthy and prosperous local communities.

It is also important for councils to understand risks associated with their lands when planning for future land uses to ensure that any development or change in land use is safe and appropriate.

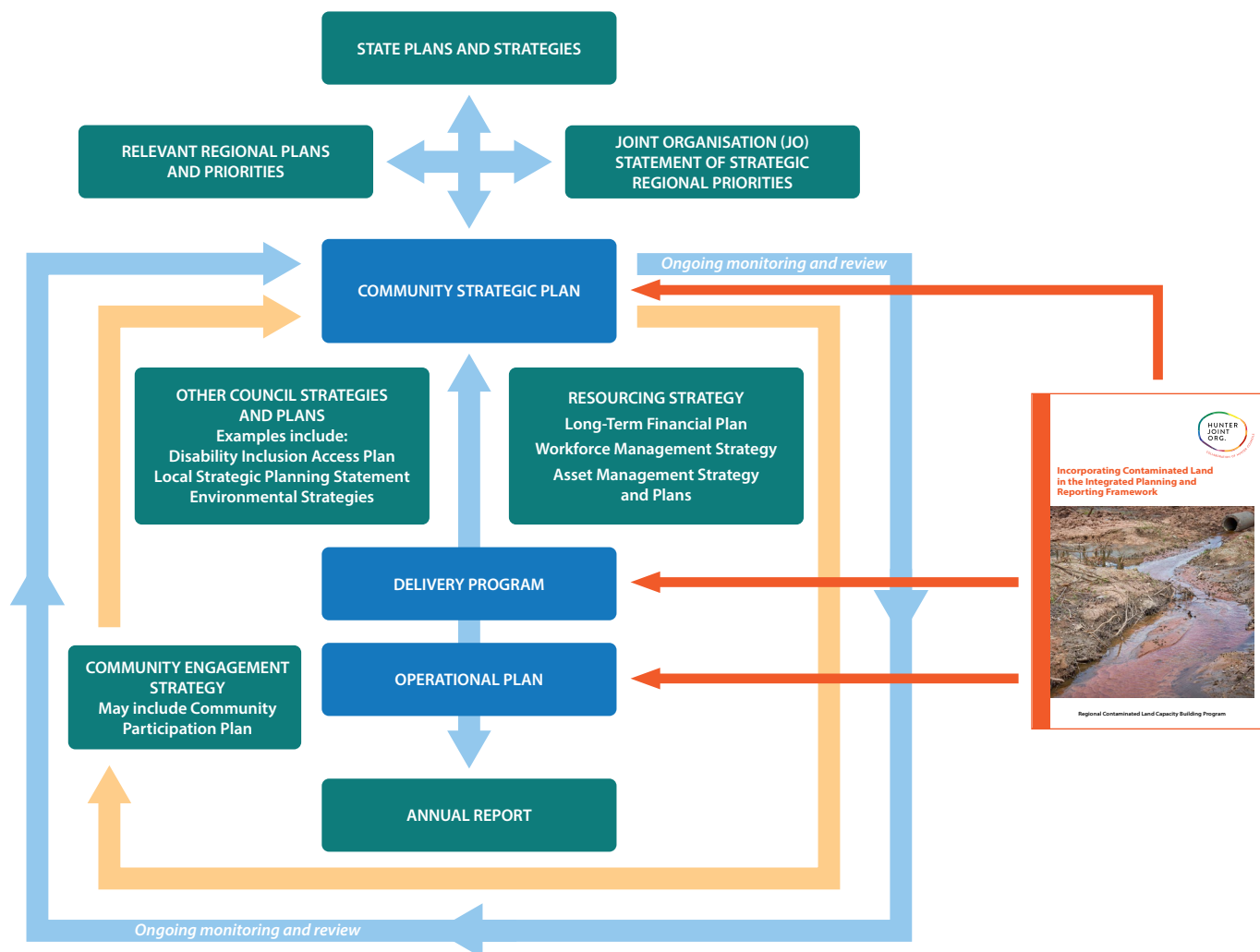
Underground petroleum storage systems (UPSS)

Pollution prevention from underground petroleum storage systems (UPSS) mainly falls under the Protection of the Environment Operations (POEO) Act 1997. Councils are the regulatory authority for compliance with the UPSS Regulation (2019) for most UPSS, and through applying appropriate consent conditions on former or new service station sites and sites with UPSS.



The Integrated Planning and Reporting Framework

The [Office of Local Government](#) defines the documents included in the IP&R framework, their purpose and links. The figure below shows the IP&R framework and key documents to consider when integrating contaminated land. By including contaminated land topics in the key documents it is anticipated it will also flow through to other relevant documents such as asset management plans, resourcing plans and community engagement as needed.



The key documents are:

- **Community Strategic Plan (CSP):** The highest-level plan representing where council wants to be in ten years and how to get there. The purpose of the CSP is to identify the community's main priorities and aspirations for the future and to plan strategies for achieving these goals
- **Delivery Program (DP):** A four-year plan that turns the strategic goals found in the CSP into actions. It is the point where a council makes a commitment to the CSP, and acts upon those issues that are within its area of responsibility. The DP is the key go-to document for the councillors. It identifies all the key activities the council has committed to undertake over its four-year term. All plans, projects, activities and funding allocations of the council must be directly linked to the DP
- **Operational Plan (OP):** A one-year plan that outlines the details of the DP, identifying the individual projects and activities that will be undertaken in a specific financial year to achieve the commitments made in the four-year DP. It should be apparent how the OP activities work towards achieving the DP, and in turn work towards achieving the objectives of the CSP. The activities of the OP are enabled by the Resourcing Strategy. OP responsibilities should be linked to team planning and the staff performance system, so that they become an intrinsic part of a staff member's work planning and regular performance review.

Focus areas for a holistic contaminated land management approach

The Figure below suggested focus areas for holistic contaminated land management, which are based on councils' main roles in contaminated land. A range of tasks and corresponding rationales for their inclusion have been identified in Table 1. Councils may already have implemented some or all of these components or may wish to focus on one area at a time depending on available resources and priorities. Table 2 provides templates for strategies and actions to include in the IP&R documents, and Table 3 provides links to a set of resources to assist implement and embed these actions.

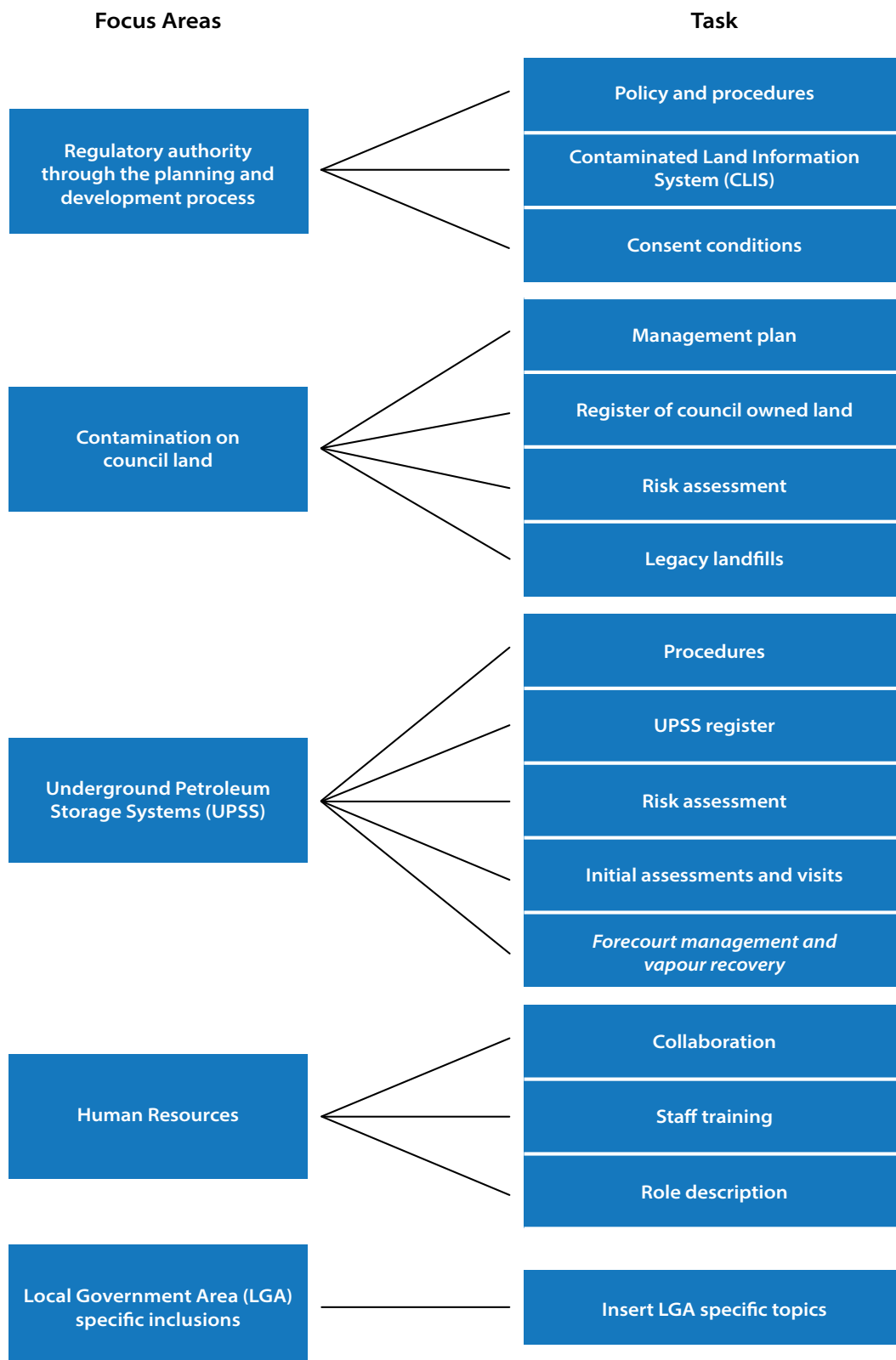


Table 1: Focus areas, tasks and rationale for a holistic contaminated land management approach

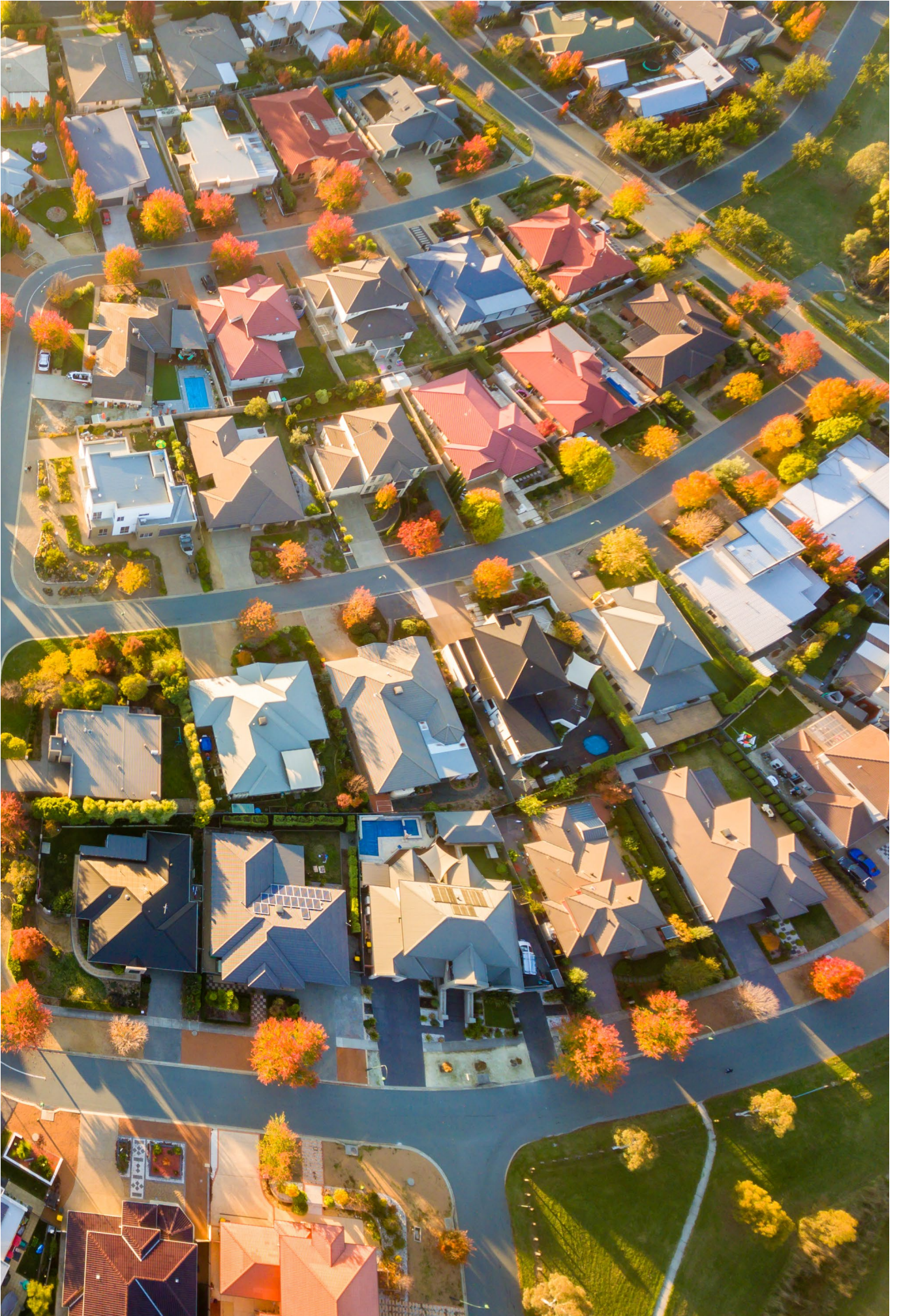
Focus Areas	Tasks	Rationale for a Holistic Contaminated Land Management Approach
<p>Regulatory authority through the planning and development process</p>	<p>Policy and Procedures</p>	<p>A local contaminated land policy outlines council's approach to the management of contaminated land, protecting the health of its community and environment. Having clear statements in a policy will help council, landowners, developers, consultants, and the community understand and identify where potential risks are and avoid inappropriate land uses and costly delays or restrictions on a development site due to unexpected contamination.</p> <p>In accordance with Clause 2 of Schedule 6 of the <i>Environmental Planning and Assessment Act 1979</i>, council as a planning authority is exempt from liability associated with contaminated land for anything done or omitted to be done in 'good faith', which is defined as to act substantially in accordance with the Managing Land Contamination Planning Guidelines – SEPP 55 Remediation of Land 1998 ('the Planning Guidelines'). The Planning Guidelines strongly recommend that "each local council develop and adopt a formal policy for managing land contamination to provide a local context for decision making" and that "the policy should be consistent with the Guidelines and either adopt or be based on them, with variations based on local conditions and procedure".</p> <p>The development and consistent application of a local contaminated land policy and associated procedures can align council activities and management processes to the Planning Guidelines, thereby ensuring that council acts in 'good faith'. A contaminated land policy can also provide requirements around specific matters and considerations for a Local Government Area (LGA).</p>
	<p>Contaminated Land Information System (CLIS)</p>	<p>Council has an important role in managing information regarding land use history, land contamination and remediation activities. Council also has a statutory responsibility to include certain information on certificates issued for the purposes of s10.7 of the <i>Environmental Planning and Assessment Act 1979</i>. A systematic approach to information management is important to ensure available information is considered on these certificates and as a basis for land use planning decisions. CLIS can also span other areas such as the management of council's own land and compliance with the Underground Petroleum Storage System Regulation (2019).</p>

Focus Areas	Tasks	Rationale for a Holistic Contaminated Land Management Approach
<p>Regulatory authority through the planning and development process cont.</p>	<p>Consent conditions</p>	<p>Council may want to establish standard wording for conditions of consent and requests for information to provide a consistent, legally enforceable approach to the assessment and management of contaminated land through the development assessment process.</p> <p>In accordance with SEPP (R&H) cl 4.6, and the National Environment Protection (Assessment of Site Contamination) Measure (ASC NEPM, 2013) volume 1, Section 5 (Planning and Development), council must consider the possibility that the previous and/or current land uses, and/or a nearby land use, has caused contamination of the site, and the potential risk to human health and the environment from that contamination when carrying out land use planning functions.</p> <p>Council is unable to provide consent for a development until it is satisfied that the site is, or can be made, suitable (during the development stage with the implementation of remediation and/or management) for the proposed land use.</p>



Focus Areas	Tasks	Rationale for a Holistic Contaminated Land Management Approach
Contamination on council land	Management Plan	<p>Councils have legal and ethical obligations for managing contamination on land which they own or for land which they have care, control and management. The effective management of contamination is also required to maintain councils broader risk appetite relating to safety, the environment, legal compliance and reputation.</p> <p>The <i>Contaminated Land Management Act 1997</i> (CLM Act) allocates responsibility for contamination firstly to the person that caused the contamination, followed by the owner or occupier of land. According to the CLM Act, the owner or occupier is taken to be responsible if the person knew or ought reasonably to have known that contamination would occur yet failed to take reasonable steps to prevent it.</p> <p>The CLM Act also imposes a duty to report contamination above certain thresholds to the EPA.</p> <p>In accordance with the <i>Environmental Planning & Assessment Act 1979</i> (EP&A Act), council must ensure that land use suitability has been assessed for any development of their land.</p> <p>A management plan can provide a framework to support councils in managing contamination across their portfolios through risk-based decision making and through the consistent application of best practice standards and procedures.</p>
	Register of council owned land	<p>To establish a management plan for council owned and managed lands, one of the first steps is to identify all land parcels that are owned or controlled by council and to gain an initial understanding of the risks. This can allow for efficient and proactive portfolio management, risk assessment and prioritisation of actions.</p> <p>The register can be standalone or form part of council's contaminated land information system (CLIS).</p>
	Risk assessment	<p>Council may want to adopt or prepare a Contaminated Land Risk Assessment Tool or framework to assess and document potential risks associated with contamination on land across its portfolio. This provides a transparent approach for prioritising actions, assists in land use planning decisions, and provides information in property transactions.</p>
	Legacy landfills	<p>Council is responsible for landfills in their LGA. Historically, landfills were often placed in voids and were unlined with little control of the content. Once full, they were often covered with soil and vegetated or made into sport fields or parkland. These legacy landfills can pose a significant risk to human health and the environment on and off site depending on their location and access, and council may want to specifically include a program of works around their legacy landfill portfolio.</p>

Focus Areas	Tasks	Rationale for a Holistic Contaminated Land Management Approach
Underground petroleum storage systems (UPSS)	Procedures	Council may want to establish procedures for their UPSS program to outline compliance with the UPSS Regulation and develop council specific approaches to UPSS compliance. This could include how to determine the frequency of compliance audits, actions based on compliance levels, roles and responsibilities, and adopted templates.
	UPSS Register	A UPSS register can be included in the overall contaminated land information system or be standalone. The register ensures a consistent approach to information management and is a basis for risk assessment and frequency of compliance audits.
	Risk assessment	Council may want to adopt a risk assessment framework to establish a risk-based compliance audit program with appropriate inspection frequencies based on risk levels.
	Initial assessments and visits	If council has not yet commenced their UPSS compliance program, it may be beneficial to include it as a project or program in the DP or OP. The initial assessments (desktop based) and audits (site visits) will provide information for the registers and risk assessments which is essential when establishing an ongoing compliance audit schedule.
	Forecourt management and vapour recovery	<i>Whilst forecourt management and vapour recovery are not considered contaminated land issues, it is acknowledged that council may want to address these matters under the UPSS section as a related issue.</i>
Human Resources	Collaboration	Collaboration and networking promotes knowledge sharing and a consistent approach to contaminated land management. It can provide an efficient use of resources and avoid duplication of work across a region. Council may want to define key collaborations and networks.
	Staff training	Continuous capacity building ensures that staff are up to date with best practice and allows new starters to get up to speed on council's practices. Council may want to emphasise the importance of training by identifying key training opportunities.
	Role description	By embedding contaminated land management responsibilities in role descriptions across council, responsibility and accountability is established. It also assists in justifying training and upskilling opportunities and ensuring an appropriate level of qualification at the time of recruitment.
Local Government Area (LGA) specific inclusions	Insert LGA specific topics	<p>Consider anything that is specific to the LGA, such as widespread contamination from a local industry or activity, naturally occurring issues (e.g. radiation, metals, asbestos, acid sulphate soils), potential migration of contamination in flood effected areas, or asbestos in bushfire areas.</p> <p>There may also be specific projects and sites for council to define in the DP or OP.</p>



Incorporating Contaminated Land in the Integrated Planning and Reporting Framework

Suggested examples of how to incorporate contaminated land management into councils' IP&R documents are provided on the next page.

Councils can use the suggested inclusions as a checklist to facilitate a holistic approach to contaminated land management. Acknowledging that each council will be at a different maturity level in their approach to contaminated land management, councils may like to choose the action(s) that are most appropriate or beneficial for their LGA.

Contaminated land would ideally be incorporated into a CSP strategic objective relating to (for example) resilience, environment, development and / or liveability. Strategic objectives outline where council and the community want to be in ten years, and strategies define how they will get there.

Table 2: Suggested examples of how to include contaminated land management in the IP&R documents



Community Strategic Plan (CSP) Strategy	Delivery Program and / or Operational Plan actions (choose whichever action(s) are appropriate for your councils' maturity level)
<p>We will protect our community and the environment from adverse effects associated with legacy contamination on land by embedding contaminated land management principles through:</p> <ul style="list-style-type: none"> • The planning and development process • Management of council owned and managed land • Underground petroleum storage systems (UPSS) • Human Resource management • <i>[Insert Local Government Area (LGA) specific inclusions].</i> 	Prepare a contaminated land policy and procedures.
	Prepare and maintain a Contaminated Land Information System (CLIS) including a register.
	Adopt standard consent conditions for contaminated land.
	Prepare a management plan for council owned and managed contaminated land.
	Prepare and maintain a register with information on contaminated land for council owned and managed land.
	Adopt a risk assessment framework and tool for contaminated land within council's land management portfolio.
	Develop and implement a program for contamination associated with legacy landfills in council's care.
	Prepare and adopt procedures for council's management of underground petroleum storage systems as a regulator under the Protection of the Environment Operations (Underground Petroleum Storage Systems) Regulation 2019.
	Prepare and maintain a register of underground petroleum storage systems in council's regulation.
	Adopt a risk assessment framework for council's underground petroleum storage systems compliance audit program.
	Undertake initial assessments and visits for council's underground petroleum storage systems compliance audit program. <i>[Council may want to include forecourt management and vapour recovery here as related topics].</i>
	Participate in <i>[define collaborations and networks]</i> for contaminated land management.
	Training staff in contaminated land through <i>[insert specific programs and training opportunities].</i>
Council will allocate roles and responsibilities for contaminated land in role descriptions to ensure a suitable level of qualification.	
<p><i>[Insert LGA specific topics].</i></p> <p><i>[Include any subtasks as needed when implementing the actions above].</i></p>	

Resources for implementation

For each of the focus areas, the Table below identifies a set of resources prepared by Hunter JO or other stakeholders that can assist councils to implement and embed the tasks outlined in the IP&R framework.

Table 3: Resources for implementation

Focus Areas	Tasks	Related Resources Click on each image below to access relevant resources
Regulatory Authority through the Planning and Development Process	Policy and Procedures	 
	Contaminated Land Information System (CLIS)	
	Consent conditions	
Contamination on council land	Management Plan	 
	Register	
	Risk assessment	
	Legacy landfills	
Underground petroleum storage systems (UPSS)	Procedures	 <p data-bbox="783 1720 1445 1776">NSW EPA guidance, templates, training and resources for councils: www.epa.nsw.gov.au/your-environment/contaminated-land/upss</p>
	Register	
	Risk assessment	
	Initial assessments and visits	
	<i>Forecourt management and vapour recovery</i>	

Focus Areas	Tasks	Related Resources Click on each image below to access relevant resources
Human Resources	Collaboration	<p>Council can define (for example) the LGNSW contaminated land network, Australasian Land and Groundwater Association (ALGA), conferences, and any regional or local collaboration or training opportunities</p> <div style="display: flex; justify-content: space-around; align-items: center;">   </div>
	Staff training	
	Role description	



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