

**INQUIRY INTO PERFORMANCE OF THE NSW
ENVIRONMENT PROTECTION AUTHORITY**

Organisation: Newcastle City Council

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The Director
General Purpose Standing Committee No. 5
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SUBMISSION - PERFORMANCE OF THE NSW ENVIRONMENT PROTECTION AUTHORITY (Inquiry)

The submission by Newcastle City Council relates to the performance of the NSW EPA in relation to the implementation of the recent amendment of the *National Environment Protection (Assessment of Site Contamination) Measure 1999 (April 2013)* ('the ASC NEPM') to the approved guidelines under the *Contaminated Land Management Act 1997*. The submission relates to the lack of consultation with Local Council's by the NSW EPA regarding the development and implementation of the ASC NEPM in the contaminated land assessment framework and lack of training resources, guidance and advice provided by the NSW EPA in relation to the interpretation and use of the ASC NEPM as an assessment guideline. The matter is raised as 'a related matter' under the Inquiry's Terms of Reference.

Local Council's as a determining authority are required to review contaminated land reports submitted with development applications as part of their responsibilities under the *Environmental Planning and Assessment Act 1979*. Department of Planning Guidelines state Council's should consider whether these reports conform to EPA guidelines issued under the *Contaminated Land Management Act 1997*.

A key guideline in the assessment of contaminated land is the ASC NEPM. In April 2013 the ASC NEPM was significantly amended and introduced increased complexity and technical detail to the contaminated land assessment process. The amended ASC NEPM is less prescriptive than the previous guideline and provides an array of contamination assessment tools and methodologies that rely upon the experience, training and professional judgement of the engaged consultant. However, the significant flexibility within the ASC NEPM presents difficulty, for Local Council assessing officers, to ensure submitted contamination reports and planning decisions accord with appropriate standards. Council also notes the contaminated land assessment process outlined in the ASC NEPM differs from the existing Department of Planning '*Planning Guidelines SEPP 55 – Remediation of Land*' resulting in confusion regarding the appropriate assessment framework for management of contaminated land in the development process.

Council notes no consultation regarding the amendment of the ASC NEPM was provided by the NSW EPA. The NSW EPA website, in their frequently asked questions, in reference to the ASC NEPM states

3. Did the EPA notify councils regarding the NEPM amendment and will the EPA be conducting training for councils?

The EPA has not directly notified councils, although details of the CRC CARE workshops that were offered immediately after the approval of the amended NEPM were included in Local Government NSW's weekly circular.

Information on the NEPM amendment will also be included in future council workshops coordinated by the EPA.

Discussions with the NSW EPA by Newcastle City Council revealed no training in reference to the amended ASC NEPM is proposed in the near future though training may be included in workshops in relation to underground petroleum storage systems. However, the amended ASC NEPM commenced as a guideline under the *Contaminated Land Management Act 1997* on 15 May 2013. As of the date of writing, the NSW EPA has provided no resources or training regarding the implementation of the ASC NEPM as an assessment guideline.

Newcastle City Council has the following concerns in relation to the implementation of the amended ASC NEPM and lack of training or advice from the NSW EPA:

1. Council's are currently expected to assess contamination reports as part of the development application process under the *Environmental Planning and Assessment Act 1979*. Without adequate training regarding the amended ASC NEPM Council's may inadvertently approve development based on a report that has incorrectly applied the ASC NEPM and result in increased exposure and risk to the public.
2. Council staff may require substantial additional training to attempt to become proficient in assessing reports against the amended ASC NEPM.
3. The implementation of the amended ASC NEPM may result in a substantial increase in the engagement of NSW EPA accredited Site Auditors. The increased use of NSW EPA accredited Site Auditors has ramifications for proponents of development in relation to additional cost associated with the processing of development applications involving the assessment of contaminated land reports against the amended ASC NEPM. The increase use of NSW EPA accredited Site Auditors may also potentially increase processing time for assessment of development applications.

Newcastle City Council seeks to highlight the performance of the NSW EPA in the lack of consultation with Local Council's regarding the development and implementation of the ASC NEPM. Council also seeks to highlight the lack of training resources, guidance and advice provided by the NSW EPA in relation to the interpretation and use of the ASC NEPM as an assessment guideline. The lack of guidance from the NSW EPA regarding the ASC NEPM and ambiguity of conflicting guidelines has resulted in impacts upon Council as a determining authority when carrying out planning functions.

Yours faithfully