

**Attachment for Clause 3 of MSC Amendment Application**  
**Refer to Planning Permit No: 2013/75**

The following are the amended requests and comments.

We are not presenting these issues just to evade the substantial costs through the application of these Clauses but see that M.S.C expect the Landowner to bear these for a simple two-block sub-division application of a down-town situation, not a Greenfield Subdivision.

As Landowners we expect that any costs which benefit our land should be applied to our landholding but not costs benefiting the community, the near-surrounding areas and the benefit to all Victorians using the road and all associated services when visiting Yea.

The property located at 6 Station St Yea could never be defined as a Greenfield site which would create an impost on the general community through its development and division into two blocks, rather the reverse where the development opportunities would increase the income for the local community plus the increase in spending visitors to the local area, while allowing for a single or dual tourist opportunity on the land.

The new homes have not been required to carry out any crossovers, drainage, footpaths, or kerb and channelling or even manage the outfall of stormwater within their block. Now we are expected to provide the kerb and channel from the western boundary of the western block to form a waterway to the main drain in the area.

This water-outfall is causing a muddy mess down past our property when high rainfall occurs.

Our property has already been delineated for rating purposes as two properties and Loyano Sharing have paid full town rates on the properties for over ten years and have received no services from M.S.C during this period.

Loyano Pty Ltd and Sharing Pty Ltd have sought legal advice from an experienced planning QC on the current conditions of Subdivision by the Council and have been advised from his experience that the works outlined in the Council conditions give little or no benefit to the Properties concerned but may do for the Community at large.

Loyano and Sharing Pty Ltd should not be required to incur such an impost which is not appropriate under the catch-all Planning laws being applied by M.S.C.

Clause 6 and 7 reflects a normal greenfield Subdivision where Developers bring services to each lot. The Services in our case are all in the adjacent street and await application when wanted.

Clause 8 and 9 (Environmental) were raised with an M.S.C Officer, Mr. Matt Parsons, who agreed with the advice which both our Environmental Consultants suggested, which was that an initial survey would indicate that further tests are needed.

The report we provided indicated that the land was suitable for low-density accommodation. This report has been provided to M.S.C. and rejected by M.S.C without any substantiation or written back-up from M.S.C.'s advisors, being the EPA.

**Clause 10, 12, 13, 14 ,15**

This work has been neglected by M.S.C., Yea Shire and Vicroads for probably up to 100 years since the town of Yea and the rail system to the area was established.

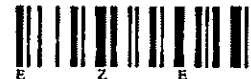
Why should we, the Landowners, trigger the necessity to undertake works which cost a considerable sum where the majority of benefit are to the Community and the greater Victorian population, as this is one of the main entries into the Yea downtown precinct.

**Clause 11**

Completed and formed part of the application and was carried out when the occupied western Lot was established.

Any crossovers needed for the Subdivision we understand will benefit the Subdivision and we would expect these costs to be to our account.

R#665535 \$116.00 LM



Loyano Sharing Deltaquest Super Funds

4 Baroona Court

Brighton VIC 3186

Murrindindi Shire Council  
RECEIVED - IMT  
23 AUG 2016  
Trim No:.....

16<sup>th</sup> August, 2016

**Murrindindi Shire Council**

**P.O. Box 138**

**Alexandra VIC 3714**

Re: Planning Permit Application No: 2013/75

Amendment to Planning Permit 2013/75

**6 Station St., Yea 3717**

**Attention:**

In response to your letter dated 9 August, 2016, we submit the following:

1. Please find enclosed cheque for \$116 being balance owing for the application
2. Find attached current Title and Title Plan as extracted on August, 2016
3. Clauses refer to Amendment required which were identified in Planning Permit No: 2013/75

**Clauses 8 and 9**

Site testing was carried out after discussion with MSC representative, Mr. Matt Parsons.

This testing was carried out to satisfy the necessity if a full audit were necessary, and returned a result that the full audit WAS NOT NECESSARY as stated by the Environmental Consultant.

We expect that MSC will accept our Consultant's recommendation and withdraw the scatter-gun approach of Clauses 8 and 9.

**Clause 10**

We request that SM2 Kerb and Channel be deleted from the conditions.

1.5 metre -wide pavement be deleted from the conditions other than the need for cross-overs.

Infill pavement and sealing works be deleted as a condition.

Piped stormwater drainage be deleted as a condition.

Our reasoning is that a small double-block Subdivision is not a green-field site, but making good history's neglect by all associated with the town of Yea.

In all the above conditions our land is only serviced and improved by a small percentage, compared with the citizens of Yea and Victorian tourists and any other nation-wide tourists to the town and surrounds of the township of Yea by these long-overdue works, which will improve safe passage by all.

Clause 11

To be deleted.

Stormwater external to our property services the greater entry artery to the town of Yea.

Clauses 12, 13, 14, 15

To be deleted, other than when an interface to our crossings occur, and needs the implementation of these engineering items.

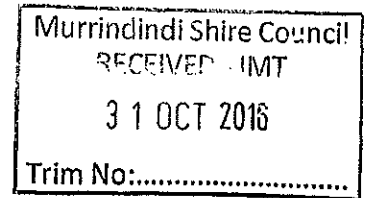
We hope this letter clarifies our position in regard to this extremely lengthy and costly Research and Review, which has ultimately led us to this conclusion.

Yours faithfully



Ian Patience

Kind  
Regards  
Ian P.



Sharing Deltaquest Super Funds  
 4 Baroona Court  
 Brighotn VIC 3186



27<sup>th</sup> October, 2016

Murrindindi Shire Council

PO Box 138

Alexandra VIC 3714

**Attention:** [\(mssc@murrindindi.vic.gov.au\)](mailto:mssc@murrindindi.vic.gov.au)

Dear

**Re: Planning Permit Application No: 2013/75**

**Amendment to Planning Permit No: 2013/75**

**Re: 6 Station St., Yea.**

In response to your email dated 6<sup>th</sup> September, 2016 to clarify your understanding of Clauses 8 & 9, the following is submitted.

**Clause 8 (a and b)** - Be deleted and our Report as submitted to MSC be used, which stated that the site is suitable for use and allowed for by the permit. This investigation was carried out by our Environmental Consultants as a preliminary investigation to determine the need for further investigation, which reflects the wording of the Permit Condition requested by MSC.

This was discussed with Mr. Matt Parsons of MSC, and was really what he said the Environmental clause was really targeted at.

What we are now expecting from MSC is that they accept our Environmental Consultant's Report that " indicates no further investigation is necessary."

**Clause 9-** Delete as a Condition as the Preliminary Report carried out by our Consultant did not suggest the requirement for an Audit was necessary.

I hope this satisfies your request to clarify what is our current expectation.

Yours sincerely

A handwritten signature in cursive script, appearing to read "Ian Patience".

Ian Patience

emailed 28<sup>th</sup> October, 2016

Planning Permit 2013/75

Form 4

# PLANNING

Permit No. 2013/75

# PERMIT

Planning Scheme Murrindindi Planning Scheme

Responsible Authority Murrindindi Shire Council

**ADDRESS OF THE LAND:**

6 Station Street YEA - SEC: 24 PCA: 14, Parish of Yea

**THE PERMIT ALLOWS:**

2 lot subdivision

**THE FOLLOWING CONDITIONS (15) APPLY TO THIS PERMIT:**

- (1) The subdivision must be in accordance with the endorsed plan. This endorsed plan can only be altered or modified with the prior written approval of the Responsible Authority, or to comply with statutory requirements.
- (2) This permit shall expire if the plan of subdivision hereby permitted is not certified within two (2) years of the date hereof or any extension of such period, the Responsible Authority may allow in writing on an application made before or within three months after such expiry.
- (3) The owner of the land must enter into agreements with the relevant authorities for the provision of water supply, drainage, sewerage facilities, electricity and gas services to each lot shown on the endorsed plan in accordance with the authority's requirements and relevant legislation at the time.
- (4) All existing and proposed easements and sites for existing or required utility services and roads on the land must be set aside in the plan of subdivision submitted for certification in favour of the relevant authority for which the easement or site is to be created.
- (5) The plan of subdivision submitted for certification under the Subdivision Act 1988 must be referred to the relevant authority in accordance with Section 8 of that Act.
- (6) The owner of the land must enter into an agreement with:
  - A telecommunications network or service provider for the provision of telecommunications services to each lot shown on the endorsed plan in accordance with the provider's requirements and relevant legislation at the time; and
  - A suitably qualified person for the provision of fibre ready telecommunications facilities to each lot shown on the endorsed plan in

Date issued: 11 June 2013

Signature for the  
Responsible Authority



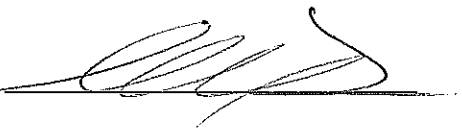
*Planning Permit 2013/75*

accordance with any industry specifications or any standards set by the Australian Communications and Media Authority, unless the applicant can demonstrate that the land is in an area where the National Broadband Network will not be provided by optical fibre.

- (7) Before the issue of a Statement of Compliance for any stage of the subdivision under the Subdivision Act 1988, the owner of the land must provide written confirmation from:
- A telecommunications network or service provider that all lots are connected to or are ready for connection to telecommunications services in accordance with the provider's requirements and relevant legislation at the time; and
  - A suitable qualified person that fibre ready telecommunication facilities have been provided in accordance with any industry specifications or any standards set by the Australian Telecommunications and Media Authority, unless the applicant can demonstrate that the land is in an area where the National Broadband Network will not be provided by optical fibre.
- (8) Prior to certification under the *Subdivision Act 1988*, the applicant must provide:
- (a) A Certificate of Environment Audit in accordance with Section 53Y of the *Environment Protection Act 1970*; or
  - (b) A Statement of Environment Audit under Section 53Z of the *Environment Protection Act 1970*. A Statement must state that the site is suitable for the use and development allowed by this permit.
- (9) Prior to the issue of the Statement of Compliance all conditions of the Statement of Environmental Audit must be complied with to the satisfaction of the Responsible Authority. Written confirmation of compliance must be provided by a suitably qualified environmental professional or other suitable person acceptable to the Responsible Authority. In addition, sign off must be in accordance with any requirements in the Statement conditions regarding verification of works. In the instance that the Statement of Environment Audit or Certificate of Environment Audit require ongoing maintenance or monitoring, prior to the issue of a Statement of Compliance, the applicant must enter into a Section 173 Agreement that will apportion this responsibility to the owners of the affected allotments, to the satisfaction of the Responsible Authority, at no cost to Council, and must be prepared by Council's solicitors.
- (10) Road Upgrade  
Prior to the issue of a Statement of Compliance, Station Street must be upgraded for the full frontage of the subject land, specific details include:
- SM2 concrete kerb and channel
  - 1.5 metre wide footpath pavement
  - Infill pavement and sealing works
  - piped stormwater drainage
- (11) Lot Drainage  
Prior to the issue of a Statement of Compliance, each lot shown on the endorsed plans must be independently drained to the satisfaction of the Responsible Authority and connected via an underground drainage system to the existing network to the west of the subject land.

Date issued: 11 June 2013

Signature for the  
Responsible Authority



*Planning Permit 2013/75*

- (12) **Work Plans**  
Before any works associated with the subdivision start, detailed engineering construction plans must be prepared in accordance with the Council's Infrastructure Design Manual and approved to the satisfaction of the Responsible Authority. All works constructed or carried out must be in accordance with those plans.
- (13) **Works within Road Reserves**  
Prior to the commencement of any works on the road reserve a separate "Consent to Work on Roads" application must be made to Murrindindi Shire Council for each item of work including service installation in accordance with the Road Management Act 2004 and associated regulations.
- (14) **Subdivisional Development**  
Prior to the issue of a Statement of Compliance by the Responsible Authority, the developer must undertake or cause to be provided in accordance with the requirements of the Responsible Authority the following:
- construction of Station Street upgrade requirements and drainage in accordance with approved engineering plans and to the satisfaction of the Responsible Authority.
  - full construction of utility services - water, sewer, electricity supply and telecommunication - in accordance with the relevant authorities requirements
  - payment to the Responsible Authority of a supervision fee of 2.5% and a engineering design checking fee of 0.75% of the actual cost of street construction works, the amount to be determined by the Responsible Authority (the subdivider must submit a copy of the Street Construction Contract Schedule, for verification of the amount by Council);
  - Lodgement of a refundable 5% maintenance bond for the duration of the maintenance period
- (15) **Maintenance of Constructed Works**  
The developer must maintain all constructed works for a period of 3 months from the agreed date of Practical Completion. The Defects Liability period for the new works shall be 12 months. Prior to the end of the maintenance period and the refund of the bond the developer must cause to be submitted:
- full set of 'as constructed' digital construction plans in PDF format

**NOTATIONS:**

nil

Date issued: 11 June 2013

Signature for the  
Responsible Authority

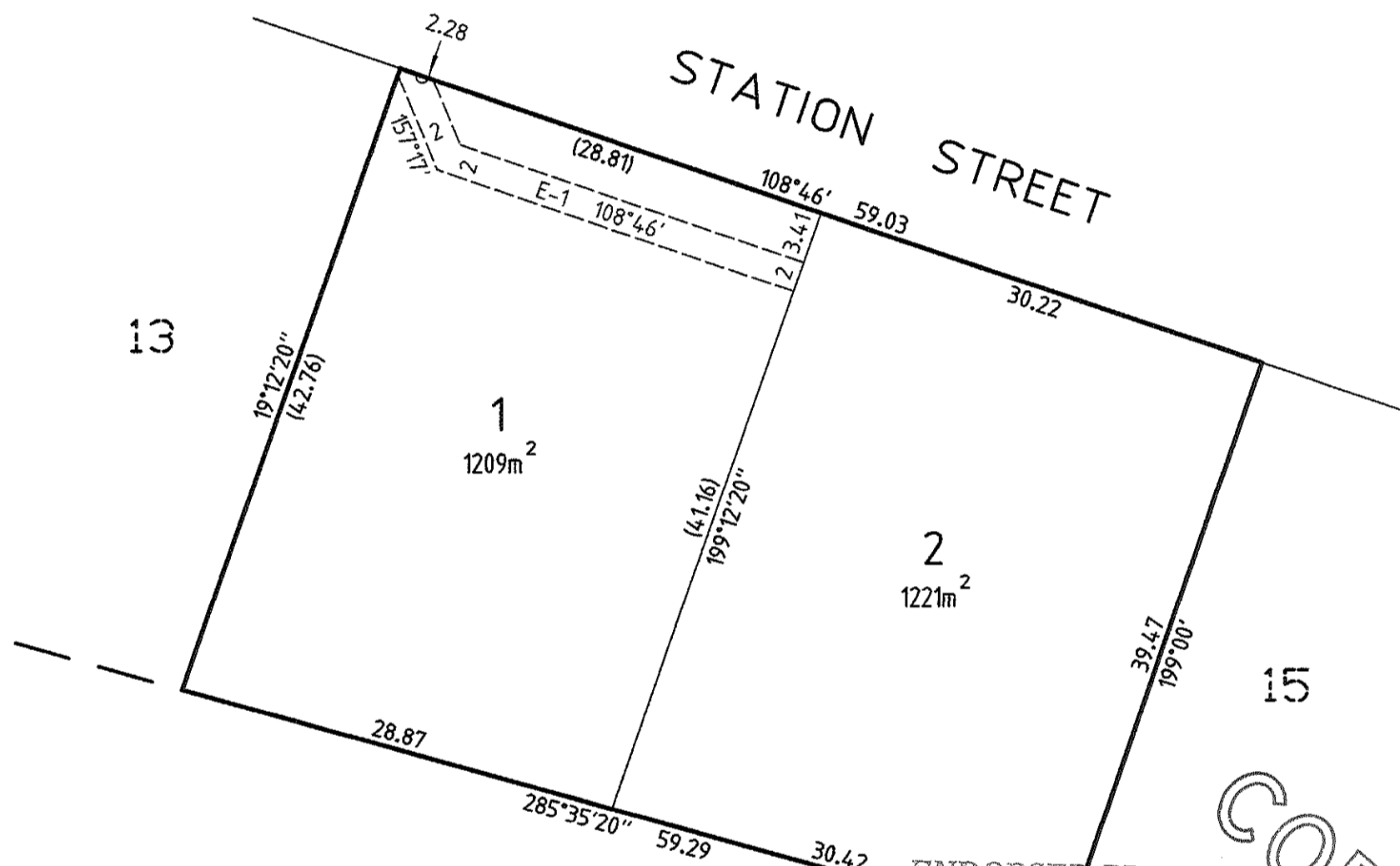




<b>PLAN OF SUBDIVISION</b>		LRS USE ONLY <b>EDITION 1</b>	<b>PS 716410 P</b>
<p style="text-align: center;"><b>LOCATION OF LAND</b></p> <p><b>PARISH :</b> Yea</p> <p><b>TOWNSHIP :</b> Yea</p> <p><b>SECTION :</b> 24</p> <p><b>CROWN ALLOTMENT :</b> 14</p> <p><b>CROWN PORTION :</b> _____</p> <p><b>TITLE REFERENCE :</b> C/T. Vol.9981 Fol.315</p> <p><b>LAST PLAN REFERENCE :</b> TP 791832 X</p> <p><b>POSTAL ADDRESS :</b> No. 6 Station Street, (At time of subdivision) Yea. 3717.</p> <p><b>MGA94 Co-ordinates :</b> (of approx. centre of land in plan) E 360 380      N 5880 325      ZONE : 55</p>		<p style="text-align: center;"><b>COUNCIL CERTIFICATION AND ENDORSEMENT</b></p> <p><b>Council Name :</b> MURRINDINDI SHIRE COUNCIL      <b>Ref.:</b></p>	
<b>VESTING OF ROADS AND/OR RESERVES</b>		<b>NOTATIONS</b>	
IDENTIFIER	COUNCIL/BODY/PERSON		
NIL	NIL		
<b>NOTATIONS</b>			
DEPTH LIMITATION : 15 metres below the surface.			
This is a SPEAR plan.			
Survey: This plan is not based on survey. This survey has been connected to Permanent Marks No.'s in Proclaimed Survey Area No.			
STAGING: This is not a staged subdivision Planning Permit No.			
<b>EASEMENT INFORMATION</b>			
<b>LEGEND:</b> A - Appurtenant Easement      E - Encumbering Easement      R - Encumbering Easement (Road)			
Easements and rights implied by Section 12(2) of the Subdivision Act 1988 apply to the whole of the land on this plan.			
Subject Land	Purpose	Width (metres)	Origin
E-1	DRAINAGE	2	THIS PLAN
		Land Benefited/In Favour Of	
		LOTS ON THIS PLAN	
		<p><b>ENDORSED PLAN</b> Murrindindi Shire Council Murrindindi Planning Scheme Planning Permit No. 2013/75. Plan No. .... of ...? Approved: ..... (Delegate) Date: 11.6.13</p>	
<p><b>RODNEY AUJARD &amp; ASSOCIATES</b> <i>Licensed Land Surveyors</i></p> <p>Level 1, 325 Camberwell Road, CAMBERWELL. 3124. Ph. 9813 2222      Fax. 9813 2244 82 High Street, YEA. 3717. Ph. 5797 2056 81 Grant Street, ALEXANDRA. 3714. Ph. 5772 1530 aujard@bigpond.net.au</p>		<p>DIGITALLY SIGNED BY LICENSED SURVEYOR : JOHN F. EGAN</p>	
		REF : 14837	VERSION 1
		Sheet 1 of 2 Sheets ORIGINAL SHEET SIZE A3	

PS 716410 P

Approx.  
True North



**ENDORSED PLAN**  
Murrumbidgee Shire Council  
Murrumbidgee Planning Scheme  
Planning Permit No. 2013/175  
Plan No. 2 of 2  
Approved: .....  
(Delegate)  
Date: 11-6-13

COPY

<b>RODNEY AUJARD &amp; ASSOCIATES</b> <i>Licensed Land Surveyors</i> Level 1, 325 Camberwell Road, CAMBERWELL. 3124. Ph. 9813 2222 Fax. 9813 2244 82 High Street, YEA. 3717. Ph. 5797 2056 81 Grant Street, ALEXANDRA. 3714. Ph. 5772 1530 aujard@bigpond.net.au	SCALE 4 0 4 8 12 16 24  Lengths are in metres	ORIGINAL SCALE <b>1:400</b>	Sheet 2 ORIGINAL SHEET SIZE A3
	DIGITALLY SIGNED BY LICENSED SURVEYOR : JOHN F. EGAN REF : 14837                      VERSION 1		

# Alpha Environmental

ABN 85 088 652 671  
Suite 205, 134 Cambridge Street  
Collingwood, Victoria 3006  
Ph: (03) 9415 8002  
Fax: (03) 9415 8052  
[www.alphaenvironmental.com.au](http://www.alphaenvironmental.com.au)

Ian Patience

## Soil Investigation

4-6 Station Street, Yea, Victoria

AE1310049 R01

November 2013

## Report Terms and Conditions

1. Alpha Environmental has prepared this report for the purposes stated herein. We do not accept responsibility for the consequences of extrapolation, extension or transference of the findings and recommendations of this report to different sites, cases or conditions.
2. This report is based in part on information which was provided to us by the client and/or others and which is not under our control. We do not warrant or guarantee the accuracy of this information.
3. We believe the conclusions and recommendations contained herein were reasonable and appropriate at the time of issue of the report. However, the user is cautioned that fundamental input assumptions upon which this report is based may change with time. It is the user's responsibility to ensure that input assumptions remain valid.
4. This report must be read in its entirety. This notice constitutes an integral part of the report, and must be reproduced with every copy.
5. This report is prepared solely for the use of the person or company to whom it is addressed. No responsibility or liability to any third party is accepted for any damages howsoever arising out of the use of this report by any third party.
6. Unless specifically agreed otherwise in the contract of engagement, Alpha Environmental retains Intellectual Property Rights over the contents of this report. The client is granted a license to use the report for the purposes for which it was commissioned.
7. All electronic copies of this report are considered to be uncontrolled documents, due to the ease of data manipulation and modification in electronic documents. Should doubt exist relating to the completeness or integrity of this report, Alpha Environmental should be requested to confirm the accuracy of the report.
8. The following assessment works necessarily involved the assessment of conditions at relatively few locations, and the interpretation and extrapolation of those conditions to elsewhere on the site, not so covered by the assessment works. All due care and skill has been applied by Alpha Environmental in carrying out and reporting on these works. Thus the findings, conclusions and comments contained in this report represent professional estimates and opinions and are not to be read as facts unless the context makes it clear to the contrary. In general, statements of fact are confined to statements as to what was done and/or what was observed. Other statements have been based on professional judgment.
9. The scope of the work has been planned in the absence of any foreknowledge of the site other than that stated in the report. Unless otherwise stated Alpha Environmental considers that the number or locations and the depths to which they have been assessed are reasonable bearing in mind the scale and nature of the project, and the defined purpose for which the assessment was undertaken.
10. We do not accept any responsibility for any variance between the interpreted and extrapolated conditions and those that are revealed by any means subsequently. Specific warning is also given that many factors, either natural or artificial, may render conditions different from those that pertained at the time of the assessment. Should there be revealed during further works on-site or at any other time any apparent difference from the conditions described or assessed in this report, it is strongly recommended that such differences be brought to Alpha Environmental's attention so that its significance may be assessed and appropriate advice given.

*Please read the statement of limitations at the conclusion of this report for any additional limitations and conditions for which are applicable to this assessment*



Soil Investigation  
4-6 Station Street, Yea, Victoria

Ian Patience  
AE1310049 R01

## Document History and Status

### Document Details

<b>Document Title</b>	<b>Soil Investigation 4-6 Station Street, Yea, Victoria</b>
<b>Report Number</b>	AE1310049 R01
<b>Last Printed</b>	15/11/2013 04:04:00 PM
<b>File Name</b>	Z:\AE1310\AE1310049 - SOAS - YEA\Documents\Reports\AE1310049 R01.docx
<b>Project Manager</b>	Darcy Boyd

### Document Issue

Issue	Revision	Issued To	Date	Signed	Reviewed
Final	0	Ian Patience	15/11/2013	DB	RB

### Document Amendments

Revision	Date	Modified	Reviewed	Amendments / Changes

Oxipha Environmental

## Executive Summary

### Introduction

Alpha Environmental was engaged by Ian Patience to undertake a Soil Investigation at 4-6 Station Street, Yea, Victoria (the site) for the purposes of determining the contamination status of soils beneath the site.

Formal development plans for the site have not been made available to Alpha Environmental at this time, however, it is understood that the development will comprise both low density and commercial land use.

### Objectives

- Undertake one round of soil sampling and laboratory analysis to determine the contamination status of soils onsite;
- Provide comment on the suitability of the soils for the proposed land uses; and
- Provide recommendations for further assessment works if required.

### Works Undertaken

The Soil Investigation comprised one round of soil sampling and laboratory analysis of selected samples.

The soil sampling was undertaken in an approximately grid-based sampling pattern and at a density recommended by Australian Standard 4482.1 – 2005 *Guide to the investigation and sampling of sites with potentially contaminated soil Part 1: Non-volatile and semi-volatile compounds*.

Selected samples were sent to *National Authority of Testing Authorities* accredited laboratories for analysis of contaminants of potential concern with the reported laboratory results assessed with respect to relevant guidelines for residential and commercial land uses.

### Results

Results of the Soil Investigation indicate that the soils onsite do not exceed the adopted human health screen criteria for low density residential land use. Based on the investigation undertaken Alpha Environmental considered the site suitable for residential land use.

Alpha Environmental

Results of the Soil Investigation indicate that the soils onsite do not exceed the adopted human health screen criteria for Commercial/Industrial land use. Based on the investigation undertaken Alpha Environmental considered the site suitable for commercial/industrial land use.

Results of the Soil Investigation indicate that concentrations of Arsenic reported within the natural soil profile exceed the adopted ecological screening criteria in three locations. However, the exceedences (ranging from 22-26 mg/kg) fall within background ranges as specified by Table 5-A of Schedule B (1) of the NEPM (1999) and as such Alpha Environmental considers these concentrations to natural occurring and do not pose a risk to ecosystems at the site.

## Recommendations

Based on the findings of the Soil Investigation undertaken by Alpha Environmental at 4-6 Station Street, Yea, Victoria, Alpha Environmental is of the opinion that the site is suitable for residential and commercial/industrial land use.

However, no samples were collected from beneath the shed at the southern boundary of the western portion of the site. As such, it is recommended that soil samples be collected from within this area following removal of the concrete slab to assess the contamination status of soils within this area.

Alpha Environmental



# Potentially Contaminated Land

General Practice Note

June 2005

This General Practice Note is designed to provide guidance for planners and applicants about:

- how to identify if land is potentially contaminated
- the appropriate level of assessment of contamination for a planning scheme amendment or planning permit application
- appropriate conditions on planning permits
- circumstances where the Environmental Audit Overlay should be applied or removed.

## What is potentially contaminated land?

**Potentially contaminated land** is defined in *Ministerial Direction No. 1 – Potentially Contaminated Land*, as land used or known to have been used for industry, mining or the storage of chemicals, gas, wastes or liquid fuel (if not ancillary to another use of land). This practice note also deals with land that may have been contaminated by other means such as by ancillary activities, contamination from surrounding land, fill using contaminated soil or agricultural uses.

## How is potentially contaminated land considered in the planning system?

The planning system is the primary means for regulating land use and approving development and is an important mechanism for triggering the consideration of potentially contaminated land.

The *Planning and Environment Act 1987* requires a **planning authority** when preparing a planning scheme or planning scheme amendment to *'take into account any significant effects which it considers the scheme or amendment might have on the environment or which it considers the environment might have on any use or development envisaged in the scheme or amendment'* (Section 12).

*Ministerial Direction No. 1 – Potentially Contaminated Land (Direction No. 1)* requires **planning authorities** when preparing planning scheme amendments, to satisfy themselves that the environmental conditions of land proposed to be used for a sensitive use (defined as residential, child-care centre, pre-school centre or primary school), agriculture or public open space are, or will be, suitable for that use.



If the land is potentially contaminated and a sensitive use is proposed, *Direction No. 1* provides that a planning authority must satisfy itself that the land is suitable through an environmental audit.

Clause 15.06 of the *State Planning Policy Framework* contains State Planning Policy for soil contamination. Clause 15.06-2 refers to *Direction No. 1* and also states that in considering applications for use of land used or known to have been used for industry, mining or the storage of chemicals, gas, wastes or liquid fuel, responsible authorities should require applicants to provide adequate information on the potential for contamination to have adverse effects on the future land use.

The Environmental Audit Overlay (EAO) is a mechanism provided in the *Victoria Planning Provisions* and planning schemes to ensure the requirement for an environmental audit under *Direction No. 1* is met before the commencement of the sensitive use or any buildings and works associated with that use. The application of the overlay, in appropriate circumstances, ensures the requirement will be met in the future but does not prevent the assessment and approval of a planning scheme amendment.

The Act also requires a **responsible authority**, before deciding on a planning permit application, to consider *'any significant effects which the responsible authority considers the use or development may have on the environment or which the responsible authority considers the environment may have on the use or development'* (Section 60).

### What is an environmental audit?

The environmental audit system was introduced under the *Environment Protection Act 1970*. It aims to identify the environmental quality of a segment of the environment and any detriment to the beneficial uses of that segment. In the case of land, the beneficial uses are linked to land use.

A statutory environmental audit provides for an environmental auditor appointed under the *Environment Protection Act 1970*, to undertake an independent assessment of the condition of a site and form an opinion about its suitability for the proposed use. To form such an opinion, the auditor must gather and review sufficient information including site history information and the results of sampling and analysis of soil and possibly groundwater, surface water and air.

An audit of the condition of a site may result in the issue of either:

- a **Certificate** of Environmental Audit that indicates the auditor is of the opinion that the

site is suitable for any beneficial use and that there is no restriction on use of the site due to its environmental condition; or

- a **Statement** of Environmental Audit that indicates that the auditor is of the opinion that there is, or may be, some restriction on use of the site due to its environmental condition. A Statement may include conditions that require remediation works to be undertaken or places ongoing requirements on the site. A Statement might also indicate that a site is not suitable for any use, in which case the EPA will usually issue a Notice to require clean up or management of that site.

An auditor must first consider whether a Certificate can be issued for the site. This is the desired outcome for all sites. However, if a Certificate cannot be issued then a Statement of Environmental Audit must be issued.

An environmental audit reflects the condition of the site at the date of issue of the Certificate or Statement. If the site condition changes, an additional assessment may be required.

Section 53 ZE of the *Environment Protection Act 1970* requires that an occupier provide to any person who proposes to become an occupier a copy of any Statement of Environmental Audit that has been issued for the site (unless a Certificate of Environmental Audit has been subsequently issued).

### What does the SEPP (Prevention and Management of Contamination of Land) 2002 do?

The *State Environment Protection Policy (Prevention and Management of Contamination of Land) (SEPP)* was released in 2002 to bring together all matters relating to contamination of land, including responsibilities for prevention and management of contamination.

The SEPP confirms the requirements of *Direction No. 1*. It also outlines useful actions a responsible authority should take in the assessment of planning permit applications. The SEPP provides guidance to responsible authorities in Clauses 13 & 14 of the SEPP. The suggested actions are elaborated on in later sections of this practice note.

### How is potentially contaminated land identified?

Contamination of land is often a result of current or historical activities that have taken place at a site, or adjacent to it.

To identify the potential for contamination, the following steps may assist:

- Inspect the site. Observations should be made regarding evidence of contamination or historical activities that may give rise to contamination (for example, fuel tanks).
- Identify whether an Environmental Audit Overlay (EAO) exists over the site.
- Review any Site Analysis presented in accordance with Clauses 54.01-1 (single dwellings) & 55.01-1 (two or more dwellings) of planning schemes (these clauses require issues of site contamination to be identified).
- Consider any available information about the site:
  - The current and previous zoning, ownership or activities carried out on the site (for example council, rail, other utility or defence). Council rate records are a useful record of this information.
  - Any previous investigations or site assessments conducted.
  - Any potential contamination from surrounding land uses (for example, an adjacent service station known to be causing off-site contamination).
- Review lists of Certificates and Statements of Environmental Audit held by council and EPA. Environmental auditors are required to provide a copy of any Certificate or Statement issued to both the relevant council and the EPA.
- Review the EPA Priority Sites Register for information about sites with a current EPA Notice (for example, clean-up notice or pollution abatement notice) via Landata ([www.land.vic.gov.au](http://www.land.vic.gov.au) , Tel: 8636 2456) or Anstat ([www.anstat.com.au](http://www.anstat.com.au), Tel. 9278 1172).

### What information is needed?

In most cases the relevant information should be available from council or EPA records.

Particular types of current or past land uses or activities on a site (see section below) can act as a 'trigger' for the collection of more information about the previous uses or activities. Zoning may indicate past land uses, but is not a substitute for a detailed review of the site history.

If this information is not available to council officers, the SEPP suggests that further information should be requested from the proponent or applicant.

A suitably qualified environmental professional may provide an opinion on whether land intended for a sensitive use, is potentially contaminated. To contact a suitably qualified contaminated land

professional, go to either the EPA environmental auditors appointed in the category of contaminated land ([www.epa.vic.gov.au/Industry/environmental\\_auditors.asp](http://www.epa.vic.gov.au/Industry/environmental_auditors.asp)) or the Australian Contaminated Land Consultants Association (ACLCA) Victorian Branch, at [www.aclca.asn.au](http://www.aclca.asn.au) or Ph: 9509 5949.

Where the applicant submits an environmental assessment of the land, the planning or responsible authority may require the applicant to contribute financially to an independent review of the information by a suitably qualified environmental professional.

### What land uses or activities might indicate potential contamination?

An assessment of the current *or previous* land uses of a site is an important step in the identification of potentially contaminated land. Table 1 lists the types of land uses that may have potential for contaminating land.

**Table 1 - Potential for contamination**

**High potential** for contamination includes land used for:

- Abattoir
- Abrasive blasting
- Airport
- Asbestos production/disposal
- Asphalt manufacturing
- Automotive repair/engine works
- Battery manufacturing/recycling
- Bitumen manufacturing
- Boat building/maintenance
- Breweries/distilleries
- Brickworks
- Chemical manufacturing/storage/blending
- Cement manufacture
- Ceramic works
- Coke works
- Compost manufacturing
- Concrete batching
- Council works depot
- Defence works
- Drum re-conditioning facility
- Dry cleaning
- Electrical/electrical components manufacture
- Electricity generation/power station
- Electroplating
- Explosives industry
- Fibreglass reinforced plastic manufacture
- Foundry
- Fuel storage depot
- Gasworks
- Glass manufacture
- Iron and steel works
- Landfill sites/waste depots
- Lime works

- Metal coating
- Metal finishing and treatments
- Metal smelting/refining/finishing
- Mining and extractive industries
- Oil or gas production/refining
- Pest control depots
- Printing shops
- Pulp or paper works
- Railway yards
- Shooting or gun clubs
- Scrap metal recovery
- Service stations/fuel storage
- Sewage treatment plant
- Ship building/breaking yards
- Shipping facilities – bulk (rate <100 t/day)
- Stock dipping sites
- Spray painting
- Tannery (and associated trades)
- Textile operations
- Timber preserving/treatment
- Tyre manufacturing
- Underground storage tanks
- Utility depots
- Waste treatment/incineration/disposal
- Woollscouring

**Medium potential** for contamination can be identified by certain types of activities carried out on the land, which may be incidental to the main site activity. The nature of the products used or stored, the quantity stored, and the location of use or storage should be considered. Such activities might include:

- Chemical storage
- Fuel storage
- Underground storage tank (if recently installed and no evidence of leaks)
- Market gardens
- Waste disposal
- Filling (imported soil)
- Other industrial activities (such as warehousing of chemicals that may be spilt during loading or unloading)

**Low potential** for contamination is likely to exist if none of the identified uses or activities in the high and medium potential categories are known to have been carried out on the land.

### What level of assessment is required?

The level of environmental assessment necessary for a planning scheme amendment or planning permit application will depend on the statutory requirements for the proposed land use and the potential for contamination.

Where land has been identified as being potentially contaminated, an assessment of the level of contamination is necessary before a

decision is made about the future use or development of that land. Councils should consider whether further information or advice from an expert should be sought to assist in determining what level of assessment is required. This enables planning decisions to be made with the knowledge of the condition of the site and the most satisfactory site management strategies.

There are two forms of assessment that can be applied. These are:

**Require an environmental audit:** a statutory audit undertaken by an environmental auditor under the *Environment Protection Act 1970*. The outcome is either a Certificate of Environmental Audit or a Statement of Environmental Audit.

**Require a site assessment:** a preliminary review of the site history (including current and previous uses and activities) by a suitably qualified environmental professional.

The matrix in Table 2 indicates the appropriate assessment level, based on proposed land use and current or historic land uses or activities carried out on the land.

**Table 2 – Assessment matrix**

PROPOSED LAND-USE	POTENTIAL FOR CONTAMINATION (as indicated in Table 1)		
	High	Medium	Low
<i>Sensitive Uses</i>			
<i>Child care centre, pre-school or primary school</i>	A	B	C
<i>Dwellings, residential buildings etc.</i>	A	B	C
<i>Other Uses</i>			
<i>Open space</i>	B	C	C
<i>Agriculture</i>	B	C	C
<i>Retail or office</i>	B	C	C
<i>Industry or warehouse</i>	B	C	C

A: *Require an environmental audit as required by Ministerial Direction No. 1 or the Environmental Audit Overlay when a planning scheme amendment or planning permit application would allow a sensitive use to establish on potentially contaminated land.*

*An environmental audit is also strongly recommended by the SEPP where a planning permit application would allow a sensitive use to be established on land with 'high potential' for contamination.*

B: *Require a site assessment from a suitably qualified environmental professional if insufficient information is available to determine if an audit is appropriate. If advised that an audit is not required, default to C.*

C: *General duty under Section 12(2)(b) and Section 60(1)(a)(iii) of the Planning and Environment Act 1987.*

**When is an environmental audit necessary for a planning scheme amendment?**

For land that has been identified as potentially contaminated land and where a planning scheme amendment would have the effect of allowing that land to be used for a sensitive use, *Direction No. 1* requires a planning authority to satisfy itself that the land is suitable for the use by:

- (a) A Certificate of Environmental Audit issued for the site; or
- (b) A Statement of Environmental Audit issued by an environmental auditor stating that the environmental conditions of the site are suitable for the sensitive use (with or without conditions on the use of the site).

*Direction No. 1* requires that this be done before notice of a planning scheme amendment is given. However, it may be appropriate to delay this requirement if testing of the land before a notice of the amendment is given is difficult or inappropriate. For instance, if the rezoning relates to a large strategic exercise or involves multiple sites in separate ownership. *Direction No. 1* provides for the requirement for an environmental audit to be included in the amendment. This can be done by applying the EAO. See the section 'When should an Environmental Audit Overlay be applied'.

For a proposal to redevelop potentially contaminated land for a use other than a sensitive use (for example, a retail premises or office use), a planning authority can require an environmental audit if it considers it appropriate.

*Direction No. 1* provides for an exemption from the need to comply with the Direction. Such an exemption may be appropriate where:

- Potentially contaminated land is already used for a sensitive use, agriculture or open space.
- Prior industry use of the land was benign and unlikely to result in any contamination.
- If there is a regional strategy to manage contamination (for example former gold mining activities).

A planning authority may request an exemption from the Minister for Planning or the Deputy Secretary, Built Environment, Department of Sustainability and Environment. The Minister or Deputy Secretary must consult with the EPA before making a decision. The planning authority should consult with the EPA before requesting an exemption.

**When is an environmental audit necessary for a planning permit application?**

For land that has been identified as potentially contaminated land and where a planning permit application may allow potentially contaminated land to be used for a sensitive use, the SEPP requires that the responsible authority seek a Certificate of Environmental Audit or a Statement of Environmental Audit indicating that the site is suitable for the proposed use.

An environmental audit should be required unless the proponent can demonstrate to the satisfaction of the responsible authority that the site has never been used for a potentially contaminating activity, or that other strategies or programs are in place to effectively manage any contamination.

Uses such as open space, agriculture and outdoor playgrounds associated with other uses are not sensitive uses but include an element of risk to the public. Careful consideration should be given to the likelihood of contamination and the need for an environmental audit.

If an environmental audit is required because an EAO is applied over the land, a Certificate or Statement of Environmental Audit must be issued before the sensitive use or buildings and works associated with the sensitive use can commence. If an EAO has been applied, the planning authority has already made an assessment that the land is potentially contaminated and that it is unlikely to be suitable for a sensitive use without further assessment and remediation works or management.

There may be other circumstances where the land is known to be contaminated and it would be appropriate for the level of contamination to be fully assessed as part of the application process.

Generally an environmental audit should be provided as early as possible in the planning process. This may not always be possible or reasonable and requiring an environmental audit as a condition of permit may be acceptable if the responsible authority is satisfied that the level of contamination will not prevent the use of the site.

### Environmental audit works

The EAO is not a permit trigger and does not prevent works or activities being undertaken that are associated with an environmental audit (such as soil sampling).

### Remediation works

Works that are associated with a development and that might also be remediation works (such as excavation or basement construction) should not commence before the completion of an environmental audit if a planning permit has not been issued for the development.

Where a permit has been issued for a development and a requirement for an environmental audit is a condition of permit, the responsible authority should consider carefully wording the permit conditions to allow early building works that facilitate remediation of the site.

### When should a site assessment be sought?

A planning or responsible authority should seek (or require a proponent to seek) a site assessment by a suitably qualified environmental professional for proposals in category B, as shown in Table 2.

A site assessment should include:

- The nature of the previous land use or activities on the site
- How long did the activity take place?
- What is known about contamination?
- How much is present?
- How is it distributed?

An environmental professional may also assist in assessing information contained in any site assessment and advising further on the need for an audit on all or part of the site. The planning or responsible authority may require the applicant to include an independent assessment of the information, as part of the assessment of the permit application.

### What if there are ongoing conditions of management?

#### Statement of Environmental Audit available at time of decision

A Statement of Environmental Audit usually contains one or more conditions that must be implemented for the site to be suitable for the proposed use.

The planning or responsible authority must consider any conditions in a Statement and:

- include provisions in a planning scheme amendment or conditions in a planning permit that reflect the requirements of the conditions of the Statement
- require the applicant to demonstrate that the conditions included in the Statement have been or will be met before the use commences
- liaise with other agencies of appropriate jurisdiction where the nature of the conditions means that they are more properly considered by that agency (for example, liaise with the EPA about conditions requiring ongoing management of groundwater).

It is appropriate for a Section 173 agreement under the *Planning and Environment Act 1987* to be required where:

- the conditions on a Statement of Environmental Audit will be ongoing in nature and require maintenance or monitoring such as regular groundwater or waterway testing
- other parties, such as the EPA or a water authority are involved with conditions of an ongoing nature.

The agreement should also provide for periodic reporting.

Other conditions, such as maintenance of a clay barrier are suitable to include as a planning permit condition.

If the conditions of a Statement of Environmental Audit are impractical or inappropriate to include as planning permit conditions, the environmental auditor should be asked to either re-issue the Statement or to confirm that the intent of the Statement conditions are adequately captured in the proposed planning permit conditions.

Where conditions on a Statement of Environmental Audit can be most effectively implemented by another agency, the planning or responsible authority should liaise with that agency and reach agreement about responsibilities and actions. Most commonly this would involve EPA, but on occasions may involve other agencies such as water authorities (for example where conditions requiring ongoing monitoring and management of polluted groundwater are to be imposed).



### Requirements where an environmental audit is a condition of permit

Where an environmental audit is to be completed in response to a condition of a planning permit, it is necessary to carefully word planning permit conditions to not only require a Certificate or Statement of Environmental Audit but to also address the implementation of Statement conditions.

An example of conditions that might be placed on a planning permit is provided below:

1. Prior to the commencement of the use or buildings and works associated with the use (or the certification or issue of a statement of compliance under the *Subdivision Act 1988*) the applicant must provide:
  - (a) A Certificate of Environmental Audit in accordance with Section 53Y of the *Environment Protection Act 1970*, or
  - (b) A Statement of Environmental Audit under Section 53Z of the *Environment Protection Act 1970*. A Statement must state that the site is suitable for the use and development allowed by this permit.
2. All the conditions of the Statement of Environmental Audit must be complied with to the satisfaction of the responsible authority, prior to commencement of use of the site. Written confirmation of compliance must be provided by a suitably qualified environmental professional or other suitable person acceptable to the responsible authority. In addition, sign off must be in accordance with any requirements in the Statement conditions regarding verification of works.

Where there are conditions on a Statement of Environmental Audit that require significant ongoing maintenance and/or monitoring, the following condition might also be used:

3. The applicant must enter into a Section 173 Agreement under the *Planning and Environment Act 1987*. The Agreement must be executed on title prior to the commencement of the use and prior to the issue of a Statement of Compliance under the *Subdivision Act 1987*. The applicant must meet all costs associated with drafting and execution of the Agreement, including those incurred by the responsible authority.

### How are environmental audit conditions enforced?

Where a responsible authority becomes aware that an occupier is failing to comply with requirements set out in the planning scheme or planning permit, enforcement procedures under the *Planning and*

*Environment Act 1987* are available. These may include planning infringement notices, enforcement orders or prosecution through the Magistrates Court.

Where the failure to comply with Statement conditions results in a site not being suitable for its current use, EPA may issue a Clean-up Notice under the *Environment Protection Act 1970*. This also applies where the non-compliance results in pollution or a likelihood of pollution of another segment of the environment.

Depending on the nature of the conditions, other agencies may also have a role in enforcement.

### When should an Environmental Audit Overlay be applied?

The Environmental Audit Overlay (EAO) is a mechanism provided in the *Victoria Planning Provisions* and planning schemes to defer the requirements of *Direction No. 1* for an environmental audit until the site is to be developed for a sensitive use.

By applying the overlay, the planning authority has made an assessment that the land is potentially contaminated land, and is unlikely to be suitable for a sensitive use without more detailed assessment and remediation works or management. The steps set out in 'How is potentially contaminated land identified?' should be used to make this assessment.

The planning authority is also determining that the requirements of *Direction No. 1* may be deferred. The EAO is a statutory mechanism to provide for that deferment. The EAO is not simply a means of identifying land that is or might be contaminated and should not be used for that purpose. Previous zoning is not sufficient reason in itself to justify application of an EAO.

The Explanatory Statement to *Direction No. 1* suggests that it may only be appropriate to defer the audit requirement if testing of the land before a notice of amendment is given is difficult or inappropriate. An example might be where the rezoning relates to a large strategic exercise or involves multiple sites in separate ownership.

Planning authorities should be careful in applying the overlay. All buildings and works associated with a sensitive use (irrespective of how minor) will trigger the need to undertake an environmental audit.

Where sensitive uses already exist on a site the planning authority, before applying an EAO, should satisfy itself that these sites are potentially contaminated (through site history records). If there is no evidence of potentially contaminated land it may not be appropriate to apply the EAO to these sites.

## When should an Environmental Audit Overlay be removed?

The planning authority should remove the EAO if:

- it determines that the land is not potentially contaminated land. The steps set out in 'How is potentially contaminated land identified?' will assist this decision; or
- the site is given a Certificate of Environmental Audit.

In some circumstances where a Statement of Environmental Audit is issued, it may also be possible to remove the EAO (for example, where there are minimum restrictions or conditions on the use of the site, or the conditions have been complied with). The timely removal of an EAO will avoid costly and time-consuming requirements for all parties.

## References

- *Ministerial Direction No. 1 – Potentially Contaminated Land* 1989.
- *Victoria Planning Provisions*, particularly Clauses 15.06, 45.03, 54.01, 55.01 and 65.
- *State Environment Protection Policy (Prevention and Management of Contamination of Land)* June 2002.
- *Environmental Auditing of Contaminated Land* (EPA Publication 860, July 2002).
- *Environmental Auditor (Contaminated Land) Guidelines for Issue of Certificates and Statements of Environmental Audit* (EPA Publication 759b, October 2002).

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