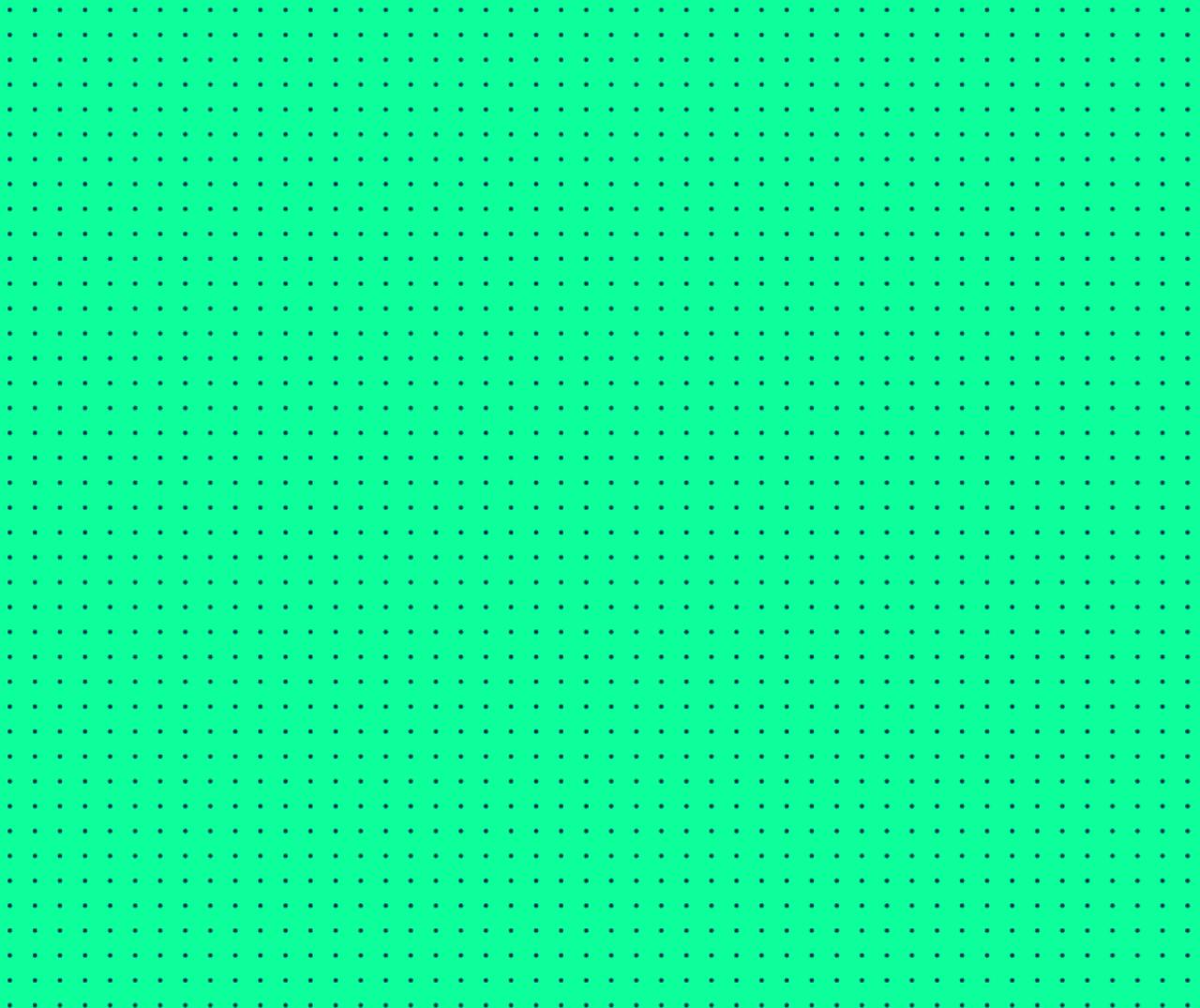




Environment Protection Authority

Preparing environmental management plans for contaminated land: Practice note (consultation draft)

Consultation report



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The EPA has developed a draft contaminated land practice note, *Preparing environmental management plans for contaminated land*.

The practice note aims to guide contaminated land consultants (practitioners) in preparing best-practice environmental management plans (EMPs) for long-term management of contamination.

This document describes the consultation outcomes, including the key feedback from invited stakeholders on the consultation draft practice note, the EPA responses and next steps.

Consultation report

About the practice note

The consultation draft practice note *Preparing environmental management plans for contaminated land* was developed in response to requests from site auditors and councils for more guidance in preparing best-practice environmental management plans (EMPs).

The practice note will help contaminated land consultants, engaged by site owners, and anyone else who has to prepare a contaminated land EMP, to prepare a plan well-suited to long-term management of contamination.

It will also help anyone who engages a consultant to prepare an EMP, and anyone responsible for reviewing, implementing or regulating an EMP (including councils, other regulators and site auditors).

What was the process?

Targeted consultation

The EPA held a targeted consultation with invited stakeholders to seek feedback on the draft contaminated land practice note.

We emailed stakeholders and invited them to ‘have your say’ on the consultation draft published on the EPA’s [Have Your Say](#) website, and to share the link with other interested parties.¹

We invited the stakeholders to read the draft guidelines and tell us what they thought by completing a short online survey about the practice note between 27 January and 10 March 2021.

We sought feedback on whether the practice note was easy to understand, included enough information and reflected up-to-date practice.

We reviewed the survey responses and the comments made in written submissions, and amended the consultation draft where relevant to produce the final practice note.

Online survey

We asked stakeholders for their response – ‘strongly agree’, ‘agree’, ‘neither agree or disagree’, ‘disagree’ or ‘strongly disagree’ – to four survey questions:

1. The practice note is easy to understand.
2. The practice note includes enough guidance for me to prepare an environmental management plan.
3. The guidance in Appendix A on roles and responsibilities is useful.
4. The guidance in Appendix B on mechanisms to make an environmental management plan legally enforceable is useful.

A fifth question said:

‘Please tell us about any other information, topics, or examples we should include in the practice note.’

¹ <https://yoursay.epa.nsw.gov.au/environmental-management-plans-contaminated-land>

Who did we engage with?

Directly invited – 24 stakeholders

Visited the survey page – 156 people

Respondents – 13 stakeholders

Surveys responses – 7 (one submitted offline via email)

Written submissions – 6 (not counting the offline survey response)

Respondents by stakeholder group:

- councils – 6
- consultants – 4
- site auditor – 1
- State Government agency – 1
- law firm – 1.

What did we hear?

Key survey results: overview

The key survey results were:

- Most survey respondents agreed that ‘the practice note is easy to understand’.
- Most survey respondents agreed that ‘the practice note includes enough guidance for me to prepare an EMP’.
- Most survey respondents agreed that ‘the guidance in Appendix A on roles and responsibilities is useful’.
- Survey respondents’ opinions differed about the statement ‘the guidance in Appendix B on mechanisms to make an EMP legally enforceable is useful’. Some respondents thought that further guidance was needed on notification, enforceability and ensuring long-term compliance.

The survey results and feedback provided in written submissions are described below, along with EPA responses. They are followed by a summary of the **concerns raised about EMPs**.

Is the practice note easy to understand?

Most survey respondents agreed ‘the practice note is easy to understand’. But most survey respondents and submissions also made some suggestions to improve understanding of the practice note. These suggestions included:

- removing repetition
- clarifying terms
- using stronger, more direct words, such as ‘must’ or ‘required’.

Our responses

We have:

- reviewed and tightened wording
- removed duplication by taking out the summary of an EMP and integrating Appendices A and B into the body of the document
- clarified
 - the different types of EMPs
 - requirements for ‘design and control of EMPs’
 - the definition for unexpected finds and residual contamination
- removed the requirement to list contact names for corrective actions and contingency plans, and instead required job titles to be listed. This maintains continuity when staff change.

We did not amend the document to use mandatory terms like ‘must’, as the document is not prescriptive; rather, it is a best-practice guide to help consultants prepare EMPs that are consistent with the EPA’s guidance in the document *Consultants reporting on contaminated land*.

Does the practice note include enough information?

Most survey respondents agreed that ‘the practice note includes enough guidance for me to prepare an EMP’. Many also provided input on other information, topics or examples they thought we should include in the practice note.

This feedback is summarised in Table 1.

Table 1 Summary of responses to ‘The practice note includes enough guidance for me to prepare an EMP’

Suggested subject	Type of information	EPA response
EMP process	At what stages an EMP should be prepared What triggers the need for an EMP?	The stage of a development at which an EMP should be prepared will vary on a case-by-case basis due to site-specific factors. We have added to the guidance: <ul style="list-style-type: none"> • advice that an EMP should not be developed in response to remediation failings unless further assessment has determined that an EMP is the most appropriate means of addressing residual contamination • factors to consider before deciding if an EMP is required.
Monitoring and review	Required review period should be set regularly, e.g. quarterly, biannually or annually. The guidance should indicate a maximum time between reviews.	The text has been clarified to indicate that the plan itself should contain review time frames, including a minimum review time frame, and identify what would trigger an immediate review. These time frames will depend on site-specific factors, and agreement with and between relevant stakeholders.

Suggested subject	Type of information	EPA response
Developer roles and responsibilities	Site clean-up (e.g. without leaving contamination behind) Ensuring mitigation measures will match the life of the development	The guidance now clearly states that: <ul style="list-style-type: none"> an EMP should not be developed in response to remediation failings unless further assessment has determined that an EMP is the most appropriate means of addressing residual contamination mitigation measures should match the life of the development.
Service stations	Decommissioning and remediation case studies where these type of EMPs are used	EMPs for managing contamination at service-station sites over the long term need to take into account site-specific factors.

Is the guidance in the practice note on roles and responsibilities in Appendix A, and mechanisms to make an EMP legally enforceable in Appendix B, useful?

Most survey respondents agreed that the guidance in Appendix A on roles and responsibilities is useful.

Survey respondents' opinions differed about the statement 'the guidance in Appendix B on mechanisms to make an EMP legally enforceable is useful'.

The guidance provided under the heading 'Compliance with the EMP' has been extended. This includes additional text clarifying the roles of the EPA and planning authorities, as follows:

It is important to note that the EPA does not approve and 'sign off' on EMPs. EPA involvement with sites likely to have EMPs will be limited to those contaminated sites being regulated under the CLM Act, or sites with environment protection licences issued under the POEO Act.²

Planning authorities, such as the Department of Planning, Industry and Environment or local councils, will regulate development conditions which require EMPs.

Compliance with the practice note

We heard questions about the compliance with the practice note. Before undertaking their work, consultants should refer to statutory guidelines made or approved by the EPA under section 105 of the CLM Act, and also contaminated land planning instruments and guidelines. They should also refer to any other contaminated land guidance published by the EPA including best-practice notes and technical notes. This guidance is intended to be best-practice guidance for preparing EMPs: it is not a statutory requirement.

Concerns raised about EMPs

We have also had some feedback from stakeholders outside this consultation, related to issues including public notification, legal enforceability and/or long-term compliance with EMPs. These issues are listed below. They are outside the scope of the public consultation on the practice note; nevertheless, the EPA will work with co-regulators and partners and contaminated land consultants to address them.

Concerns raised in feedback outside this consultation included:

- councils often not being consulted about EMPs** by landowners responsible for remediating land and/or consultants preparing EMPs on their behalf

² Protection of the Environment Operations Act 1997

- **use of EMPs to manage off-site contamination impacts**, such as impacted property owners not being informed of the EMP or involved during its preparation
- **problems with public notification and lack of ongoing records** of EMPs, for example
 - often after a few years EMPs are lost by their owners and no longer implemented: this may be because of responsible staff moving on and lack of adequate filing and records retrieval systems. Some form of central (State or local government) registry is required with implementation periodically recorded and any failure to do so flagged and rectified
 - there may be certain circumstances where it is not appropriate to make an EMP public
- **limited monitoring and review of EMPs** by landowners responsible for ensuring the EMP actions are implemented
- **lack of regulatory oversight and enforcement of EMPs** by councils, including
 - limitations of available enforcement mechanisms and council access to them
 - council reluctance to record the presence of an EMP on planning certificates
- **limits of the consultant's expertise** – council concerns that while the suitably qualified contaminated land management consultant has the appropriate expertise to produce EMPs, they may not know
 - who the stakeholders are and when to engage them
 - what the mechanisms for enforcement are
 - how to address situations where the EMP is not part of a development application (so it is not required or managed by a consent condition)
- **differing remediation goals** – some councils will not consider the use of an EMP to manage residual contamination in any circumstance
- **limits of the consultant's role** – the view (voiced by consultants) that it is not the consultant's job to check that EMPs are implemented unless they have been contracted to do so.

Some respondents were disappointed that these concerns remain unresolved, and suggested further consultation with stakeholders and/or law reform to support ongoing enforcement of EMPs.

How did we respond?

The EPA analysed the survey responses and the comments made in the written submissions, and amended the consultation draft where relevant to produce the final practice note.

Next steps

We will continue to work with our co-regulators and partners to provide updated guidance and to build capacity in contaminated land management, including within local councils.