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This toolkit refers specifically to the tender, contract and project management phases of construction projects. It is designed to help procurement officers and construction project managers to engage contractors and work on contracts that involve construction and demolition.

Unlawful waste disposal or fraudulent behaviour by contractors and subcontractors creates the potential for significant reputation damage, financial penalty and criminal conviction.

The NSW Environment Protection Authority (EPA) recommends procurement officers and construction project managers be familiar with how their contractors and subcontractors manage and dispose of waste.
Who is responsible for lawfully disposing of construction and demolition waste?

Waste generated from construction and demolition sites, including soil, contaminated soil and demolition waste, must be re-used or disposed of lawfully. Unlawful waste disposal or fraudulent behaviour by contractors and subcontractors potentially exposes the proponent to significant reputation damage and financial penalty.

In NSW the **owner of the waste** and the **waste transporter** may both be guilty of an offence when waste is transported to a place that cannot lawfully be used as a waste facility.

The **owner of waste** includes, in relation to waste that has been transported, the person who was the owner of the waste immediately before it was transported, Section 143(4) of the *Protection of the Environment Operations Act 1997* (POEO Act).

Section 143 of the POEO Act makes it an offence to transport waste to a place that cannot lawfully accept it. Penalties apply for doing the wrong thing.

**Maximum Penalty:** $1,000,000 (corporation) $250,000 (individual)

This toolkit provides guidance to support lawful waste disposal practices.

**Part 1. The tender and contract**

- Outlines recommended areas for consideration when developing tender documents and contracts.

**Part 2. Management of waste from construction sites**

- Outlines some of the tools available to check waste transport and disposal compliance by contractors and subcontractors.
- A supporting document *Construction & Demolition Waste: an owner’s guide to lawful disposal*¹ is available on the EPA website.

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Part 1: The tender and contract

The EPA recommends considering the steps below, in addition to any other relevant matters, when preparing requests for tender documentation for principal contractors.

1.1 Tender specification considerations

Waste Management Plan (WMP)

Consider including the following in your WMP:


2. Estimated quantities of each waste type to be removed from the site.

3. An outline of how the waste types will be managed from generation, to recycling, re-use and disposal during the construction phases. Include details of any receival sites to be used and the required approvals e.g. development consent, environment protection licence (EPL).

4. A reporting and monitoring template used to deliver the above-mentioned information to the principal contractor. Note: this may be able to occur within overall project reporting.

5. An itemised schedule of rates for the transport, disposal and recycling of each type of waste including unexpected contaminated soil.

6. Details of any contractors and subcontractors to be used, their environmental history, ACN/ABN and how subcontractors will be managed.

7. Details of monitoring of transporters such as GPS trackers.

8. Allocated areas for waste segregation, stockpiling and management, if applicable.

9. Contact details for consultant and disposal company that can manage unexpected contaminated soil.

10. Sufficient contingency budget and plan for unearthed contamination. Plan to consider management, timing and budget considerations for client.

11. Exploration of re-use options.

12. Suitable receival sites for spoil including Virgin Excavated Natural Material (VENM) and Excavated Natural Material (ENM).

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Principal waste contractor contract considerations

The EPA recommends, in addition to any other relevant factors, the following should be considered when preparing contracts with principal waste contractors:

1. Waste contractors and subcontractors may need to adhere to WMP requirements. Consider including these requirements in the contract.

2. Require that the proponent be advised of variation/updates to the WMP.

3. The reporting and monitoring template may need to be followed by waste contractors and subcontractors. Consider including this as a contractual requirement.

4. Consider linking payment milestones to waste recycling or disposal deliverables. For example, require recycling and disposal dockets prior to milestone payment.

5. Consider paying disposal costs directly to the disposal or recycling facilities and paying the transporter for transport only.

6. Consider requiring transport monitoring (e.g. GPS tracking or similar technology) and recording waste dispatch details from site.

7. Consider requiring details of any subcontractors to be used, their environmental history, ACN/ABN and how they will be managed.

8. Consider requiring evidence of lawful disposal/recycling/re-use (for example EPL or development consent) before waste is removed from site.
Part 2: Management of waste on construction projects

Diagram 1: Construction and demolition waste flows
The EPA strongly recommends that project managers ensure their contractors meet contractual obligations for the correct disposal of waste. While project managers must rely on their own inquiries, the checklist in the table below highlights some factors that may assist in assessing whether contractual obligations have been met.

This checklist also provides examples of the types of information that contractors provide as evidence of lawful disposal. The EPA recommends project managers make further inquiries if contractors and subcontractors cannot provide such evidence.

### Construction and demolition waste

<table>
<thead>
<tr>
<th>No.</th>
<th>Item</th>
<th>Requirement</th>
<th>Evidence</th>
<th>Sighted</th>
<th>Date</th>
</tr>
</thead>
</table>
| 1   | Does any of the waste meet a resource recovery order (RRO)? | Yes | • waste classification report  
• records required by RRO including sampling results and copies of the statements of compliance  
• records detailing where material was transported to  
• copy of the receival sites development consent, if required  
• transport records (e.g. GPS trackers) | | | |
| 2   | Will the C&D waste be sent for recycling/re-use/reprocessing in NSW? | Yes | • waste classification report  
• any records including sampling results  
• copy of receival site’s EPL (available on public register)  
• weighbridge receipts  
• invoicing and payment receipts from receival facility or contractor  
• transport records  
• (e.g. GPS tracker) | | | |
| 3   | Will the C&D waste be sent for disposal (levy applies)? | Yes | • waste classification report  
• any records including sampling results  
• copy of receival site’s EPL (available on public register)  
• weighbridge receipts  
• invoicing and payment receipts from receival facility or contractor  
• transport records (e.g. GPS tracker) | | | |
## Asbestos waste

<table>
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<tr>
<th>No.</th>
<th>Item</th>
<th>Requirement</th>
<th>Evidence</th>
<th>Sighted</th>
<th>Date</th>
</tr>
</thead>
</table>
| 1   | Is any of the waste asbestos? | Yes | • classify waste onsite  
• SafeWork NSW must receive a notification to remove asbestos by a licensed asbestos removalist  
• you may need an occupational hygienist to verify the site is free of asbestos (clearance certificate) | • waste classification report  
• sampling results  
• asbestos audit  
• evidence of SafeWork NSW notification  
• removalist licence  
• clearance certificate | | |
| 2   | Will the asbestos be transported offsite? | Yes | • asbestos sheets must be wrapped  
• soils wetted down and covered  
• vehicles must be covered  
• transporter to use smart phone to track waste - WasteLocate >10t | • records of site checks  
• weighbridge receipts  
• any records including sampling results  
• invoicing and payment receipts from receival facility or contractor  
• WasteLocate evidence – consignment code  
• transport records (e.g. GPS tracker) | | |
| 3   | Where will the asbestos be disposed? | Yes | • receival facility must have EPL for those waste types and planning consent | • copy of receival site’s EPL (available on public register)  
• weighbridge receipts  
• invoicing and payment receipts from receival facility or contractor  
• WasteLocate consignment code (audit consignments) | | |

Note: Recommend generator pay disposal facility directly
<table>
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<tr>
<th>No.</th>
<th>Item</th>
<th>Requirement</th>
<th>Evidence</th>
<th>Sighted Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Will uncontaminated soil be sent offsite for re-use?</td>
<td>Yes</td>
<td>• waste classification report&lt;br&gt;• copy of the receival site's development consent, if required&lt;br&gt;• statutory declaration from landowner&lt;br&gt;• records required by RRO including sampling results and copies of the statements of compliance&lt;br&gt;• VENM certification&lt;br&gt;• Geo-tech report (if available)&lt;br&gt;• records detailing where material was transported to&lt;br&gt;• transport records (e.g. GPS trackers)</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Will contaminated soils be generated for offsite disposal?</td>
<td>Yes</td>
<td>• waste classification report&lt;br&gt;• sampling results</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Contaminated soil transport</td>
<td>Yes</td>
<td>• consignment authorisation</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Contaminated soil disposal</td>
<td>Yes</td>
<td>• copy of receival site’s EPL (available on public register)&lt;br&gt;• weighbridge receipts&lt;br&gt;• sample results&lt;br&gt;• invoicing and payment receipts from receival facility or contractor&lt;br&gt;• transport records (e.g. GPS tracker)</td>
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Note: recommend generator pay disposal facility directly
Resources

Abbreviations

<table>
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<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>C&amp;D</td>
<td>Construction and Demolition</td>
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<tr>
<td>CLM Act</td>
<td>Contaminated Land Management Act 1997</td>
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<tr>
<td>ENM</td>
<td>Excavated Natural Material</td>
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<tr>
<td>EPL</td>
<td>Environment Protection Licence</td>
</tr>
<tr>
<td>MLA</td>
<td>Metropolitan Levy Area</td>
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<tr>
<td>RRE</td>
<td>Resource Recovery Exemption</td>
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<tr>
<td>RRO</td>
<td>Resource Recovery Order</td>
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<tr>
<td>VENM</td>
<td>Virgin Excavated Natural Material</td>
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</tbody>
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Definitions

Excavated Natural Material
The Excavated Natural Material Order 2014 defines excavated natural material (ENM) as:
1. naturally occurring rock and soil (including but not limited to materials such as sandstone, shale, clay and soil) that has:
   a) been excavated from the ground, and
   b) contains at least 98% (by weight) natural material, and
   c) does not meet the definition of Virgin Excavated Natural Material in the Act.
2. Excavated natural material does not include material located in a hotspot; that has been processed; or that contains asbestos, Acid Sulfate Soils (ASS), Potential Acid Sulfate soils (PASS) or sulfidic ores.
3. All conditions of the Excavated Natural Material Order and Exemption must be met for the re-use of the resource recovered waste to be lawful.

Virgin Excavated Natural Material
The Protection of the Environment Operations Act 1997 (POEO Act) defines virgin excavated natural material (VENM) as:
1. ‘natural material (such as clay, gravel, sand, soil or rock fines):
   a) that has been excavated or quarried from areas that are not contaminated with manufactured chemicals, or with process residues, as a result of industrial, commercial, mining or agricultural activities and
   b) that does not contain any sulfidic ores or soils or any other waste and includes excavated natural material that meets such criteria for virgin excavated natural material as may be approved for the time being pursuant to an EPA Gazettal notice.’
<table>
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<th>Term</th>
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