

MANAGING OFFSITE TRANSPORT OF SOIL

QUICK REFERENCE GUIDE

BEST PRACTICE IN MANAGING THE OFFSITE TRANSPORT
OF SOIL IN DEVELOPMENT CONTROL PROCESSES

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- > What are the requirements of moving soil offsite?
- > When is the management of soil considered a 'waste management' process?
- > What is required when importing infill at subdivision sites?



HOW TO READ THIS DOCUMENT

This quick reference guide provides summary information to Councils on the process and steps for managing contaminants in soil. Rather than duplicate information contained in corresponding resources, links to other capacity resources or external sources are provided where applicable.

The tab structure of this document allows Council staff to quickly locate information about the process triggers, steps and key considerations, thereby enabling this guidance to be incorporated into Council business processes. Visual aids and checklists are also provided to assist Council in navigating the process.

This quick reference guide should be read in conjunction with the corresponding ***Managing Asbestos in Development Control Processes*** quick reference guide.

ACKNOWLEDGEMENT AND REPORT LIMITATIONS

This quick reference guide is one of a series of resources on contaminated land developed for Councils. These resources were developed with the use of funds under the NSW EPA Council Regional Capacity Building (CRCB) program on contaminated land.

The process of developing these resources was a collaboration between the respective CRCB projects delivered by the Riverina and Murray Joint Organisation, Riverina Eastern Regional Organisation of Councils, Northern Rivers Contaminated Land Program, Far North West Joint Organisation and the Dubbo Regional Council. Councils participating in each CRCB project are acknowledged on the reverse side of this resource.

The following limitations are to be noted in relation to this resource:

- The legislative framework is the framework of 23 June 2023
 - *Contaminated Land Management Act 1997*
 - *Environmental Planning and Assessment Act 1979*
 - *Environmental Planning and Assessment Regulation 2021*
 - *Local Government Act 1993*
 - *Managing Land Contamination: Planning Guidelines: SEPP55 – Remediation of Land*
 - *Protection of the Environment Operations Act 1997*
 - *Protection of the Environment Operations (General) Regulation 2022*
 - *Protection of the Environment Operations (Underground Petroleum Storage Systems) Regulation 2019*
 - *Protection of the Environment Operations (Waste) Regulation 2014*
 - *State Environmental Planning Policy (Resilience and Hazards) 2021*
 - *Work Health and Safety Act 2011*
 - *Work Health and Safety Regulation 2017*
- Information on processes, steps and related information is of 23 June 2023
 - *Consultants Reporting on Contaminated Land: Contaminated Land Guidelines* (NSW EPA, 2020)
 - *Waste Classification Guidelines – Part 1: Classifying Waste* (NSW EPA, 2014).

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GLOSSARY

Environment protection licence (EPL):

A licence issued by the NSW EPA to the owners or operators of various industrial premises and activities under the *POEO Act*. EPLs list conditions that relate to pollution prevention and monitoring, and to cleaner production through recycling, re-use and the implementation of best practices.

EPA:

Environment Protection Authority.

Licensed site:

Schedule 1 Part 1 of the *POEO Act* defines premises-based activities for which a licence is required for the [premises at which the activity is carried out](#).¹ A licence site is a site with a licence for such an activity.

Non-licensed site:

Waste facilities are not required to be licensed if they are [outside the EPA-regulated area](#)² but only if:

- (i) the site is owned by and operated by or on behalf of a local council, and
- (ii) the site was in existence immediately before 28 April 2008 and was not required to be licensed before that date, and
- (iii) details required under clause 47 of the Protection of the Environment Operations (Waste) Regulation 2005 were provided, in relation to the site, before 28 April 2008, and
- (iv) the site receives from off site less than 5,000 tonnes per year of waste, and
- (v) that waste has been generated outside the regulated area and consists only of general solid waste (putrescible), general solid waste (non-putrescible), clinical and related waste, asbestos waste, grease trap waste or waste tyres ([or any combination of them](#)).³

However, a non-licensed waste management facility that receives up to 5,000 tonnes per annum requires EPA approval but may not require a licence.

POEO Act:

Protection of the Environment Operations Act 1997.

Remedial action plan:

A written description of remediation action designed or planned to reduce or mitigate the human health and ecological risk posed by the contamination detected at a contaminated site.

Section 143 notice:

A notice, under section 143 of the *POEO Act*, provided by a landowner to a transporter. This notice provides a transporter immunity from prosecution if waste is dumped in accordance with a section 143 notice for a site. The notice does not give a landowner a defence to using their land as a waste facility without lawful authority. Regardless of the notice, the landowner or any person who carries out any development or activity on land involving waste must ensure compliance with planning requirements, including by obtaining any planning consent or approval and complying with any conditions attached to that consent or approval. Only then can a landowner lawfully provide a section 143 notice to a transporter.

¹ <https://legislation.nsw.gov.au/view/html/inforce/current/act-1997-156#sch.1>

² <https://www.epa.nsw.gov.au/-/media/epa/corporate-site/resources/wasteregulation/levy-area-map.pdf>

³ <https://legislation.nsw.gov.au/view/html/inforce/current/act-1997-156#sch.1-sec.39>

PURPOSE AND OBJECTIVES

The purpose of this quick reference guide is to provide a simplified waste management process for Council to manage offsite soil contamination. It outlines simple steps to move:

- contaminated material offsite to a licensed waste management facility (landfill)
- import material onsite
- transport clean (non-contaminated) soil to a non-licensed site (such as private land).

This quick reference guide is one of a series of resources developed for Councils on contaminated land management. These resources are intended to guide and inform the Council development control processes that are required to:

- ensure land is suitable for its proposed use
- minimise the risk of harm to human health and the environment
- apply good practice to managing contaminants in soil to ensure the above objectives are achieved.

INTENDED AUDIENCE, AND ROLES AND RESPONSIBILITIES

Council staff are required to consider the management of waste in development control processes and related activities.

This quick reference guide provides some waste-specific guidance to staff as they:

- assess development applications
- review remedial action plans and validation reports for contaminated sites
- investigate illegally dumped stockpiles (waste, asbestos or other) on public or private land
- respond to unexpected finds during development works.

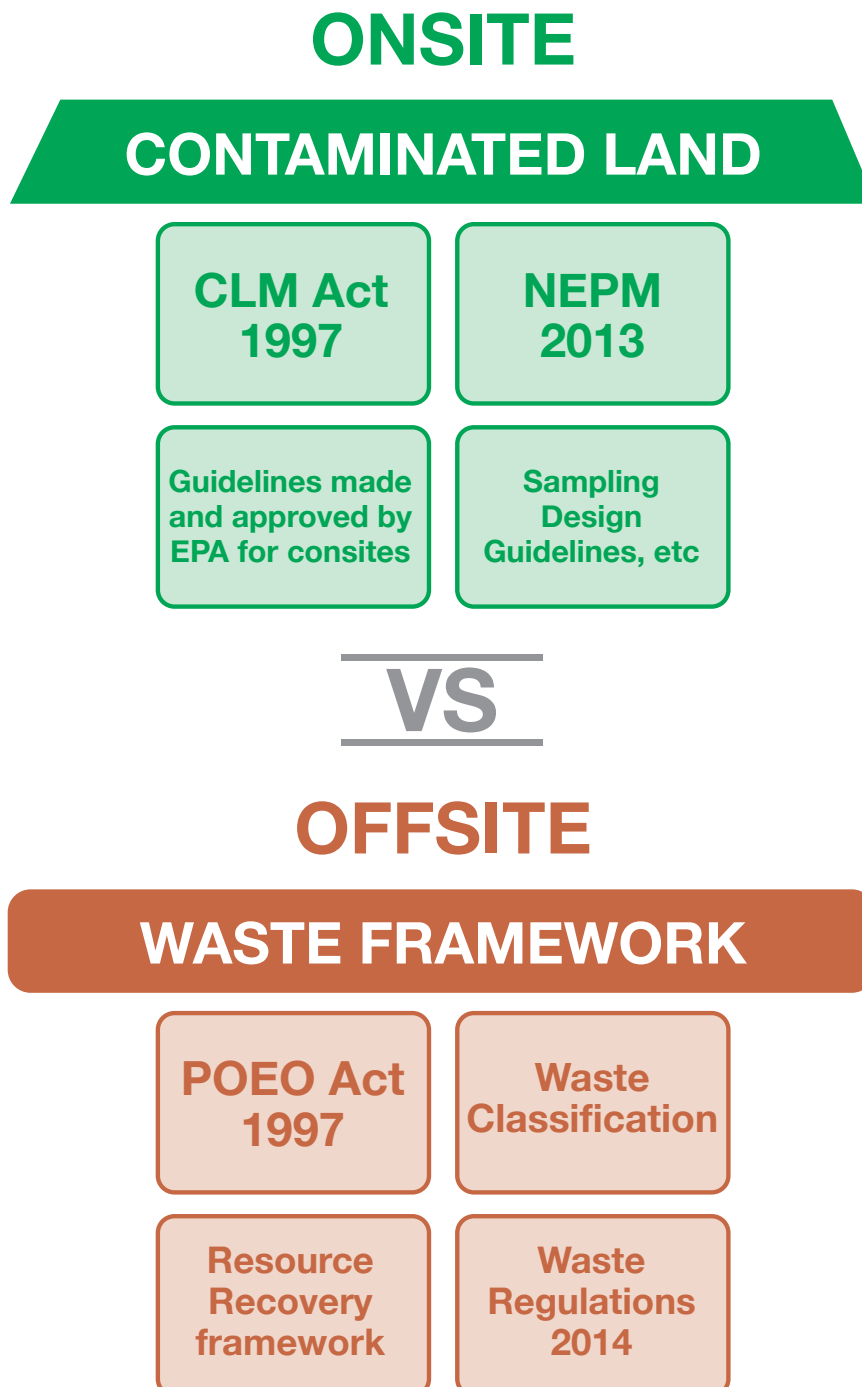
Measures taken during the early stages of the development control process, if followed, will streamline and reduce the compliance measures to be taken to ensure works meet legislative requirements.



IS THE ACTIVITY ONSITE OR OFFSITE?

The policy objectives and considerations for the recovery and re-use of waste (offsite activities) are very different to those used for the management of contaminated sites (onsite activities), as shown in Figure 1.

Figure 1: Is the activity 'onsite' or 'offsite'?



Note: CLM Act 1997 = Contaminated Land Management Act 1997; NEPM 2013 = National Environment Protection Measure 1999 (amended 2013); EPA = Environment Protection Authority; POEO Act = Protection of the Environment Operations Act 1997; Waste Regulations 2014 = Protection of the Environment Operations (Waste) Regulation 2014.

Source: Ly, Alan. (2020). Asbestos waste [PowerPoint slide]. University of Technology Sydney presentation.

IS THE ACTIVITY ONSITE OR OFFSITE?

This quick reference guide provides a process for managing offsite contamination only. The management of onsite contaminated land is discussed in the *Assessment of Site Contamination Reports* quick reference guide.

Typically, the re-use of waste materials is proactive, precautionary and focused on preventing land from being contaminated by the waste. It also focuses on ensuring that the waste is viewed as a resource rather than as contaminated waste.

DEFINITION OF WASTE

The definition of 'waste' is very broad and covers a wide range of substances. Taking material from one site to another will trigger the waste definition from the *Protection of the Environment Operations Act 1997*, which is reproduced below:

waste includes –

- (a) any substance (whether solid, liquid or gaseous) that is discharged, emitted or deposited in the environment in such volume, constituency or manner as to cause an alteration in the environment, or
- (b) any discarded, rejected, unwanted, surplus or abandoned substance, or
- (c) any otherwise discarded, rejected, unwanted, surplus or abandoned substance intended for sale or for recycling, processing, recovery or purification by a separate operation from that which produced the substance, or
- (d) any processed, recycled, re-used or recovered substance produced wholly or partly from waste that is applied to land, or used as fuel, but only in the circumstances prescribed by the regulations, or
- (e) any substance prescribed by the regulations to be waste.

A substance is not precluded from being waste for the purposes of this Act merely because it is or may be processed, recycled, re-used or recovered.



THE WASTE REGULATORY FRAMEWORK

The proper assessment and characterisation of wastes that are intended for either disposal or re-use on another site is key to protecting the environment and human health as well as the current and potential future uses of land on which waste is applied.

The two key legislative instruments for the regulation of waste in NSW are as follows:

- *Protection of the Environment Operations Act 1997 (POEO Act)*
- *Protection of the Environment Operations (Waste) Regulation 2014 (Waste Regulation)*.

Both contain provisions for the management, storage, transport, processing, recovery and disposal of waste.

THE PROTECTION OF THE ENVIRONMENT OPERATIONS ACT 1997

The principal environmental protection legislation for NSW is the *POEO Act*. The Act:

- defines 'waste' for regulatory purposes
- establishes management and licensing requirements for waste
- defines offences relating to waste and sets penalties
- establishes the ability to set various waste management requirements via the *Waste Regulation*.

The land application of waste (as defined in the *POEO Act*) may trigger various regulatory requirements, such as the need to hold an environment protection licence and to pay a waste levy.

THE PROTECTION OF THE ENVIRONMENT OPERATIONS (WASTE) REGULATION 2014

The *Waste Regulation* assists the Environment Protection Authority (EPA) in protecting human health and the environment.

The EPA has the power to grant an exemption from certain regulatory requirements for material that is produced wholly or partly from waste. The EPA grants this permission, subject to strict conditions, under the *Waste Regulation*. Clause 92 of the *Waste Regulation* outlines a series of resource recovery orders and exemptions for commonly recovered and re-used wastes.

This clause is reproduced below:

92 Exemptions relating to resource recovery

- (1) This clause applies to the following waste –
- (a) waste (including any processed, recycled, re-used or recovered substance that is produced wholly or partly from waste) that is applied, or is intended to be applied, to land as follows –
 - (i) by spraying, spreading or depositing it on the land,
 - (ii) by ploughing, injecting or mixing it into the land,
 - (iii) by filling, raising, reclaiming or contouring the land,
 - (b) waste (including any processed, recycled, re-used or recovered substance that is produced wholly or partly from waste) that is used, or is intended to be used, as a fuel,
 - (c) waste used, or intended to be used, in connection with a process of thermal treatment.

OVERVIEW OF WASTE CLASSIFICATION PROCESS

The waste classification requirements differ depending on whether the waste is going to a licensed waste management facility (landfill) or a non-licensed site.

Waste going to a licensed or approved waste management facility (landfill) needs to follow the NSW EPA's *Waste Classification Guidelines – Part 1: Classifying Waste (Waste Guidelines)*.

Waste can only be taken to a non-licensed site if it meets the strict conditions of the EPA's general or specific resource recovery orders and exemptions. The waste generator must demonstrate that the waste can be safely and effectively used for another purpose, and the use of the waste must be genuine, fit for purpose and cause no harm to the environment or to human health (see the 'Re-use of Waste (Resource Recovery Waste)' tab for more information).

WASTE CLASSIFICATION FOR MATERIAL GOING TO A LICENSED WASTE MANAGEMENT FACILITY (LANDFILL)

Prior to transportation, waste disposed at an NSW EPA-licensed (or approved) landfill must be classified against the *Waste Guidelines*. This guideline outlines the step-by-step waste classification process.

To comply with the waste legislation, waste generators are responsible for classifying their waste into one of 6 waste classes. The waste classes are based on the level of risk they pose to the environment and human health. Note that asbestos and waste tyres are classified as special waste.

Common matters for Council officers to consider for material going to a licensed facility, such as a landfill include:

- whether the contaminated soil identified in the remediation action plan has been tested as per the waste classification process (rather than the *National Environment Protection Measure 1999* site characterisation process) by an appropriately qualified consultant⁴
- whether the licensed waste facility can legally accept the material (under the provisions of its environment protection licence)
- whether there is any potential for asbestos-containing material to be present in the material
- whether tracking documentation is required in addition to landfill weighbridge receipts
- whether the material is going to an interstate landfill and, if so, whether the consultant has met the appropriate interstate requirements
- once material is taken offsite, whether the record-keeping requirements for material going to a licensed landfill or resource recovery facility (to be included in site validation reports) have been met.

The above items have been included as a checklist in Appendix A in the 'Supplementary Information (Appendices)' tab for convenience.



⁴ Further information on what is an appropriately qualified person can be found in the *Guide to Selecting a Consultant* fact sheet.

RE-USE OF WASTE (RESOURCE RECOVERY WASTE)

Strict conditions apply to the re-use of waste materials (such as surplus soil) offsite. Waste can only be taken to a non-licensed site if it meets the EPA's general or specific resource recovery orders and exemptions.

The resource recovery orders contain the conditions that generators and processors of waste must meet to legally supply the resource recovery waste material for land application. Resource recovery exemptions contain the conditions that consumers must meet to use resource recovery waste for application to land as fill.

An order and exemption can be used without EPA approval, but all conditions of an order and exemption must be met for the re-use of the resource recovery waste to be lawful. The applicant must also have, if necessary, development consent and permission from the owner and occupier of the place where the waste will be re-used.

Material can be beneficially re-used so long as all conditions for offsite re-use are met. Refer to the NSW EPA resource recovery orders and resource recovery [exemptions website for further information](#).⁵

A range of required conditions and matters to consider are summarised below and included in Appendix B in the 'Supplementary Information (Appendices)' tab for convenience. Additionally, a summary of common resource recovery exemptions is provided in Appendix C, and a fact sheet on virgin excavated natural material is provided as Appendix D.



⁵ <https://www.epa.nsw.gov.au/your-environment/recycling-and-reuse/resource-recovery-framework>

CONDITIONS FOR OFFSITE RE-USE

Prior to waste being transported offsite for beneficial re-use:

- check that the relevant resource recovery exemption or order is still current
- the waste must be appropriately classified and, if required, tested, to verify that it meets any specific conditions for its re-use
- the proposed receiver (consumer) of the waste material must be made aware of the conditions for re-use, including the relevant EPA resource recovery order and exemption (if applicable)
- where waste is being transported to a non-licensed site, a signed section 143 notice (see the 'Supplementary Information (Appendices)' tab, Appendices E–G for further information) must have been received from the landholder proposing to receive the waste.

Keep all records of the quantity and nature of material supplied, the person it is supplied to, and all testing, sampling and characterisation for 6 years.

IMPORTING INFILL MATERIAL TO A SITE

Similar to the conditions when transporting material for re-use to another site, material imported to a site must meet certain requirements (to stop the spread of contaminated material). The requirements to be confirmed before importation include:

- that the receiving site can accept this material (that is, whether development consent is required)
- that the relevant resource recovery exemption/order is still current
- that the waste has been appropriately classified and, if required, tested, to verify it meets any specific conditions for its re-use
- a signed section 143 notice to track and transfer responsibility from the waste generator to the receiver.

Following receipt of the material, all records of the quantity and nature of material supplied, the person it is supplied to, and all testing, sampling and characterisation should be kept for 6 years.

Proof of purchase (as a minimum) will be required if the material was purchased from a quarry or landscaping business.

SUPPLEMENTARY INFORMATION (APPENDICES)

Appendix	Resource	Description
A	Checklist for waste going to a licensed or an EPA-approved (non-licensed) waste management facility (landfill)	Things to consider before waste is transported to a waste management facility
B	Checklist for waste prior to being transported offsite for beneficial re-use	Things to consider before waste is transported offsite for beneficial re-use
C	Summary of common resource recovery exemptions and potential offsite re-uses	Summary of common resource recovery exemptions and where they can apply
D	Fact sheet: virgin excavated natural material (VENM)	Fact sheet describing and outlining the classification process for virgin excavated natural material
E	Fact sheet: Section 143 (<i>POEO Act</i>) notice	Fact sheet describing what a section 143 notice is and why it is important
F	Section 143 (<i>POEO Act</i>) notice template for landowners	A template form to be completed by the landowner of a non-licensed site where resource recovery exemption material is to be taken, to transfer responsibility for the material from the generator to the receiver
G	Letter template for Council providing material to landholders	A letter template for Council to provide to landholders who wish to receive surplus material from a Council project

**APPENDIX A –
CHECKLIST FOR WASTE GOING TO A LICENSED OR
APPROVED WASTE MANAGEMENT FACILITY (LANDFILL)**

MATTERS TO CONSIDER FOR WASTE GOING TO AN APPROVED WASTE MANAGEMENT FACILITY (LANDFILL)		
Issue	Y/N	Comments
Has the contaminated soil identified in the remediation action plan been tested as per the waste classification process (rather than the <i>National Environment Protection Measure 1999</i> site characterisation process) by an appropriately qualified consultant?		
Can the licensed waste facility accept this material (under the provisions of its environmental protection licence or development consent)?		
Is there any potential for asbestos-containing material to be present in this material?		
Is tracking documentation required in addition to landfill weighbridge receipts?		
Is the material going to an interstate landfill? If so, has the consultant met the appropriate interstate requirements?		
Once material is taken offsite, have the record-keeping requirements for material going to a licensed landfill or resource recovery facility been met? Tip receipts or other evidence of disposal are to be included in site validation reports.		

SUPPLEMENTARY INFORMATION (APPENDICES)

APPENDIX B – CHECKLIST FOR WASTE PRIOR TO BEING TRANSPORTED OFFSITE FOR BENEFICIAL RE-USE

MATTERS TO CONSIDER PRIOR TO WASTE BEING TRANSPORTED OFFSITE FOR BENEFICIAL RE-USE		
Issue	Y/N	Comments
Is the relevant resource recovery exemption or order still current?		
Has the waste been appropriately classified and tested (if required) to verify it meets any specific conditions for its re-use?		
Has the proposed receiver (consumer) of the waste material been made aware of the conditions for re-use, including the relevant EPA resource recovery order and exemption (if applicable)?		
Where waste is being transported to a non-licensed site, has a signed section 143 notice been received from the landholder proposing to receive the waste? This is required to confirm that the receiving site has approval to accept this material (that is, development consent is not required).		
ONCE MATERIAL HAS BEEN TRANSPORTED OFFSITE		
Keep all records of the quantity and nature of material supplied, the person it is supplied to, and all testing, sampling and characterisation for 6 years.		
Proof of purchase (as a minimum) will be required if the material was purchased from a quarry or landscaping business.		

**APPENDIX C –
SUMMARY OF COMMON RESOURCE RECOVERY
EXEMPTIONS AND POTENTIAL OFFSITE RE-USES**

WASTE MATERIAL	POTENTIAL OFFSITE RE-USE	CAN BE APPLIED TO PRIVATE LAND?	TESTING REQUIRED?
<p>Virgin excavated natural material</p>	<p>Can be applied to land by:</p> <ul style="list-style-type: none"> • spraying, spreading or depositing on the land • ploughing, injecting or mixing into the land • filling, raising, reclaiming or contouring the land. <p>Can be applied to private or public land. No limit on quantity re-used offsite.</p>	<p>Yes</p>	<p>No (but evidence or certificate of origin may be required)</p>
<p>Excavated natural material</p>	<p>Can be applied to land as engineering fill or for use in earthworks. Can be applied to private or public land. No limit on quantity re-used offsite for approved activities.</p>	<p>Yes</p>	<p>Yes</p>
<p>Recovered aggregate</p>	<p>Can only be applied to land in road-making activities, building, landscaping and construction works.</p> <p>Cannot be re-used for:</p> <ul style="list-style-type: none"> • the construction of dams or related water storage infrastructure • mine site rehabilitation • quarry rehabilitation • sand dredge pond rehabilitation • backfilling quarry voids • raising or reshaping land used for agriculture • the construction of roads on private land unless: <ul style="list-style-type: none"> • the recovered aggregate is applied only to the minimum extent necessary for the construction of the road, and • development consent has been granted under the relevant environmental planning instrument, or • it is to provide access (temporary or permanent) to a development approved by a Council, or • the works are either exempt or complying development. <p>No limit on quantity re-used offsite for approved activities.</p>	<p>Yes (but not to construct roads on private land unless specific conditions are met as per previous column)</p>	<p>Yes</p>

SUPPLEMENTARY INFORMATION (APPENDICES)

WASTE MATERIAL	POTENTIAL OFFSITE RE-USE	CAN BE APPLIED TO PRIVATE LAND?	TESTING REQUIRED?
Mulch	<p>Can only be applied to land as a soil amendment. Can be applied to private or public land. Must not be further processed at the receiving site. Leachate must not be generated or permitted to migrate from the application site. There is no limit on quantity re-used offsite for approved activities.¹</p>	Yes	No
Biosolids	<p>Biosolids are widely applied to land with additional conditions regarding how they are applied and when stock are permitted to graze on the land. Biosolids must be processed in accordance with the testing, record-keeping and reporting requirements of the EPA's <i>Environmental Guidelines: Use and Disposal of Biosolids Products</i>.</p>	Yes	Yes
Building and demolition waste	<p>Waste generated within the regulated area Up to 200 tonnes of the following waste (and no other waste) can be taken to a site for an identified beneficial re-use:</p> <ul style="list-style-type: none"> • building and demolition waste only • building and demolition waste mixed with virgin excavated natural material <p>Re-use site may be located inside or outside the regulated area, on private or public land. Tonnage limit applies over any period of time – that is, not for each re-use application.</p> <p>Waste generated outside the regulated area Up to 20,000 tonnes of the following waste (and no other waste) can be taken to a site for an identified beneficial re-use:</p> <ul style="list-style-type: none"> • building and demolition waste only • building and demolition waste mixed with virgin excavated natural material <p>Re-use site located outside the regulated area, on private or public land. Tonnage limit applies over any period of time – that is, not for each re-use application.</p>	Yes	No
Is material the subject of another EPA general resource recovery order or exemption?	<p>Can be re-used in accordance with the conditions of the general resource recovery order and exemption. Resource recovery orders and re-source recovery exemptions currently in force in NSW are listed on the EPA website.</p>	See specific conditions of order or exemption	http://www.epa.nsw.gov.au/wasteregulation/orders-exemptions.htm

¹ Refer to the Mulch Order 2016: <https://www.epa.nsw.gov.au/-/media/epa/corporate-site/resources/wastegrants/rr016-mulch.pdf>

APPENDIX D – FACT SHEET VIRGIN EXCAVATED NATURAL MATERIAL (VENM)

What is virgin excavated natural material?

Virgin excavated natural material (VENM) refers to natural material (such as clay, gravel, sand, soil or rock fines):

- 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
- that does not contain any sulfidic ores or soils or any other waste.

VENM, by its nature, can be re-used easily. VENM may be sent offsite to a site that can legally accept this material for re-use or reprocessing.

Waste classification

All waste must comply with the general solid waste requirements of the NSW EPA [Waste Classification Guidelines – Part 1: Classifying Waste](#).⁶ VENM is pre-classified as ‘general solid waste (non-putrescible)’. For more information, [see the EPA website](#).⁷

How do I classify my excavated material as VENM?

Excavated material must meet all aspects of the above definition to be classified as VENM. Generators of excavated material must consider the following questions to determine if the soil is VENM. The NSW EPA website provides a [VENM certificate template to be used to certify material as VENM](#).⁸

Has the soil been contaminated by land-use activities?

Generators of VENM must consider if past and present land-use activities on the site could contaminate the excavated material. This also includes impacts from offsite sources such as contaminated groundwater.

Material can only be classified as VENM if it has been excavated from an area that is not contaminated with manufactured chemicals or process residues as a result of industrial, commercial, mining or agricultural activities.

Land uses that could result in contaminants being present in an excavated material include:

- | | | |
|---|--|---------------------------------|
| • acid/alkali plant and formulation | • electroplating and heat treatment premises | • power stations |
| • agricultural/horticultural activities | • engine works | • railway yards |
| • airports | • explosives industry | • scrap yards |
| • asbestos production and disposal | • gas works | • service stations |
| • chemical manufacture and formulation | • iron and steel works | • sheep and cattle dips |
| • defence works | • landfill sites | • smelting and refining |
| • drum reconditioning works | • metal treatment | • tanning and associated trades |
| • dry cleaning establishments | • mining and extractive industries | • waste storage and treatment |
| • electrical manufacturing (transformers) | • oil production and storage | • wood preservation |
| | • paint formulation and manufacture | |
| | • pesticide manufacture and formulation | |

Note: residential housing built prior to 1969 can result in lead contamination of soil, and is often encountered after demolition.

⁶ <http://www.epa.nsw.gov.au/resources/wasteregulation/140796-classify-waste.pdf>

⁷ <http://www.epa.nsw.gov.au/waste/virgin-material.htm>

⁸ <https://www.epa.nsw.gov.au/your-environment/waste/classifying-waste/virgin-excavated-natural-material>

Is the site identified within a high-risk probability area for acid sulfate soils?

VENM cannot contain sulfidic ores or soils. Acid sulfate soil risks have been mapped across the state to determine the probability of acid sulfate soils. These are available on the [CSIRO website](#).⁹

If the site is identified as having a high-risk probability of having or potentially having acid sulfate soils, the material will require laboratory testing before it can be classified as VENM.

Does the material contain any form of asbestos (naturally occurring or otherwise)?

The waste cannot be classified as VENM if it contains naturally occurring asbestos soils or any other type of asbestos-containing material.

Is there any other waste present, or has the material been processed?

VENM cannot contain any other waste or be 'made' from processed soils. Excavated material that has been processed in any way (such as by adding lime to acid sulfate soils) cannot be classified as VENM. VENM should not be mixed with any other types of waste.

Is chemical assessment necessary?

If the material meets the above definition for VENM, it can be re-used onsite or offsite without prior testing. If there is uncertainty as to whether all aspects of the definition have been met, chemical testing may be required. If the source of the material is identified as having a high-risk probability of having or potentially having acid sulfate soils, then laboratory testing for acid sulfate soils is required.

Do I need to obtain a section 143 from the landholder if I dispose of VENM offsite (for example, as fill material)?

Yes. When disposing of VENM offsite to a private or publicly owned site, you must issue the landholder with a copy of the letter and a section 143 notice (Appendices F and G of this guide). The landholder must complete, sign and return the section 143 notice to the waste generator prior to the waste being transported to the landholder's site.

Are there any legal waste transport or tracking requirements?

No, but, as a minimum and for due diligence, you should keep records of the:

- amount and type of waste material generated, stored, treated or disposed of
- amount and type of waste transported
- name of the transporter and the transporter's vehicle registration number
- date of transportation
- name and location of the waste management facility that is receiving the waste material.

⁹ <http://www.asris.csiro.au/mapping/viewer.htm>

APPENDIX E – FACT SHEET SECTION 143 (POEO ACT) NOTICE

The legal definition of ‘waste’ is very broad and covers a range of substances, including some that are not commonly considered waste (for example, crushed concrete or soil).

Similarly, a waste facility includes any premises used for storage, treatment, reprocessing, sorting or disposal of waste. Under the legislation, a landholder importing fill to build a road or dam could be classified as using their land as a waste facility.

A site landholder may not require an EPA licence to store, treat, reprocess, sort or dispose of virgin excavated natural material or other resource recovery

exemption material; however, they may still require planning consent or approval from Council.

Section 143 of the *Protection of Environment Operations Act 1997* states that it is an offence for a person to transport waste to a place that cannot lawfully be used as a waste facility for that waste, or to cause or permit waste to be so transported. It is the waste transporter/owner’s responsibility to prove that the receiving site can lawfully be used as a waste facility for that particular waste.

What is a section 143 notice?

A section 143 ‘approved notice’ is used to provide proof that material can be lawfully accepted at the receiving site, and it transfers the responsibility of the waste from the generator to the receiver.

An ‘approved notice’ means a notice in a form approved by the EPA:

- stating that the place to which the notice relates can lawfully be used as a waste facility for the waste specified in the notice
- that contains a certification by the owner/occupier of the place that the statement is correct.

Why does Council require a section 143 notice?

A section 143 notice under the *Protection of Environment Operations Act 1997* is the best way to protect the waste generator, the waste transporter and the waste receiver from prosecution for illegal dumping. It is not a defence to rely on advice from the owner/occupier of the site receiving the material unless the advice is provided on an approved notice.

The maximum penalty for an illegal dumping offence is \$1,000,000 for a corporation or \$250,000 for an individual. Both the transporter and owner of the waste are potentially liable. The ‘owner’ of waste includes the person who was the owner of the waste immediately before it was transported.

What steps do Council and landowners take?

Anyone sending material (classified under general or specific resource recovery exemptions) to a non-licensed facility needs to complete a section 143 notice (a template is attached as Appendix F).

If the owner/occupier providing this notice is a company, the full name of the company should be used, and the notice must be certified in accordance with the *Corporations Act 2001*.

Council will include a development consent condition for the inclusion of a section 143 notice for the movement of waste to non-licensed sites. Properties that receive material without a section 143 notice may be placed on Council’s contaminated land register.

Councils should also require a section 143 notice for the movement of surplus material from any Council project. A template cover letter is attached as Appendix G to assist Council in requesting that the landowner complete the section 143 notice.

**APPENDIX F
SECTION 143 NOTICE TEMPLATE FOR LANDOWNERS**



**ORIGINAL: TO BE COMPLETED BY LANDOWNER AND GIVEN TO WASTE
TRANSPORTER OR DISPLAYED AT WASTE FACILITY**

APPROVED NOTICE UNDER SECTION 143

PROTECTION OF THE ENVIRONMENT OPERATIONS ACT 1997

WARNING: If you sign this notice it could be used as a defence by a transporter if they deposit waste on your land. It does not give you a defence. It is an offence to provide false or misleading information about waste (section 144AA)

I (full name)

am the owner and/or occupier (delete if not applicable) of (insert street address and/or folio identification number of place):

.....
.....

certify that this place can lawfully be used as a waste facility for the **waste(s) specified** in the following table.

(Note: you must clearly state the exact type. Do not use terms like 'fill' or 'clean fill'.)

Table of specified wastes

Type of waste e.g. virgin excavated natural material	Classification of waste e.g. general solid waste	Amount of waste e.g. 50 tonnes
.....
.....
.....
.....

Before signing this notice you should read the back of this form for important information about offences.

Signature	Signature
Name	Name
Position title (e.g. director, owner, occupier)	Position title (e.g. director, owner, occupier)
ACN	ACN
Date	Date

Note that only one signature is required if the person signing this notice is **not** signing on behalf of a company.



Lawful authority to use place as waste facility for the specified waste

The place can lawfully be used for the types of waste described in the notice **because** (Delete whichever is not applicable):

A. This use is permitted by EPA licence number:

Or

An EPA licence is not required (for example, a resource recovery exemption may apply)

And because (Delete whichever is not applicable):

B. The place has consent or approval under the *Environmental Planning and Assessment Act 1979* for the uses described in the table above.

Or

The place can be used as a waste facility without consent or approval under the *Environmental Planning and Assessment Act 1979*.

The use(s) for the waste at the place are:

Land owners and occupiers should note that it is an offence to use land as a waste facility without lawful authority, see section 144 of the *Protection of the Environment Operations Act 1997* (POEO Act). It is also an offence to carry out an activity listed in Schedule 1 to the POEO Act without an Environment Protection Licence when one is required (see section 48). Offences carry a maximum penalty of \$250,000 for an individual and \$1,000,000 for a corporation. In the case of a continuing offence, a further penalty applies for each day the offence continues, being \$60,000 for an individual and \$120,000 for a corporation.

Regardless of this notice, any person who carries out any development or activity on land involving waste must ensure they comply with any planning requirements including obtaining any planning consent or approval and complying with any conditions attached to that consent or approval

Information about this notice

Waste is a very broad concept under the law and covers many types of materials you may not think of as waste; for example, it covers waste tyres, building and demolition materials and virgin excavated natural material.

Under the POEO Act, a waste facility includes any premises used for storage, treatment, processing, sorting or disposal of waste. For example, if you are planning to build a road or dam, or fill a gully, this could involve using your place as a waste facility.

Section 143 of the POEO Act makes it an offence to transport waste to a place that cannot lawfully be used as a waste facility for that waste. The notice above is the approved notice under section 143 (3A) of the POEO Act. If you sign this notice it may be used as a defence by a transporter if they are charged with unlawfully transporting or depositing waste on your land. It does not give you a defence to using your land as a waste facility without lawful authority.

If you sign this notice, you should give it to the transporter or display it at the waste facility. The transporter should keep the original and you should keep a copy.

If the landowner or occupier signing this notice is a company, the full name of the company and ACN should be used and the notice must be executed in accordance with the Corporations Law.

If you operate an unlicensed landfill site for business or commercial purposes you should contact the EPA to discuss reporting and operating requirements.

If you are not sure if you require an EPA licence you can ring the Environment Line on 131 555.

You are likely to need development consent to use your land as a waste facility. If you are not sure if you require development consent you should contact your local council.



COPY: TO BE KEPT BY LANDOWNER AND KEPT FOR RECORDS

APPROVED NOTICE UNDER SECTION 143

PROTECTION OF THE ENVIRONMENT OPERATIONS ACT 1997

WARNING: If you sign this notice it could be used as a defence by a transporter if they deposit waste on your land. It does not give you a defence. It is an offence to provide false or misleading information about waste (section 144AA)

I (full name)

am the owner and/or occupier (delete if not applicable) of (insert street address and/or folio identification number of place):

.....

certify that this place can lawfully be used as a waste facility for the **waste(s) specified** in the following table.

(Note: you must clearly state the exact type. Do not use terms like 'fill' or 'clean fill'.)

Table of specified wastes

Type of waste e.g. virgin excavated natural material	Classification of waste e.g. general solid waste	Amount of waste e.g. 50 tonnes
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Before signing this notice you should read the back of this form for important information about offences.

Signature	Signature
Name	Name
Position title (e.g. director, owner, occupier)	Position title (e.g. director, owner, occupier)
ACN	ACN
Date	Date

Note that only one signature is required if the person signing this notice is **not** signing on behalf of a company.

APPENDIX G

LETTER TEMPLATE FOR COUNCIL PROVIDING MATERIAL TO LANDHOLDERS

This letter template is for Council to provide to all landholders who wish to receive surplus material from a Council project. Please insert relevant details and delete all shaded instructions once completed.

Contact Person Reference

Date

Addressee1

Addressee2

Addressee3

TOWN STATE PCODE

Dear Salutation,

Re: Receiving Council Surplus Fill Material (Waste) – Location

Your interest in receiving surplus fill material ('material' or 'waste') that will be generated by the project is appreciated.

It is understood that you intend to use the material *[insert intended use for the waste]*. It is important to the Council that all waste materials from this project are managed in a way that meets legislated requirements and will not harm the environment or human health.

This letter provides important information that will help you to understand what you need to do to legally receive this material and avoid harm to environmental and human health.

You will need to do the following before the material is delivered to your property:

- Read the information attached to this letter. The NSW Environment Protection Authority (EPA) has other information that may help you to understand the laws relating to receiving waste materials (<http://www.epa.nsw.gov.au/waste/>).
- Check with Council whether any equivalent approvals or licenses are needed before your property can accept the material. This includes any requirements under the **[CouncilName]** Local Environmental Plan to obtain prior consent for the placement of material.
- Make sure that you obtain all relevant approvals, licenses or permits that are required for you to legally receive the material. Often, there will be no need for any approvals, licenses or permits, but always check with Council whether this will be the case for your property.
- Complete and sign a 'Section 143 Notice' (copy attached). Only sign this form if you are confident that the details on the Section 143 Notice are correct, your property can lawfully receive the material, and the materials can be legally used for the intended purpose.
- Keep a copy of the completed Section 143 Notice for your records and mail the original document to:
[Enter details of where Section 143 Notice should be sent].

Once we have received the completed and signed Section 143 Notice and have confirmed that the material can be legally transported to your property, we will contact you to make arrangements for waste delivery.

When the Council waste material arrives on your property, you must ensure that:

- the Council waste material is as described on the Section 143 Notice
- the Council waste is managed in a way that complies with any relevant approvals, licences or permits and avoids harm to the environment, human health and other people's property.
- the material can only be used for the farm access track located within your property located on Lot XX DP XXXXXX.

Council does not guarantee the quality or standard of the material supplied.

Council is not responsible for any onsite works; the material will be truck-dumped at a stockpile nominated by you.

You will be required to comply with all Acts, Regulations, Codes of Practice and Guidelines in regard to the onsite environmental management of the material.

[Optional – outline any further requirements, depending on the environmental risks associated with the Council waste and the proposed use].

If you have any inquiries about these matters, please contact *[insert name of contact person]* on *[insert contact number]*.

Yours faithfully

[insert name of Council representative]

[insert Council Department]

[insert Council Division or Group]

Enc.