Technical Services for Contaminated Land

Consultation Regulatory Impact Statement

Prepared by: Regulatory Reform, Department of Environment and Heritage Protection

The Queensland Regulatory Impact Statement System

The Queensland Government is committed to applying Regulatory Best Practice principles to reduce the regulatory burden on the community and to ensure that where regulation is used it is efficient, effective and in the public interest. The Regulatory Impact Statement (RIS) System Guidelines, issued by the Treasurer require all Queensland Government agencies to carefully assess the impacts of proposed regulation on business, community and the government. Consultation is key to improving regulatory quality at all stages of the regulatory development process. Where a regulatory proposal may provide a net benefit to the community but at the same time it is likely to have significant adverse impacts on a section or sections of the community, a Consultation RIS is required. The Consultation RIS provides the community with the opportunity to consider the options and their impacts. Stakeholder responses to the Consultation RIS provide decision makers with valuable information on which to base their policy decisions and to avoid unintended consequences and unnecessary compliance burdens. Further information on the RIS System, including a copy of the Treasurer's Guidelines, is available at www.qca.org.au/obpr/ris/.

April 2014

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Executive summary

This Consultation Regulatory Impact Statement (RIS) has been prepared to assess the costs and benefits of options for facilitating the provision of technical expertise in contaminated land matters to inform regulatory decision making under the *Environmental Protection Act 1994* (EP Act). This is a key priority and essential to effectively and appropriately manage the significant risks that contaminated land can pose to public health and the environment.

The regulatory proposal is one component of a broader contaminated land reform program to review, modernise and streamline the contaminated land provisions within the EP Act and the *Sustainable Planning Act 2009* (SPA). Consistency across environmental and land use planning legislation is essential to ensure a level playing field for all stakeholders with land that is listed on one of Queensland's contaminated land registers and to protect public health and environmental values by reducing the potential for contaminant exposure.

Three options for facilitating the effective provision of technical contaminated land advisory and assessment services are considered in the RIS. Option 1 outlines the current situation whereby the government provides technical contaminated land expertise. Option 2 involves private sector provision of technical expertise by requiring compulsory certification of contaminated land reports before being submitted to government. Option 3 is a hybrid model whereby the government procures the technical expertise from the private sector via contracts.

The regulatory proposal contains the preferred option for facilitating the technical expertise for contaminated land—Option 2. This option mandates that contaminated land reports are certified by an approved auditor before being submitted to the department. This will reduce assessment timeframes and delay costs, enhance stakeholder confidence and facilitate the development of a competitive auditor market.

Three other broad initiatives are also covered in the RIS, including:

- expanding the prescribed criteria requirements for contaminated land reports
- introducing minor amendments to the EP Act including removing the requirement for soil disposal permits to reduce duplication and streamline approval processes; and modifying notification requirements that apply when selling land that is listed on a contaminated land register. This would improve the balance between the rights of buyers and sellers of land listed on one of the contaminated land registers.
- restructuring Chapter 7, Part 8 of the EP Act to modernise, streamline and improve clarity of contaminated land provisions.

Amendments to the scope of the assessment triggers and the type of development assessment required under SPA for contaminated land are being progressed in parallel. While not subject to a RIS, these are discussed in this document for completeness.

There are potentially significant stakeholder impacts from the proposal to mandate that an approved auditor certify contaminated land reports before they are submitted to the department. Currently, technical expertise can be sourced from the government or the private sector. This proposal would reduce the choice of selecting technical services from the private sector only. Where the private sector is able to competitively supply a service there is no compelling reason for the government to compete. The public benefits to the broader community of the proposal outweigh the private cost of technical assessment services, which will be internalised to developers and industry.

The Consultation RIS is being released for targeted consultation for a period of 28 days. Written submissions on the proposals will be accepted until 16 May 2014. It is anticipated that any regulatory proposal arising from this RIS will be put into place in late 2014.

Have your say

Submissions are open until 16 May 2014. Submissions must be made in writing and can be emailed or posted.

Email: epact.policy@ehp.qld.gov.au

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Issues statement

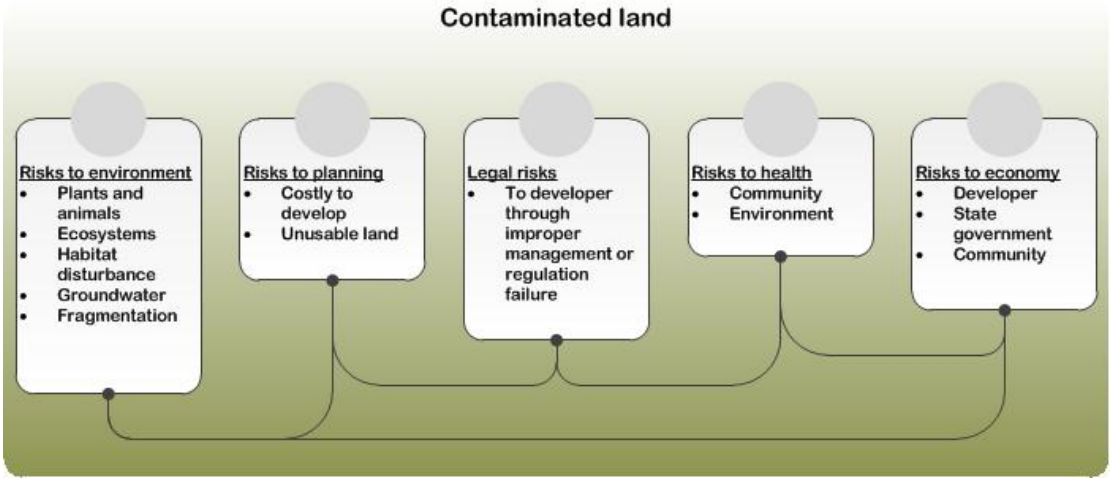
Site contamination is recognised as a major environmental issue for Australia. In addition to posing a potential threat to public health and the environment, contamination can have significant economic, planning and legal implications for the affected site. Contamination may limit land use potential or increase costs for developers, government and the community.

There are currently 22,000 actual and potentially contaminated sites across the state listed on one of Queensland's two contaminated land registers. Between February 2013 and February 2014, 930 sites were notified for listing on the environmental management register (EMR) and over the same period 300 sites were removed from either the EMR or the contaminated land register (CLR).

While the majority of sites listed on the EMR and CLR do not require immediate remediation or management, the risks to human health and the environment are more likely to change when a new use, particularly development, is proposed for that land. Specialised technical contaminated land expertise ensures that contaminated or potentially contaminated land is suitably managed or remediated so that new land uses can be conducted in a way that is safe for human health and the environment.

Consistent with the government's contestability and renewal agendas, the Department of Environment and Heritage (the department) is considering the best way of ensuring technical contaminated land expertise is available, i.e. either by government or by third parties, and how that expertise is paid for, so that the risks (Diagram 1: Risks of contaminated land) to human health and the environment are managed.

Diagram 1: Risks of improperly managing contaminated land



The department currently provides a range of technical services including advice on contaminated land matters, assessment and approval of contaminated land reports.

A statutory framework for auditors is established within the EP Act. It stipulates an application and approval process for qualified persons to be approved as an auditor and to perform specific technical and advisory functions as an alternative to the department providing these services. Considerable improvements in knowledge about contaminated land have enabled the standardisation of management techniques across Australia. The auditor framework recognises that business and industry is well placed to efficiently provide services where performance can be accurately measured against standards.

Approved auditors are highly qualified and skilled individuals with extensive experience in environmental science, engineering or environmental auditing. When statutory decisions are required on contaminated land matters, approved auditors can review, evaluate and certify that site investigation reports, validation reports and draft site

management plans[1] meet the standards of the National Environmental Protection Measure (NEPM) for contaminated sites. The department then considers the certified report conclusions to make decisions about the status and extent of contamination, if further management action is required, the land use change or development proposal and whether the site should be listed on the relevant contaminated land register.

As the auditor framework is voluntary in nature (there is no provision within Chapter 7 Part 8 of the EP Act requiring a contaminated land report to be evaluated and certified by an approved auditor) the use of private sector auditors has been low. Developers have preferred to use low-cost government provided services to assist them meet their regulatory requirements for contaminated land rather than pay for the services of private sector auditors.

It is timely to consider how the provision of technical services for contaminated land could be improved by potentially changing the structure and management of service delivery. The private sector has the capacity and is willing to supply technical advisory and assessment services for contaminated land—raising the question as to whether the government should be offering the same services. Over the past 10 years, the department's capacity to provide technical advisory and assessment services has diminished, in part due to competition with the private sector. This has challenged the department's responsiveness to fluctuations in demand for contaminated land assessment services.

The department's Regulatory Strategy sets a new strategic direction for regulating environment and heritage matters, which is to be achieved by setting standards and clarifying expectations for acceptable industry performance. The department's traditional role as technical assessor of applications and reports is shifting to being an enabling regulator. This is consistent with the government's renewal agenda recognising that business and industry are best placed to determine how to achieve the desired environmental outcomes and operate within the limits of their approvals.

The provision of low cost technical expertise by the department has limited commercial opportunities for potential auditors and stifled auditor supply to the market. Four auditors have been approved under the EP Act to date. This is not representative of the contaminated land professionals in Queensland capable of satisfying the requirements for approval as an auditor. Nor does it reflect potential auditor supply from mutual recognition of auditors approved under equivalent legislation in other Australian state jurisdictions.

Increasingly, the community is demanding more efficient expenditure of limited public resources towards high value environmental outcomes. Government provision of low or no cost technical services for contaminated land has largely been subsidised by the community, with direct benefit to a relatively small stakeholder group who actually use the services. Departmental provision of assessment services, estimated at approximately $0.6 million per annum, has a high public cost and a high private benefit to the development industry.

User-pays principles are broadly accepted as the most efficient way of allocating limited resources or providing services. By internalising the cost of technical assessment services for contaminated land to the user e.g. development industry, the real value of all of the components that make up that service would be reflected in the usage costs. This means that those who use and benefit from the services would pay for them. Efficiency is maximised as the service is provided to those who require and are willing to pay for the full cost of assessment services, as an input to their business. The full range of costs of doing business should be borne by the users/beneficiaries rather than externalised and subsidised by the community at large.

Land development and development approvals are coordinated under SPA with referral agencies assessing applications against the requirements of legislation and planning schemes. Sites listed on the contaminated land registers trigger assessment and approval requirements for certain types of development under SPA. Landholders and developers may submit contaminated land reports in conjunction with a development approval process under SPA, as an alternative to the EP Act. Approximately 40% of material change of use (MCU) and reconfiguration of a lot (ROL) applications referred for State assessment through SPA are concerned with sites that are listed on the EMR that pose a low contamination risk to the environment and/or public health and do not require State assessment.

These figures may indicate that the contaminated land assessment triggers in the *Sustainable Planning Regulation 2009* (SP Reg) are too broad and are causing landowner and developer confusion about matters that must be referred for State assessment. Confusing and complicated assessment triggers can also result in missed applications. This is a problem where development could pose a risk to human health and the environment.

[1] The three reports required under the EP Act including site investigation reports, validation reports and draft site management plans will be collectively referred to as "contaminated land reports".

Alternatively, it could indicate that the assessment services provided are too low in cost to motivate developers to properly scrutinise whether the proposal actually requires State assessment. If an assessment or service fee were to be charged reflecting the market value of the technical services provided, developers may be more likely to confirm whether the application requires State assessment or not. Regardless, assessment loads in excess of regulatory requirements have a high cost burden on both the department and the community.

The government's program for renewal is growing a four pillar Queensland economy based on tourism, agriculture, resources and construction. An economic upturn is likely to result in more development applications involving contaminated sites that require assessment. Prompt action will ensure the ready availability of technical assessment services for contaminated land and increasing the availability of land for development by the construction sector.

Policy objectives

The overarching contaminated land reform program will be progressed over several years. It will ensure that arrangements for contaminated sites in Queensland meet the State's obligations for the protection of the environment and public health using efficient and targeted legislation.

The policy objectives of the regulatory proposal contained in this RIS are:

- to continue to manage the environmental and public health risks of contaminated land for the safety of the community
- to improve service delivery and modernise the regulatory approach for contaminated land
- to ensure technical expertise in contaminated land and an efficiently operating auditor market informs regulatory decision making under the EP Act and SP Act into the future
- to enable a departmental shift to being an enabling regulator as per the public sector renewal agenda.

The preferred policy option will be the option which best achieves each of the policy objectives.

The legislative framework for contaminated land in Queensland

The EP Act is Queensland's main legislation for environmental protection. It establishes a statutory framework for managing contaminated land which involves listing sites that are contaminated or potentially contaminated on one of Queensland's two registers for contaminated land—the EMR or CLR. The registers provide a mechanism for ensuring that prospective purchasers are aware of the contamination, and that development of sites takes appropriate account of it.

The EP Act interacts with SPA Queensland's planning legislation, to ensure that the risks of contaminated land to public health and the environment are appropriately managed. Contaminated land is assessable development against the State Development Assessment Provisions (SDAP) under SPA. The SDAP outlines 'performance outcomes' that must be met and 'acceptable outcomes' as options for meeting the performance outcome. There are two contaminated land assessment triggers—for an MCU and ROL, both of which are referred to the State for assessment.

To progress a proposal for development or land use change that involves land listed on the EMR or CLR, landowners and developers can either submit contaminated land reports for assessment under the EP Act or, submit these reports together with a development application under SPA for approval to change the use of the land to another use.

If the EP Act pathway is chosen:

- A landowner, developer or industry may engage a suitably qualified person (SQP) to develop a contaminated land report providing evidence of the status and extent of contamination, which can then be used to update the contaminated land registers. For instance, a validation report produced for a listed site and submitted to the department, may demonstrate that following activities to remediate the land, there is no longer any contamination at the site. The department is able to use this information to update the EMR or CLR and remove the site from the registers. If a development application was then to be lodged under SPA, a contaminated land assessment would not be triggered as the site is not listed on either the EMR or CLR.

If the SPA pathway is chosen:

- A landowner, developer or industry with a site that is listed on the EMR or CLR may submit an MCU or ROL for the parcel of land for approval via SPA. For both MCU and ROL applications, an acceptable outcome is to provide evidence that an auditor approved under the EP Act has certified a contaminated land report

demonstrating that the performance outcome has been met and as such land is suitable for its intended use. Contaminated land reports and plans are submitted to support the development application and provide information regarding the extent and status of the contamination and any risks to human health or the environment. This will inform any decisions regarding suitable uses of the land and compatibility with the proposed use or development in a way that manages the risks of contaminated land.

Options and alternatives

Three policy options are presented for facilitating the effective provision of technical contaminated land expertise and payment for those services, to support regulatory decision making that ensures the environmental and human health risks of contaminated land are managed. These options are:

- Option 1: Maintain the status quo.
- Option 2: Mandating that contaminated land reports are certified by an approved auditor before being submitted to the department.
- Option 3: Status quo plus an administrative fee to cover costs of contracting out the technical contaminated land function of the department.

Option 1

Maintain the status quo

Option 1 involves departmental provision of technical services for contaminated land including assessing contaminated land reports that are submitted via the EP Act or the State planning framework established by SPA.

Landowners and developers are required to engage a suitably qualified person (SQP) experienced in land contamination matters to undertake site investigations, validate and draft reports that demonstrate the land has been successfully remediated and draft site management plans to manage contaminated sites.

A SQP submits a contaminated land report for departmental assessment on behalf of the proponent along with a declaration that they are qualified to assess the site and that any report submitted meets the Guideline for Contaminated Land Professionals. For a proposed land use development, a SQP investigates a site to assess the extent of the contamination and any works required to remediate the land (or validates the completion of works to remediate land) relative to the proposal.

There is no assessment fee for submitting contaminated land reports except for a site investigation report, which carries an assessment fee of $1196 per lot. Once submitted, the department reviews and assesses the contaminated land report to determine whether the site is contaminated and the extent of the contamination. For validation reports that demonstrate the land is no longer contaminated, the department removes the site from the register and prepares a site suitability statement identifying the land is suitable for any use. The site suitability statement is then issued to the landowner, applicant and local authority (e.g. local government).

For draft site management plans, the department assesses the draft plan to determine whether it contains measures and monitoring actions that will ensure the contamination identified on the site is appropriately managed.

On the basis of the report and any additional work required, the department decides whether the site should be listed or removed from the CLR or the EMR.

In relation to SPA, an MCU or ROL involving land listed on the EMR or CLR will be assessed as assessable development against the SDAP.

Maintaining the status quo is not a viable option as it does not deliver the policy objectives. Diminishing technical expertise and difficulties attracting and retaining the expertise to the department prevents the in-house provision of these services into the future without a commensurate increase in risk to public health and the environment. It also creates delays in assessment times and adds to development costs. This is not acceptable for the Queensland community.

Where the private sector can supply a service, there is no supporting argument for the continued government provision of the same services. Option 1 is not consistent with the government's agendas for economic growth and contestability of services. It is also inconsistent with the Regulatory Strategy, which shifts the focus of the department to being an enabling regulator, providing more flexibility to proponents in determining the best way to manage risk.

Option 2

Amend the EP Act to mandate that contaminated land reports are certified by approved auditors and introduce compliance assessment under the Sustainable Planning Regulation

Mandating that contaminated land reports be certified by an auditor approved under the EP Act, before being submitted to the department, would apply to all contaminated land reports regardless of the legislative trigger and

process through which they were initiated (i.e. proponent initiated under the EP Act or, development approval via SPA). Amending the SP Reg to change the type of assessment for development applications on contaminated lands from code assessable (SDAP) to development requiring compliance assessment is proposed to occur in parallel with the EP Act reforms.

Option 2 creates a new obligation for stakeholders who require a contaminated land report to engage an approved auditor[2] to certify the report and prepare a site suitability statement. Engaging an approved auditor is in addition to engaging a SQP who will still be required to fulfil the roles and functions as outlined in Option 1 (e.g. determine remediation works, prepare contaminated land reports).

The role of the approved auditor is to independently review assessment, remediation and validation reports to ensure the technical components of the report are accurate and correct and any risks to the environment or public health from the contaminated site are being appropriately managed. In certifying reports the auditor will make decisions about the status and extent of contamination for a site, risks to environment and human health and land use activities suited to the site.

Criteria prescribed in the *Environmental Protection Regulation 2008* (EP Reg) are used to measure all assessment, remediation and management of sites listed on the EMR or CLR providing the grounds to accept or refuse a contaminated land report.

On the basis of the certified contaminated land report and any risks to human health and the environment, an approved auditor will also be responsible for making decisions about land use suitability, and determining whether the site should be listed or removed from the EMR or CLR. Consistent with the regulatory decision making responsibilities of approved auditors, a high level of performance accountability is expected.

A proponent can choose at which stage of the project to hire an approved auditor. By simultaneously engaging the services of a SQP and approved auditor, greater engagement between the two could be facilitated providing the proponent with greater certainty that the right outcomes will be achieved. This is likely to save developers time and money compared to the current situation where to support regulatory decision making, the department requests additional information for an average of 40% of contaminated land reports submitted for assessment. Information requests extend assessment and approval timeframes.

As part of Option 2, the department is responsible for delivering two key functions essential for the efficient and effective operation of the statutory auditor framework. This includes updating the EMR and CLR so that the public has access to accurate contaminated land information, and secondly, monitoring the operation of the auditor framework for effectiveness and enforcing compliance. For instance, if a person fails to fulfil their obligations as an approved auditor under the EP Act, the department would take compliance action which may include suspending the approval as a contaminated land auditor.

Sustainable Planning Act

Clarifying the scope of the assessment triggers and changing the type of development assessment

In a planning context, the primary risk associated with contaminated land is where a change in the use of land could result in people, particularly the elderly, young and infirm, being exposed to hazards where they live, are educated, shop, play or receive health care.

In parallel with Option 2, two amendments to Schedule 3 of the SP Reg are proposed to improve efficiencies for industry, government and the community. The first amendment is to simplify and clarify the triggers for when development is assessable for contaminated land. The ROL trigger will be deleted and the MCU trigger simplified so that only changes to a more sensitive use, which therefore potentially change the level of risk, will be captured. By clarifying when the contaminated land trigger should apply, it will more efficiently target high risk applications and reduce the number of unnecessary applications referred for State assessment.

The second proposal involves changing the category of development that applies for contaminated land from development requiring code assessment to development requiring compliance assessment. Compliance assessment is similar to self-assessable development, with the exception of the requirement for auditor certification that the development meets the required standard with the certification provided to government to demonstrate compliance.

[2] An approved auditor is an individual with specific qualification and expertise who has been approved through the relevant process under the EP Act to perform a specific role and functions in relation to contaminated land.

Changing the type of development assessment from ‘assessable development’ to ‘compliance assessment’ has the effect of making the use of an approved auditor for the certification of contaminated land reports compulsory as evidence of meeting the required standard. Landholders will still be able to choose to address the contamination status of sites listed on the EMR or CLR through the EP Act prior to making a development application. In these circumstances, the development would not trigger assessment under SPA for contaminated land. A compliance assessment approach enables only those works that are required for the land to be suitable for its intended use to be completed as the development proceeds, with contamination not needing to be addressed until after the development approval and other relevant approvals are obtained. This approach allows greater and easier engagement of technical expertise as an auditor can be more easily accessed during all stages of project development, which can also increase certainty about assessment outcomes.

These proposed amendments will ensure legislative consistency between the EP Act and SPA so that the risks of contaminated land are managed for the safety of the community and the environment. The compliance assessment approach and the use of auditors will support the growth of private sector auditors and complement the proposal to mandate the approved auditor framework in the EP Act. The requirement to use approved auditors applies to the assessment of contaminated land reports irrespective of the legislative pathway, i.e. the EP Act or SPA.

Option 3

Status quo and introduce a regulatory fee to cover the cost of contracting out the technical assessment services to the private sector

Contaminated land reports would be submitted to the department. A procurement process would be used to contract out the technical assessment and certification of the contaminated land reports to the private sector. The results of the technical assessment would then be returned to the department and the certification used to inform regulatory decisions.

The department would contract out the technical assessment of applications and contaminated land reports to individuals with the relevant technical qualifications and experience. A proponent would be charged an administration fee per report to cover the associated costs of procuring the technical services required. This fee would need to cover the technical assessment costs as well as the administrative costs associated with procuring the technical expertise.

The key difference between Option 3 and the status quo is the procurement process to contract out the technical assessment services for contaminated land reports. This would overcome the issues surrounding the technical capacity of the department.

Option 3 is more burdensome compared to Option 2 with an additional layer of administration to cover the cost of the department procuring the technical expertise to assess contaminated land reports. While the administrative fee would be determined by regulation, possibly at a graduated level to reflect the complexity of the assessment, it would not necessarily be commensurate with the size of the proposal. It would be difficult to devise a highly flexible fee structure that was suited to the range of contaminated site situations. This is likely to result in smaller proposals effectively subsidising larger proposals. Larger proposals would receive a large private benefit due to the potential to gain larger earnings and profits from a larger development proposal.

Impact assessment

This regulatory impact assessment is the next stage of the consultation process and submissions are invited in response to this paper. This section includes a detailed impact assessment of the three policy options presented for facilitating the effective provision of technical contaminated land advisory and assessment services to inform regulatory decision making under the EP Act and ensure that contaminated land risks on human health and the environment are appropriately managed.

Amendments to the SPA development approval process are being developed in parallel with the proposed amendments to the EP Act. This will ensure the requirement to use approved auditors applies to contaminated land assessment irrespective of the legislative avenue—the EP Act or SPA.

Departmental provision of technical and assessment services is estimated at $0.6 million per annum. Currently, these services are provided at low or no cost which is borne by the community at large. There is little justification to support the continuation of departmentally provided services where the private sector is capable of providing the same services. Options 2 and 3 provide benefits for all stakeholders affected by the proposal.

The regulatory proposal impacts on stakeholders including those who require technical contaminated land expertise, private sector suppliers of technical contaminated land expertise, the Queensland Government, and the Queensland community. The nature and distribution of the benefits, costs and overall public welfare changes under each of the three policy options.

Approved auditors and potential auditors, state and local government and the community may also be affected by the proposal.

The costs and benefits of the three options are analysed below. A summary of the costs and benefits for each of the options is provided in Table 2.

Restrictions on competition

There are no restrictions on competition. The preferred option will promote the competitive supply of approved auditors for contaminated land to the Queensland market.

Table 1: Benefits and costs of the options

Options/stakeholders	Benefits	Costs
Option 1: Maintaining the status quo		
Developers	• Access to technical advice and assessment services for low or no cost. • Private benefits from low or no cost government provided services are maximised.	• Increased time delays for technical advice and assessment services experienced over time as economy improves and construction industry picks up.
Auditors		• Low demand for technical contaminated land expertise provided by approved auditors. • Competing with heavily subsidised government provided services. • Lack of certainty about future demand for technical services from private sector auditors.
Government		• Assessment load for contaminated land is beyond statutory requirements. • Statutory framework for approved auditors is not fully or efficiently implemented. • Out of step with government's agendas for contestability and economic renewal. • Inconsistent with National Environmental Protection Measure for Contaminated Land. • Inconsistent with Regulatory Strategy. • Creates a market failure by reducing the competitive supply of private sector auditors for contaminated land.
Community		• The community bears the cost of government provided technical advice and assessment services. • High risk to the environment that contaminated land is not being managed most efficiently. • High opportunity cost of resources that could otherwise deliver environmental outcomes for the broader community.
Option 2: Mandate that approved auditors certify contaminated land reports prior to being submitted to the department		
Developers	• An auditor provides independent and authoritative advice. • More confidence that reports satisfy contaminated land standards before being assessed for certification. • Reduced delay costs due to shorter assessment timeframes. • Low search costs for approved auditors. • Increased certainty about assessment outcomes. • Can select from a competitive pool of approved auditors with the skills and experience best suited to the project	• Must engage the services of an approved auditor. • The cost of engaging an approved auditor to carry out assessment functions is borne by the developer.

	needs. • Approved auditor can oversee, evaluate and certify at various stages of the project to reduce approval times, particularly for complex projects. • Improves the development assessment and approval pathway under the EP Act. **SPA amendments** • Enhances consistency of assessment processes and provides certainty about the standard required for development approval. • Minimises delays to development that support the construction industry. • Reduces costs to developers by allowing remediation and other site management activities to be carried out when the proposal commences rather than upfront. • Greater flexibility.	**SPA amendments** • Must engage the services of an approved auditor. • The cost of engaging an approved auditor to carry out assessment functions is borne by the developer.
Auditors	• Enhanced auditor confidence about the long-term demand for technical expertise, increase in willingness to supply auditor services. • Diversify range of professional services provided commercially. • Quickly respond to fluctuations in market demand for technical services. • Site suitability statement based on first-hand knowledge and experience with the project. **SPA amendments** • Provides certainty to potential auditors about demand for technical skills. • Optimises the use of technical advisory and assessment skills available in the private sector.	• Higher level of accountability for assessment and decision making about suitable uses of contaminated land. **SPA amendments** • Higher level of accountability for assessment and decision making about suitable uses of contaminated land.
Government	• Ensures the department gets reliable information on the status and extent of contamination of a site and any risks posed. • Reduced number of contaminated land reports and applications requiring technical assessment by the department. • Reduced administration cost of assessing and approving contaminated land reports and development applications. • More confident that the contaminated land risks to the environment and public health are being appropriately managed. • Can direct resources to ensuring the efficient and effective operation of the auditor framework—i.e. audit the auditors. • Consistent approach to assessing and managing contaminated lands in other states.	• Increased training costs to ensure auditors understand and carry out their regulatory functions. • Increased cost of auditing auditor performance.

Community	• Not bearing the cost of technical services provided by the department at less than cost recovery. • High confidence that highly specialised technical expertise is informing regulatory decision making for contaminated land.	
Option 3: Maintain the status quo and introduce a regulatory fee to cover the cost of providing the technical assessment services		
Developers	• Administration fee provides certainty about the cost of accessing technical contaminated land expertise.	• Increased cost of administration fee for technical advice and assessment services for contaminated land.
Auditors	• Enhanced confidence about the demand for technical services which could translate to an increased willingness to supply auditor services.	• More limited competitive environment as government is only purchaser.
Government	• Maintains control over assessment and decision making for contaminated land matters.	• Inconsistent with the government's agendas for contestability and renewal of the Queensland economy. • Not enabling, limits flexibility for proponent in managing risk. • Adds cost of procurement administration.
Community	• More confident that the risks of contaminated land are being managed appropriately.	

Option 1

Status quo

Assuming that a contaminated land report meets the decision criteria, the department assesses a simple contaminated land report in about 20 business days. On average, 430 contaminated land reports are submitted to the department each year. Four assessment officers each take approximately 17.5 hours to assess a single contaminated land report.

The total cost of in-house technical assessment by the department is estimated at $680,000 per annum[3]. The estimate includes the administrative and assessment activities performed, which are carried out pre and post assessment. Pre-assessment files/records are created upon receipt of a contaminated land report. Following assessment the relevant contaminated land register is updated. The cost of the department performing the assessment activities only (i.e. excluding administration costs) is $570,000 per annum. This includes the cost of assessing the contaminated land report against national and state standards and regulations, peer review of the assessment and notifying the proponent of the assessment outcome.

An assessment fee of $1196 per lot is charged for a site investigation report only as validation reports and site management plans do not require an assessment fee. The full cost of assessment is ultimately borne by the Queensland community as the services are provided at less than cost recovery.

The number of contaminated land reports submitted for assessment fluctuates along with the cyclical nature of the economy. In the event that an economic upturn results in more contaminated land reports being submitted for State assessment, and higher assessment loads are not matched by an increase in technical capacity to carry out the assessment function, delay costs to developers would increase beyond 20 days. A backlog of reports and applications would quickly develop.

No change to the SPA assessment triggers would exacerbate the delays as more development applications including MCUs and ROLs continue to be submitted for State assessment than required. A high assessment load results in high cost to the all stakeholders, particularly the community and the government.

The code assessment approach of assessing MCUs and ROLs against the SDAP means that the proponent needs to address upfront how the development will deal with the contaminated land as part of obtaining the development approval. This can lock in the approach without a full understanding of other factors that may affect this as the development proceeds. The full cost of service provision by the department represents an opportunity cost to the community as these resources could otherwise be used to target environmental outcomes for the benefit of the broader Queensland community.

Option 1 does not achieve the project objectives. It is inconsistent with National Competition Policy and user pays principles. Maintaining the status quo has a high cost and low benefit for the community. The continued provision of technical services by the department well below cost recovery prevents the efficient operation of the market for the statutory auditor framework. Private sector auditor confidence is low due to weak market signals for technical contaminated land expertise and this discourages them from entering the market.

The benefits of Option 1 accrue to landowners and developers, in that land is removed from the register, or an approval is received, enabling a change in development type or use of the land. These are private benefits that accrue to the landholder but are not paid for by the landholder.

While a general benefit is provided to the community that the public health and environmental risks are being well managed, the nature of the benefits is private. It is not fair or equitable for the community to pay for services that provide a private benefit to a small stakeholder group, in this case landowners and developers. Nor does this option represent an efficient allocation of public funds.

There is a high opportunity cost to the community from government expenditure of resources where the private sector could competitively provide them. Alternatively, public funds could be targeted towards high value environmental outcomes that could be shared by the broader Queensland community. The public cost of Option 1 exceeds the private cost of Option 2.

The contaminated land risks to planning, health and the economy are higher under Option 1 than Options 2 or 3, due to the potential for capacity constraints in the department during peak activity periods. Compared to Options 2

[3] This estimate is based on the average number of contaminated land reports received by the department over the four year period 2008/09-2011/12.

and 3, Option 1 has the highest cost to the community while delivering a high private benefit to landowners and developers, who use technical contaminated land advisory and assessment services.

Option 2

Mandating that approved auditors under the EP Act certify contaminated land reports prior to being submitted to the department

This option will have the greatest benefit as proponents who require the services of an approved auditor will be able to search for and secure the services of an approved auditor with the experience and skills that best meet the needs of the contaminated land project/proposal.

The department will maintain an up to date list of approved contaminated land auditors, which will reduce search costs of developers when looking to identify and engage the services of an approved auditor that best meets the project needs. Savings to the community and government will be maximised under Option 2 as the community will no longer bear the cost of providing technical advice or assessment services for contaminated land. These resources can be redirected to other activities with a higher value return on investment for the broader public benefit. Consistent with user pays principles, the cost of service provision will be internalised and paid for by those stakeholders who require and source technical contaminated land expertise from the private sector as a business input.

Option 2 enables the existing statutory framework for auditors under the EP Act to be fully and efficiently implemented. Strengthening market signals for private sector auditors will enhance auditor confidence about the viability of the market and assist to promote auditor supply. Competitive supply of technical expertise could increase price tension in the market, encouraging more timely service delivery and reducing the overall cost of service provision.

With adequate capacity and willingness of the private sector to supply technical contaminated land services, there is no compelling reason (market failure) for the government to supply the same services.

Competitive auditor markets operate in other Australian states. Table 3 identifies the number of approved auditors in other Australian state jurisdictions. This provides a realistic indication of potential auditor supply that could be achieved in Queensland as demand shifts towards the use of private sector auditors who can competitively supply technical contaminated land expertise.

Table 2: Number of accredited (approved) auditors by Australian state

State	Number of Auditors
New South Wales	37
South Australia	26
Victoria	54
Western Australia	31
Queensland	4

There is a risk that at the outset there may not be sufficient approved auditors to cater for the demand for technical contaminated land services. Initially, this could result in delays in assessment and decision making and short term spikes in the prices charged for technical services. With the right market signals, the number of approved auditors in Queensland is expected to increase from four to a figure closer to the number of approved auditors in other Australian states (see table 3).

The department will implement measures to encourage auditor supply prior to any regulatory amendments taking effect, including awareness raising amongst those in Queensland who may qualify to apply for approval and amongst approved auditors in other states whose technical qualifications could be recognised in Queensland.

The private sector is able to respond quickly and more flexibly than government to fluctuating demand for technical assessment services. Option 2 recognises that industry is well placed to provide technical services where there are clear guidelines and standards against which risks are identified and performance is measured.

The estimated cost to a landholder or developer of engaging an approved auditor in Queensland is informed by comparison with the hourly rate charged by auditors approved in other Australian states. Table 4 provides

estimated cost ranges for approved auditors in other states. These figures also represent stakeholder's willingness to pay for technical advice and assessment services for contaminated land.

Table 3: Estimated hourly cost of accredited (approved) auditors by Australian state

Australian State	Estimated cost of approved auditor per hour
New South Wales	**$250 - $450**
Victoria	**$200 - $300**
Western Australia	**$260 - $400**

It is difficult to assess the individual cost impact of engaging the services of an approved auditor as the price will vary according to the proposal type, size of the site, extent of contamination and remediation required, location and so on. Estimates provided here indicate the cost range that could be expected as a result of Option 2 being progressed.

The cost to a landowner or developer is estimated for both simple and complex contaminated land projects to be in a range of $3,000 to $36,000.

For a simple contaminated land project, it is assumed that an approved auditor is engaged at an early stage of the contaminated land project and spends two days completing a desktop and historical assessment of the site. Applying the lowest ($200/hr) and highest ($450/hr) hourly charge from Table 4 above, the estimated cost range of an auditor is $3,000 to $6,000.

For a complex contaminated land project, it is assumed that an approved auditor is required to undertake a site visit (two days); work with the SQP (two days), generate an auditor report (one day), review the contaminated land report produced by the SQP (five days) and certify and submit the contaminated land report (one day). Again, by applying the lowest and highest hourly charge from Table 4 above, to the number of auditor hours, the estimated cost range of an auditor is $16,000 to $36,000.

The cost of engaging an approved auditor is likely to be proportional to the size and the complexity of the project. Anecdotal evidence suggests that the cost of an auditor is not expected to be significant in comparison to the cost of remediation and will be integrated as an input cost into the day to day decision making of a business.

Table 4 provides examples of the cost of remediation compared to the economic value of development that has involved contaminated land. While the examples are not representative of every situation, they demonstrate the valuable input that technical contaminated land expertise provides to decision making, which can influence the profitability of a development. Technical expertise is of significant value to the developer and the value of that expertise should be paid for by those who use the expertise.

Table 4: Costs of remediation compared with development value for selected contaminated land sites

Name of contaminated site	Estimated cost of remediation	Estimated value of development
Newstead Gasworks	Reported cost of remediation was $67 million over 3 years	$500 million – $1 billion
Willawong	$40 – 50 million	Valuation of land is difficult post remediation as land uses combine public open space and Brisbane City Council purposes.
Rhodes Peninsula (NSW)[4]	$200 million	$1.5 – $2.5 billion

[4] RIS Proposed Contaminated Land Management Regulation 2013, NSW EPA

Proponents who require technical contaminated land expertise will be able to access those skills and services in a competitive market place. This is fair in that those stakeholders using and benefitting directly from the technical expertise will pay for that advice and expertise in the same way that other costs of development of a project are paid for.

Additionally, sectors requiring the services of an approved auditor are for profit and will naturally place pressure on service providers to produce efficient outcomes in a timely manner. This will assist in creating price tension within a competitive market.

The requirement for an auditor certified report will be partly offset by reduced assessment and decision timeframes. Unlike the department, approved auditors will operate outside the administrative processes of government.

The requirement for an auditor certified report will be partly offset by shorter decision timeframes as the assessment and decision functions undertaken by an approved auditor occur outside the administrative processes of government.

Once a contaminated land report is received by the department, it takes approximately 1.25 hours to complete the administrative process for a single contaminated land report. It takes an average of 15 business days to assess a standard site investigation report and draft site management plan and an average of 20 business days to assess a validation report.

Where an approved auditor is used, it is estimated that assessment time could be reduced by at least 50% from 20 business days to 10 business days. The savings may be greater for more complex projects. An approved auditor could be engaged to oversee and evaluate all stages of project development as well as certify it at various stages. By engaging an approved auditor in the early stages of the project, developers would be more certain that the risks of contaminated land are being managed appropriately and the desired outcome is achieved as quickly and efficiently as possible.

Based on the assumption that the rate and number of contaminated land reports received by the department would be the same into the future, the estimated assessment cost could also represent the estimated annual savings of Option 2 from no longer assessing contaminated land reports, development applications or developing a site suitability statement.

Change in regulatory burden

The likely change in the regulatory burden is minor in terms of additional requirements or obligations imposed on business and industry.

Option 3

Status quo plus introduce a regulatory fee to cover the cost of procuring the technical assessment expertise for contaminated land

Option 3 is the same as Option 1 but with the addition of an administration fee that would be charged to recover the cost of procuring the technical expertise from the private sector to assess contaminated land reports on behalf of the department. It is assumed that the cost of administrative activities for example, maintaining the contaminated land registers, would be borne by the government.

The marginal cost of procuring the technical contaminated land expertise from the private sector to assess and certify contaminated land reports is estimated to be $25,000 per annum (see Attachment: Option 3 Procurement Cost). The cost of procurement includes administrative, procurement, evaluation and technical assessment components. This would involve establishing a procurement plan, identifying standing offer arrangements and requirements, advertising and calling for tenders from approved auditors, evaluating offers for tender from approved auditors, and developing and letting contracts for the technical assessment of contaminated land reports.

A procurement process can take up to three months from establishing arrangements to securing contracts with approved auditors. The process would be streamlined by creating standing offer arrangements with approved auditors. Effort is also required to monitor the contracts once in place to ensure they are implemented.

Option 3 is less efficient than Option 2 in terms of time and cost. Once a contaminated land report is submitted to the department, it would then need to follow a procurement process—the duration of which is represented to the proponent as a delay cost. Additional processing time is required to complete the administrative and approval processes for procurement than Option 1.

Option 3 also prevents the efficient operation of the auditor market because the government is the only purchaser and the proponent would not be able to choose an auditor. Pricing of auditor services would effectively be fixed for a certain period of time because the fee would need to be enshrined in regulation. A variable fee to reflect the complexity of the assessment would need to be considered so that there would be an incentive for auditors to

participate. However, determining the criteria for and devising a graduated fee for different levels of assessment services would inevitably result in an artificial representation. It is unlikely such an arrangement could achieve the flexibility and competitive environment provided by an open market for auditor services.

In a fixed fee scenario, landowners, developers and industry with simpler contaminated land reports and/or development applications would effectively be subsidising more complex proposals. More complex proposals would likely receive a large private benefit due to the potential to gain larger earnings and profits from a larger development proposal.

Consultation

Greentape Reduction came into effect on 31 March 2013 reforming the core assessment and licensing framework for environmental approvals. An extensive consultation program was undertaken with key stakeholders from industry, community and government on each of the initiatives including for contaminated land.

The Greentape Reforms legally formalised the role of third party auditors in relation to contaminated land matters and more generally the use of auditors, by providing for 'approved auditors' under the EP Act. The function of approved auditors was specified including evaluating and certifying the three types of contaminated land reports. Auditor's functions may only be carried out by an approved auditor or the department. The intention however, was that the department would only perform the functions of an auditor where an auditor was not available.

Consultation process

Consultation on contaminated land matters commenced with the Greentape Reduction Project. An extensive community consultation program was progressed with key stakeholders from industry, community and government. Departmental officers met with several industry representatives and peak bodies to discuss the regulatory system.

Key stakeholder consultation has continued to inform a portfolio of information and guidance developed to support the approved auditor framework including:

- Draft prescribed guideline—contaminated land auditors under Chapter 12, Part 3A
- Draft prescribed code of professional conduct for auditors approved under Chapter 12, Part 3A
- Guideline for contaminated land professionals; and
- Guideline for assessing suitably qualified persons.

The next step in the policy process for contaminated land is the release of this Consultation RIS. Key stakeholders are invited to provide written submissions about the proposed regulatory amendment for careful consideration by the department before the proposed regulatory amendments are finalised.

Submissions will be accepted until the close of business 28 days after advertisement. The timeframe and process for lodging a submission on the contents of this Consultation RIS are provided in the Executive summary.

Preferred option

Option 2 is the preferred option and has the greatest net benefit for the community.

The preferred option is consistent with the government's renewal and contestability agendas as well as user-pays principles. It promotes the competitive supply of technical contaminated land services to the market. Option 2 enables the existing statutory auditor framework in the EP Act to be fully and efficiently implemented. The competitive supply of technical contaminated land expertise will further increase price tension, encourage more timely service delivery and reduce the overall cost of service provision.

The preferred option provides an effective and proportional response to the current and forecast issues concerned with ensuring technical contaminated land expertise informs and supports regulatory decision making under the EP Act for the appropriate management of public health and environmental risks.

The proposed regulatory amendment enables further streamlining of the development approval path. Assessment and decision making timeframes will be reduced saving all stakeholders time and money. The preferred option enables an agile service delivery model capable of facilitating the provision of technical contaminated land expertise to the market in response to fluctuations in demand for that expertise.

Currently, developers have the option of using the framework for approved auditors or not. Consistent with the third party auditor frameworks in Victoria and Western Australia, the proposal will make it compulsory for landowners, developers and industry to use the approved auditor framework in the EP Act. While this removes the choice of using technical assessment services supplied either by the government or the private sector, it achieves broader public benefit.

The proposal does not compromise environmental protections in Queensland that are associated with managing the risks to human health and the environment from contaminated land.

Other initiatives in the regulatory proposal

In addition to the preferred Option 2, the proposed regulatory amendment includes three broad initiatives to streamline and modernise contaminated land regulation and improve transparency, efficiency and effectiveness of the auditor framework:

Expanding the criteria requirements for contaminated land reports.

To ensure auditor certainty about what each type of contaminated land report must contain, the prescribed criteria in the EP Regulation will be expanded.

Minor amendments including removing the requirement for soil disposal permits and modifying notification requirements for land purchasers.

Soil Disposal Permit

A soil disposal permit is required for the transportation of contaminated soil to a waste facility. An applicant is required to prepare and submit an application for a soil disposal permit. Approximately 130 soil disposal permits are issued per year.

It is proposed to repeal the requirement for a soil disposal permit from the EP Act in favour of using existing waste tracking requirements. This will necessarily involve including contaminated soil as a trackable waste in the EP Waste Management Regulation, which is currently being reviewed. Benefits of the proposal include streamlining application processes, removing duplication and reducing delay costs of approvals to developers.

Notification requirements

The EP Act requires anyone selling or disposing (granting) of land that is recorded on either the EMR or CLR to give written notification to a prospective purchaser of the recording and details of any current or outstanding notices given under the EP Act in relation to the land. This ensures that potential buyers of land listed on either of the contaminated land registers can consider any costs associated with assessing and possibly remediating the land before they purchase the land.

The importance of informed decision making by prospective purchasers of land listed on a contaminated land register is reflected in Common law which requires due disclosure of such information when selling land. While only an issue for a very few cases, it is possible that this information is misused to break a contract of sale even after a contract has been in place for many years. A proposal to amend notification requirements and limit the period within which the purchaser has a right to rescind a contract will better balance the rights of the seller and

purchaser.

Restructuring Chapter 7 of the EP Act to modernise, streamline and improve clarity of contaminated land provisions

At the macro scale, application and approval processes contained in the EP Act have been streamlined and up-dated in line with the needs of modern business. Chapter 7 relating to contaminated land was largely left untouched by the first round of Greentape Reduction initiatives. The proposed restructure of Chapter 7 will create a better fit with the rest of the EP Act and the proposed new sections.

The community will benefit from the proposed regulatory amendment through increased government efficiency and greater emphasis on monitoring and enforcing compliance with the regulations and standards for contaminated land established in the NEPM. Importantly, the engagement of technical experts on specific contaminated land projects which will enhance community confidence that the health and environmental risks of contaminated land are being appropriately managed.

Consistency with other policies and regulation

Competition principles agreement

The department currently provides technical advisory, review and assessment services in competition with private sector auditors. These services are provided at low or no cost which is contrary to the principles of competitive neutrality outlined in National Competition Policy.

The proposal is a minor regulatory amendment to the benefit of landowners, the development industry and other private sector business with technical expertise in contaminated land matters. It is not the intention that the proposed regulation restricts competition in any way. On the contrary, the proposal seeks to promote demand for, and supply of, technical contaminated land expertise from the private sector, to the market. The proposed reforms are consistent with Clause 5 of the Commonwealth of Australian Governments' Competition Principles Agreement.

The proposed reforms will not have a disproportionate impact on any one industry. Rather the reforms will deliver greater commercial opportunities for private sector service providers with technical skills and experience in contaminated land matters. The proposal would also ensure equity for stakeholders with land that is listed on the EMR or CLR despite the legislative pathway used to address issues of contamination, the EP Act or SPA.

Fundamental legislative principles

The *Legislative Standards Act 1992* contains a set of Fundamental Legislative Principles that must be satisfied when amending regulations. The four initiatives contained in the proposed regulatory amendment do not raise any fundamental legislative principles.

National framework

The *Commonwealth National Environmental Protection Council Act 1994* was enacted to ensure that people enjoy the same level of protection from pollution wherever they live in Australia and that business decisions are not distorted by variations between jurisdictions. The NEPM for assessing site contamination provides a nationally consistent approach which ensures sound environmental management practices by regulators, site assessors, environmental auditors, landowners, developers and industry.

The proposed amendment will fully implement the statutory auditor framework in the EP Act and align it with the nationally agreed approach for the assessment of site contamination, which involves site assessors.

Implementation, evaluation and compliance support strategy

The proposed regulatory amendment will necessarily involve an increase in the use of contaminated land approved auditors under the EP Act. The department will need to undertake education and awareness raising about the expectations and obligations of auditors to ensure that auditors understand and fully adopt the role.

Approved auditors are responsible for evaluating contaminated land reports, against the NEPM to ensure best practice management of the environmental and health risks of contaminated land. With respect to remediated land, or contaminated land that can be managed via a site management plan, approved auditors make recommendations about suitable land uses to the department. Approved auditors will be held accountable for their professional expertise and decision making with respect to contaminated land.

The department will maintain a publicly searchable, current and accurate list of persons, who have been approved under the EP Act as a contaminated land auditor. This will help to match demand for technical services with supply and reduce the associated search costs.

Implementation of the preferred option is likely to be staged. The proposed amendments to the assessment triggers and type of development assessment in the SP Reg would be implemented first, followed by amendments to the EP Act in late 2014, as part of an Environmental Protection and Other Legislation Amendment Bill.

The department will monitor the efficiency and effectiveness of the auditor framework. Raising awareness about the market opportunities for private sector auditors will be undertaken to ensure supply of technical contaminated land expertise adequately meets the demand for these services. This will also be essential in supporting construction sector in the Queensland's four pillar economy.

Auditing the performance of approved auditors will ensure that auditors are operating in line with the requirements and obligations of their approval, the code of conduct and guidelines for contaminated land professionals. Suspension or cancellation of approval of an auditor may be enforced in the case of non-compliance.

The statutory framework for approved auditors is contained in the EP Act, which is primary legislation and subject to review every 10 years. The regulatory proposal will be incorporated into the department's broader reform program to ensure relevance, effectiveness and efficiency is maintained over time and most importantly that the public health and environmental risks of contaminated land are being managed for the benefit and safety of Queenslanders.