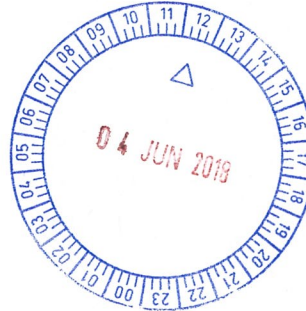




Environmental Trust

Our Ref: DOC18/157701
Your Ref: D17/0023



Mr Bryce Wilde
Executive Director
Natural Resources Commission
GPO Box 5341
SYDNEY NSW 2001

Dear Mr ~~Wilde~~ **BYCE**

Natural Resources Commission (NRC) - Evaluation of Contaminated Land Management Program

Thank you for undertaking the evaluation of the EPA's Contaminated Land Management Program, funded by the Environmental Trust (Trust).

The evaluation has assisted the Trust in determining the future direction for the program. The Trust has now approved a grant of up to \$3 million for a three-year program. Based on the NRC's recommendation this will fund Council Gasworks and Innocent Owners, and administration of individual grants will return to Trust Administration. All other contaminated land issues will be considered as part of the Trust's biennial Major Projects Prospectus process, with the program undergoing another review in three years.

The Trust has noted the outcomes of the evaluation and has accepted the NRC's recommendations. A copy of the Trust's administrative response is enclosed for publication with the report. I am advised that the EPA has also presented its response to the NRC directly.

I acknowledge that the NRC is required as part of the *Natural Resources Commission Act 2003* to make its reports publicly available, and the Trust supports the NRC placing the evaluation report and responses on its website.

I thank the NRC for its thoroughness and flexibility in undertaking the evaluation, and look forward to our continued collaboration.

Yours sincerely

Anthony Lean **29 MAY 2018**
Environmental Trust Secretary
Enclosure

**ENVIRONMENTAL TRUST ADMINISTRATION RESPONSE TO NATURAL RESOURCES COMMISSION CONTAMINATED LAND MANGEMENT EVALUATION -
RECOMMENDATIONS**

	Key Findings	Recommendations	Trust Administration response
STRATEGIC DESIGN	<p>Overall, in its current form, the program is not fully consistent with Trust's policies or principles of good practice, and is not the most effective or appropriate use of Trust funds.</p> <p>Limited alignment with Trust funding principles including core-business, mostly for regional acceleration, regional capacity building and prevention and education subprograms.</p> <p>The size of the contaminated land issue is beyond the Trust's ability to make significant impact e.g. \$100-200M/yr -v- \$2M (with <50% on ground i.e. \$1M/yr)</p> <p>Lack of information on state-wide management of contaminated land and the EPA not enforcing their regulatory powers, limits the Trust's ability to strategically target funds and make a significant impact.</p>	<p>1. Undertake a rigorous strategic assessment before funding any contaminated land management program, including:</p> <ul style="list-style-type: none"> ▪ Evaluate any future proposals in the context of broader state-wide contaminated land management issues, including those described within this report. ▪ Assess and consider potential CLM programs through the major projects biennial prospectus process (as opposed to being an ongoing program), so that their value is evaluated relative to other funding options available to the Trust for achieving its objectives. ▪ Consistently assess whether proposed programs would substantially fund core business of another agency as described in the Trust's core business policy. ▪ Ensure application of any exception to the core business policy is consistent with Trust guidance and fully evaluated. ▪ Assess the likely impact of available Trust funds relative to the scale of the contaminated land management problem targeted. 	<p>Accepted: The Environmental Trust (Trust) agrees that contaminated land management issues should be considered against other environmental issues and should not be funding core business. The Trust has decided to no longer fund sub-programs such as Regional Acceleration which are considered EPA core business.</p> <p>After detailed analysis, the Trust has decided to provide \$3 million in funding for a redesigned 3-year CLM program, with a narrowed scope that focuses on one final round of the Council Gasworks program and continuation of the Innocent Owners program. This will incorporate the NRC's recommendations, and will be reviewed at the end of the three years.</p> <p>Any other contaminated land management issue would be considered as part of the Trust's biennial Major Projects Prospectus process.</p>

Key Findings	Recommendations	Trust Administration response
<p>The current use of narrow subprograms for on-ground works does not provide the flexibility for high impact projects to be routinely identified and addressed.</p>	<p>2. For on-ground projects, maintain flexibility to address projects across the full range of potential contaminated land scenarios, with clear funding criteria that prioritise sites consistent with Trust's desired outcomes. In particular:</p> <ul style="list-style-type: none"> ▪ Target projects where Trust funds: <ul style="list-style-type: none"> ○ are genuinely likely to provide "seed funding" ○ allow coordination and leverage of greater action and funding ○ provide information needed for others to make further investment. ▪ Enhance requirements for co-contributions and ensure they are consistently applied. ▪ Apply the "innocent owner" criteria rigorously and consistently. 	<p>Accepted: The elements identified are all strongly supported by the Trust, with seed or pilot projects and co-contributions aligning well with the Major Project funding principles.</p> <p>Potential pilot and seed funding projects related to contaminated land will be explored through the prospectus process, as is currently done for other issues.</p> <p>Requirements for co-contributions will also be clearly defined in the Program's grant guidelines and criteria.</p>
<p>Pilots (like UPSS) were not delivered in a way that provided useful information, and there is a general reluctance for legally responsible parties to get involved.</p>	<p>3. For any future funding of pilot programs or research funding:</p> <ul style="list-style-type: none"> ▪ Clearly identify the evidence-based need and outcomes being sought by the pilot study and ensure the design is consistent with achieving the desired outcomes. ▪ Allow for flexibility to ensure pilot studies can be adaptively managed to gain the greatest insights in the timeframe of the project. 	<p>Accepted: It is agreed that the UPSS pilot did not provide the intended information. The recommendations are noted, and will be considered when scoping any future pilot programs.</p>

Key Findings	Recommendations	Trust Administration response
	<ul style="list-style-type: none"> ▪ Identify a clear strategy to move from a pilot to a fully funded implementation phase, including an appropriate source of ongoing funds. 	
<p>Limited capacity building in many of the on-ground projects, and longevity of outcomes is unclear. Some activities may cross-over with the EPA's core responsibilities. For instance, the Regional Acceleration subprogram is funding core business.</p>	<p>4. For any future funding of capacity building and education:</p> <ul style="list-style-type: none"> ▪ Discontinue funding for the Regional Acceleration subprogram through the Trust due to this being core EPA business. ▪ Consider when making funding decisions whether programs/projects are likely to achieve long-term outcomes without ongoing funding past the date of the grant, and favour activities that will have a longer-term legacy. ▪ Consider whether there is a clearly identified need for specific education funds. 	<p>Accepted: The Trust agrees and as such has decided to discontinue funding the Regional Acceleration subprogram, as it is EPA core business. The EPA has accepted this.</p> <p>The EPA is seeking alternative funding for the Regional Capacity Building program, however, should its request be unsuccessful the Trust may support a redesign of the program to ensure that there was demonstrated commitment that councils would continue program outcomes post funding; there was no overlap with EPA core business; and the level of capacity could be effectively demonstrated.</p>
<p>Financial reporting lacks transparency and difficult to account for funds spent (e.g. EPA could not advise number of sites assessed under the regional acceleration program or differentiate work funded by Trust from Treasury funded).</p>	<p>5. Ensure measures are in place to ensure financial control and probity, including:</p> <ul style="list-style-type: none"> ▪ Require a clear scope of works for the allocation of funds. Where this level of detail is not feasible at grant allocation, make the release of funds contingent upon approval of clear implementation and budgetary plans and outcomes. ▪ Financial reporting frameworks that ensure consistent reporting of actual spend at least quarterly, and ensure 	<p>Accepted: The Trust has decided to administer the grants under the revised CLM program. The Trust has demonstrated experience in best practice grant administration and will utilise its audited processes and policies. Grantees will be required to use Trust templates, and adhere to standard reporting timelines and processes. There will be independent review of reports, allowing the Trust to ensure that there is adequate financial control and probity.</p> <p>Trust Administration will develop the guidelines which will clearly stipulate allowable costs.</p>

Key Findings	Recommendations	Trust Administration response
	<p>information is collected to assess cost-effectiveness, value for money and in-kind contributions.</p> <ul style="list-style-type: none"> ▪ Clear and robust requirements for spending of grant funds, for instance specification of what is an allowable on-cost. 	<p>Each grant application will be reviewed and endorsed by an Independent Subcommittee, and approved by the Trust Secretary.</p>
<p>Application of selection criteria appears inconsistent and unclear, and not based on strong evidence to determine level of environmental risk, mainly for UPSS. Health risks are often focus for selection of sites, not environmental risks.</p>	<p>6. Improve project selection by ensuring robust risk-based selection criteria that reflect program objectives, and ensuring consistent and transparent use of this criteria, including documentation of decision making.</p>	<p>Accepted: The Trust agreed to cease funding UPSS programs. For all other programs, Trust Administration will develop clear program guidelines and assessment criteria, and ensure that the decision is fully documented. This is standard Trust procedure, which adheres to the Premier's Good Practice Guide to Grants Administration.</p>
<p>Probity issues around the identification, assessment and selection of grants, and often they did not adhere to program guidelines. (e.g. for regional capacity building, they used other criteria to assess and for Cowra Gasworks they used investigation grant funds to fund remediation activities (as the cost of remediation exceeded the funding cap for remediation grants).</p>	<p>7. Improve the grant application process by:</p> <ul style="list-style-type: none"> ▪ ensuring grant application guidelines and criteria are adhered to. ▪ establishing a more independent review of applications if the administrator is to remain heavily involved in developing the applications. ▪ considering opportunities to implement contestable application processes. ▪ If program funded again, consider moving back to previous model where the Trust makes and manages the grants, rather than the EPA. 	<p>Accepted: As discussed above. Further, Trust Administration will design and administer grants, and the EPA will provide technical and regulatory support only.</p>
<p>With some exceptions, business plans, subprogram guidelines and projects have limited formal planning. Planning documents lack sufficient detail to provide</p>	<p>8. Require an implementation plan at the program and subprogram level from administrator (if devolved) or require</p>	<p>Accepted: Trust administration will be administering the grants so governance procedures and project planning will be adequately implemented. It will not be a devolved grant.</p>

Key Findings	Recommendations	Trust Administration response
<p>clear guidance on project delivery, such as specific deliverables and timelines.</p> <p>No formal processes apparent to ensure consistent technical input at key decision-making points. (e.g. some were gold plated and resulted in unnecessary activities and others didn't provide best practice or a consistent approach).</p>	<p>further details in business plan prior to funding.</p> <p>9. Ensure technical review is consistently conducted at key decision points including approval of the scope of works, changes to on-ground work approach and review of project progress reports.</p>	<p>Accepted: it is agreed that technical reviews must be consistent, to ensure equity and appropriateness. Under the redesigned program, the business plan will identify who will be responsible for undertaking the technical reviews and at which points. It will also set out the governance arrangements on who is approved to make decisions.</p> <p>A Memorandum of Understanding will be developed between the Trust and EPA outlining respective out roles and responsibilities.</p>
<p>Investigation and remediation grants have been awarded together and often in excess of what is required, increasing the risk of inappropriate spending (esp. as the investigation is to identify what remediation work is needed, and the Trust refused a request to combine on this basis and due to probity issues).</p>	<p>10. Develop guidelines and standard procedures for project managers where possible, with direction on general approaches and quality criteria for investigation and remediation to allow for consistency of approach and improved efficiency and probity.</p>	<p>Accepted: Detailed guidelines will be developed with necessary technical information sought from the EPA. Investigation and remediation grants will be assessed and awarded separately following independent review of each application.</p>
<p>Program logic requires stronger analysis, with clear outcomes and supported by implementation planning.</p>	<p>11. Develop a program logic based on clear objectives and a strategic assessment of priority areas for investment, prior to committing funds.</p>	<p>Accepted: clear project logic and evaluation framework has been developed and included in the business plan for the redesigned program</p>
<p>Risk assessment and mitigation strategies not done appropriately, e.g. excluded key risk and didn't identify unintended risk. This includes the risk that there may be an expectation that the Trust will fund remediation in perpetuity.</p>	<p>12. Ensure a robust risk assessment is carried out to identify risks to program implementation and controls are in place where necessary.</p>	<p>Accepted: It is acknowledged that many risks were not identified in previous business plans. Trust Administration has developed the business plan for the redesigned program in collaboration with the EPA, which includes a robust risk assessment and identifies the intended mitigation strategies.</p> <p>The Trust recognises the risk that there may be an expectation for ongoing or additional funding. For this reason, the Trust has decided to no longer fund</p>

PROGRAM DESIGN

Key Findings	Recommendations	Trust Administration response
		<p>the Underground Petroleum Storage Systems program.</p> <p>For the redesigned Council Gasworks program, a cost-sharing model will be adopted in line with the recommendations in the evaluation. The model will be developed in line with similar programs to ensure a transparent and equitable approach. Exceptional circumstances will be considered in line with the current policy.</p>
<p>Of concern is the potential risk for unintended negative consequences which is not adequately addressed.</p>	<p>13. Ensure an assessment of potential perverse outcomes of the program and associated risks is undertaken, and identified risks are adequately controlled in program design where necessary.</p>	<p>Accepted: As above.</p>
<p>Monitoring and evaluation does not adequately capture and assess the outcomes achieved, and there is limited reporting at the sub-program and project level. Limited information gathered and reported on environmental outcomes.</p>	<p>14. Strengthen monitoring and evaluation framework to focus on measuring outcomes and use information to inform adaptive management. In particular:</p> <ul style="list-style-type: none"> ▪ Establish one clear set of objectives, outcomes and outputs that are clearly aligned and consistent with the Trust's objects. ▪ Ensure objectives, outcomes and outputs at the program, subprogram and project level are specific, measurable, achievable and appropriate for the funds, timeframe and scale of the projects. ▪ Establish clear roles and responsibilities for the active capture and sharing of knowledge and good practice, and 	<p>Accepted: Trust Administration, in consultation with the EPA, has prepared an evaluation framework as part of the new business plan, this includes measures and targets to measure immediate, intermediate and ultimate outcomes in line with the program logic.</p> <p>The business plan also outlines the roles and responsibilities for collecting monitoring information.</p> <p>Trust Administration will be administering the grants, and will apply its best practice grant monitoring requirements, and adaptively manage projects as needed.</p>

Key Findings	Recommendations	Trust Administration response
	<p>implement measures to assess effectiveness of knowledge sharing.</p> <ul style="list-style-type: none"> ▪ Revise reporting requirements to allow for evaluation of the program outcomes, assessment of whether what was proposed was delivered, and efficient collection of useful information for completing program evaluation and informing future works. 	
<p>Devolving the grant program did not resolve the issues it was meant to address, and created additional problems. Didn't appear to be options assessment.</p>	<p>15. Determine whether to devolve administration of the program based on an assessment of the expected added value and risks, including assessment of value for money, technical capacity, grant administrative capacity and any potential conflicts of interest and consider the other option of the Trust again running the program with technical input from the EPA.</p>	<p>Accepted: Based on the recommendations, Trust Administration will resume administration of the redesigned program.</p>
<p>While the EPA steering committee and the Trust subcommittee have different roles, there is overlap in their responsibilities and the structure is somewhat duplicative.</p>	<p>16. Assess the role of the Contaminated Land Management Steering Committee, including in relation to that of the Trust's statutory Environmental Hazards Subcommittee. Streamline the governance structure if possible, or more clearly define their roles.</p>	<p>Accepted: There will no longer be a Steering Committee, only the Environmental Trust's independent Subcommittee. The Subcommittee's role will be to provide governance and advice to the Trust on the practicality and overall worthiness of projects (including accountability and reporting arrangements), monitor and review project implementation including reviewing progress, and final reports.</p> <p>The EPA will provide technical advice where required.</p>
<p>While the committees generally provided good guidance with the information provided, the current structure can be streamlined and strengthened.</p>	<p>17. Ensure the Trust is fully informed of the activities of Contaminated Land Management Steering Committee</p>	<p>Accepted: There will no longer be a Steering Committee, only the Environment Trust's independent Subcommittee.</p>

GOVERNANCE

Key Findings	Recommendations	Trust Administration response
<p>Lack of accountability at the program and project levels. Limited mechanisms in place to ensure accountability or address poor performance.</p>	<p>meetings, if the program is devolved and the steering committee is maintained.</p> <p>18. Establish clear roles and responsibilities for the program administrator (if the grant is devolved), and include stronger mechanisms to ensure accountability.</p>	<p>Accepted: There was difficulty in managing poor performance under the previous program, and limited accountability to address it. Particularly with the EPA being the point of contact between grantees and Trust Administration.</p> <p>Under the redesigned program, the grant will not be devolved. Trust Administration will be the direct point of contact with grantees. They will have to sign and adhere to the provisions of the Trust's standard grant agreement, including any special conditions.</p> <p>As above, the Environmental Trust's Subcommittee plays a governance role in overseeing the delivery of programs/projects.</p>