

Strategic Approaches to Environmental Liability Transfer



Presenter: Grant Scott

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Benefits – Liability Transfer



The important benefits you should look for in an Environmental Liability Transfer Product (ELTP) are:

Transference of Liability:

Environmental liabilities, known and unknown, contractual and legal should be transferred affording maximum allowable release and insulation from future liability.

Guaranteed Cost Certainty:

ELTP give a fixed-cost solution for environmental obligations and uncertainties.

Management of Compliance Issues:.

ELTP would assume regulatory compliance obligations freeing manpower and capital.

Economic Consideration:

The ELTP should provide you with the best possible economic methods to Transfer environmental liability – ELTPs have been completed in the US with numerous Fortune 500 companies – and have gained the approvals from the nation's most sophisticated accounting departments and boardrooms.

Contamination Liability – Transferred – Covers?

Onsite Contamination

- Above Ground
- On-Ground
- Below Ground

Offsite Contamination (migrated)

- Past, Present & Future
- Known & Unknown



Exclusions

- Offsite contamination that did not naturally migrate offsite (land filled etc)
- Known, but undisclosed contamination

How it works – Commercial Offering

**OFFERING = (FAIR MARKET VALUE) –
(IMPAIRMENT ISSUES)**

If Accepted

Create - Layers of Protection

Contractual, Insurance and Balance Sheet Guarantee –
put into place

Company Paid Out, Indemnified – Focus is Back on Business
Impaired Value – Escrow Fund – for Rectification/Management

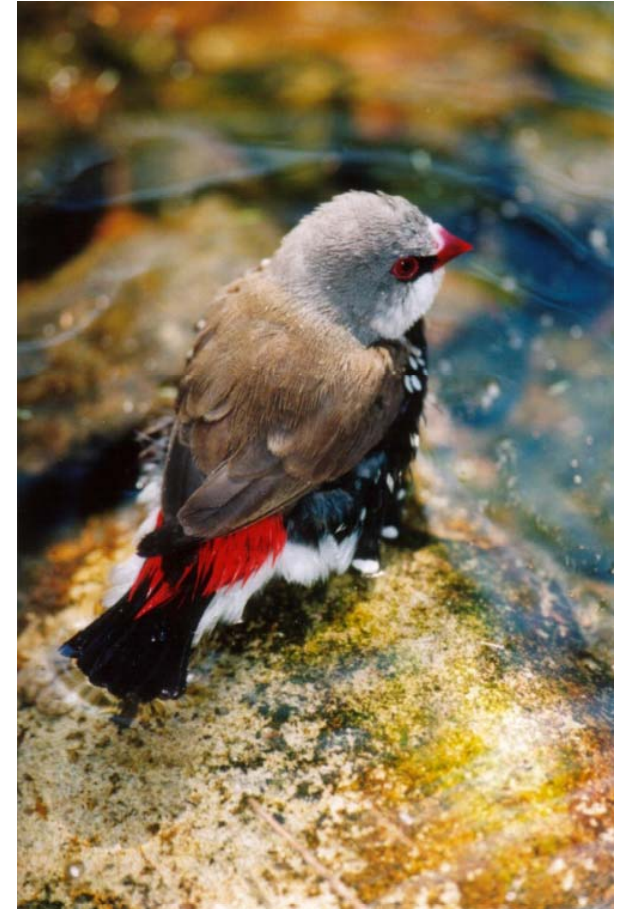


Types of Liability Transactions

Strategic Transaction Types

Examples – Economic Situation

- Special Purpose Vehicles
- Sale/Leaseback Options
- Transfer w/o Real Estate
- Fixed Cost Remediation/Third Party



Companies Concept – Liability Transfer

Historic

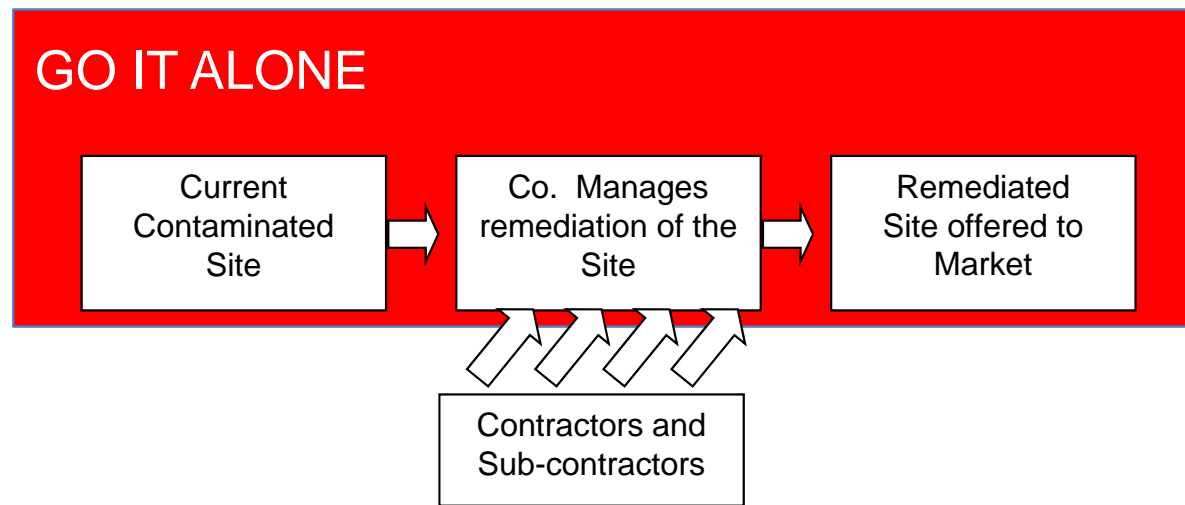
- “Go-It- Alone” Approach
- JV’s with a Developer

Present – Future

- Outright Sale to PLT
- Outright Sale to PLT / Developer Consortium with Indemnity
- Participation in Consortium – with Indemnity



Go it alone



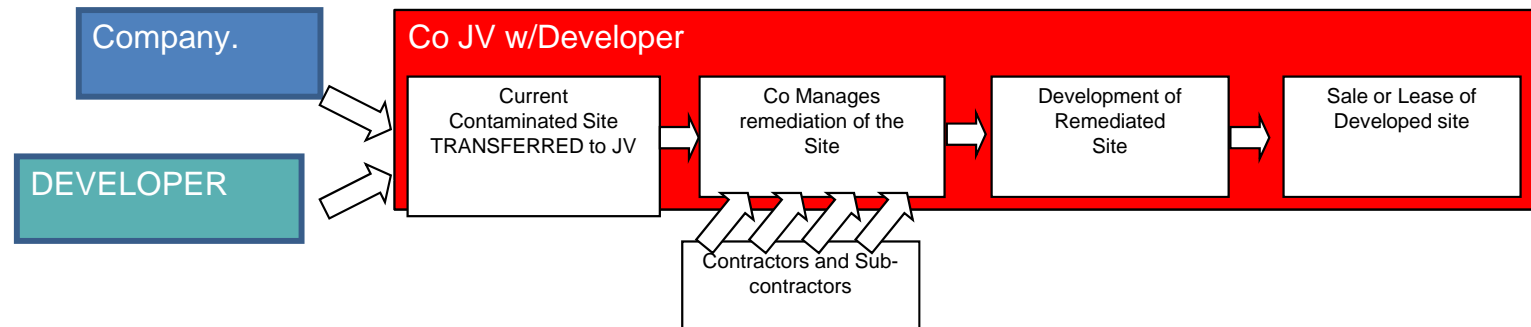
Positives

1. Provides Co with the greatest sense of control
2. Final sale proceeds would come back only to Co.

Negatives

1. Risk that remediation costs could blow-out as unknowns are discovered
2. The time to remediate is unknown and could result in the land sale missing the optimal point in the market
3. Should any problems be encountered with the remediation it may reflect badly on Co.
4. Co. would need to devote management time and take responsibility for the work of all contractors or sub-contractor engaged on the project
5. Net PV return on realization of the property will always remain uncertain until the end is reached
6. The pollution liability will remain with Co. in perpetuity in the event of a future problem being detected during the subsequent development of the property

JV with Developer



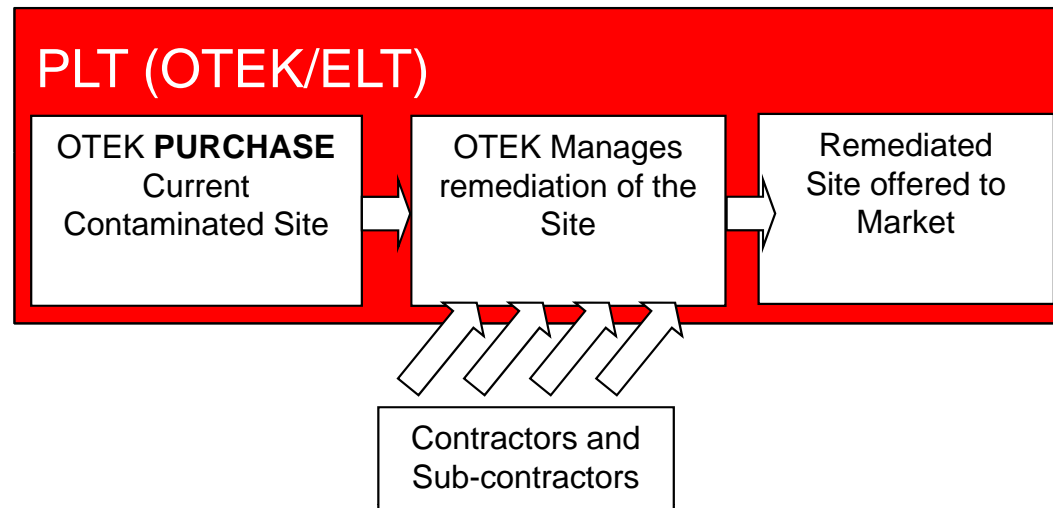
Positives

1. Provides Co. with a high sense of control.
2. The process of adding value to the site may contribute to some enhanced reputation for Co.
3. Final sale proceeds would need to be shared between the JV partners.

Negatives

1. Risk that remediation costs could blow-out as unknowns are discovered.
2. The time to remediate is unknown and could result in the land sale missing the optimal point in the market.
3. Should any problems be encountered with the remediation it may reflect badly on Co.
4. Co. would need to devote management time and take responsibility for the work of all contractors or sub-contractor engaged on the project.
5. Net Present Value return on realization of the property will always remain uncertain until the end is reached.
6. The pollution liability will remain with Co. in perpetuity in the event of a future problem being detected during the subsequent development of the property.
7. This ongoing liability could include an obligation for monitoring of groundwater for an indeterminate time period.
8. Time to market is extended by the development time which could off-set possible gains
9. Net PV return on realization of the property will always remain uncertain until the end is reached

Outright Sale - with full indemnity against past, present & future liabilities



Positives

1. Proceeds of the sale are immediately available to be re-deployed to other Co. projects.
2. Funds required for clean-up are placed in escrow and Co. has input into its use.
3. PLT process provides indemnity against future loss from claims made on Co. for the broadest range of possible issues emanating from past or future problems associated with the property or its subsequent development or use.
4. Co. is protected against any liabilities associated with the property in perpetuity
5. Any timing delay risk is fully eliminated giving Co. certainty of their return
6. Co. can use the PLT sale to promote their responsible disposal of the property thereby eliminating any reputational risk
7. There is no risk of remediation cost blow-out as the remediation costs are fixed for both know and unknown causes

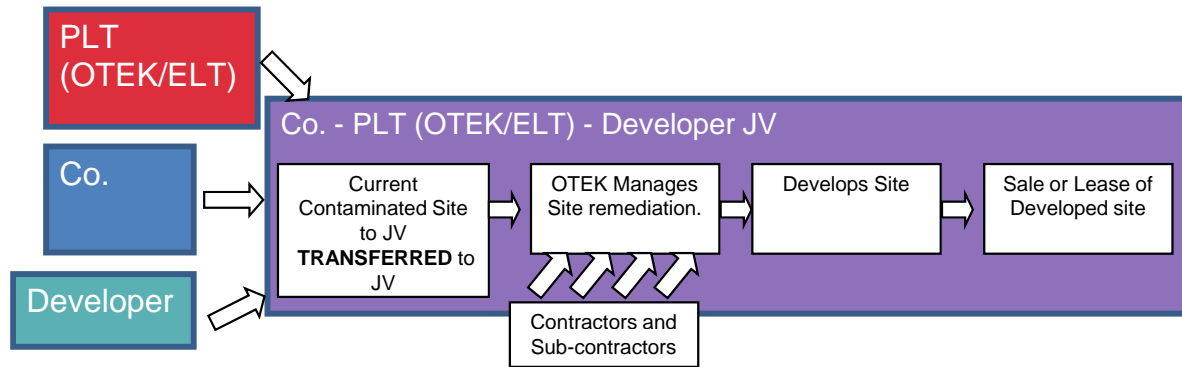
Positives, cont.

8. The EPA would see this in a positive light as there is a guaranteed plan of remediation and action taken to fix the existing problems
9. Should any problems be encountered with the remediation it Co. will be shielded from any negative fall out
10. Net PV return on realization of the property will be certain and not dependent what happens between the sale and the end of the process.

Negatives

1. The possible negative is that Co. whilst locking in the price of the property, would not participate in any upside increase in value, nor would it be exposed to any decline in value property going forward.

Participates in consortium – with indemnity



Positives

1. Depending on what the end-use finished development looks like the Co. – PLT (OTEK/ELT) – Developer consortium may be able to achieve a higher return to Co. under this option.
2. Funds required for clean-up are placed in escrow so Co. will have some control over its use.
3. PLT process provides indemnity against future loss from claims made on Co. for the broadest range of possible issues emanating from past or future problems associated with the property or its subsequent development or use.
4. Co. subsequent to development is protected against any liabilities associated with the property in perpetuity.
5. Co. can use the PLT sale to promote their responsible disposal of the property thereby reducing any reputational risk their continued involvement may diminish the full benefit of this.
6. The Regulator would see this in a positive light as there is a guaranteed plan of remediation and action taken to fix the existing problems.

Positives, cont.

7. There is no risk of remediation cost blow-out as the remediation costs are fixed for both known and unknown causes, however there may be increased costs to be shared between the consortium members for the Value added elements of the development.
8. Should any problems be encountered with the remediation Co. will be partially shielded from any negative fall

Negatives

1. The time to remediate is unknown and could result in the sale of the developed property missing the optimal point in the market.
2. Should any problems be encountered with the remediation it may reflect badly on the company
3. Net Present Value return on realization of the property will always remain uncertain until the end of the remediation, development and subsequent sale process is reached
4. Time to market is extended by the development time which could off-set possible gains.
5. Co. will waste management time and energy for the number of years it takes to remediate and develop this site.

Negative Value Transaction

Site: 12 hectare site

Nature of Contamination: Confidential

Environmental Liability & Risk Transfer: approx. \$6,000,000 AUS

Value of Development: est. >\$4,000,000 (partial site)

Status: Finalising RAP – obtaining Regulator review/approval.



Used to limit financial exposure – provide indemnity, remove off balance sheet provisions.

Transfer of Liability Financing

Site: Former Coal Mines

Nature of Contamination: Perpetual Acid Mine Drainage Water Treatment

Environmental Liability & Risk Transfer: > 56 Million Tonnes of Coal



Illustrates flexibility of financing using commodities, shares, etc – part of the negotiation and risk aspects.

Ongoing Operation – Fixed Cost Remediation

Site: Manufacturing Facility

Issue: Long term release of Hydrocarbons

Nature of Contamination: Hydrocarbons

Environmental Liability & Risk Transfer: > \$2,000,000 AUS



Used to provide surety around cost exposure, obtain indemnity,
and allow for ongoing operations.

Risk Control – Removal – Fixed Cost

Site: 11 Hectare Site

Issue: Area of Illegal Landfilling

Nature of Contamination: Various Items.

Environmental Liability & Risk Transfer, Management: > \$4,000,000 AUS

Status: Site issues defined, preliminary program of mitigation/control designed.
Regulator/Auditor approval in process.



Used to limit financial exposure – provide indemnity, remove long-term liability from balance sheet – comfort to developer.

Sale Multiple Site Portfolio Example

Site: 13 Chemical Manufacturing Sites

Transferring Entity: Millennium Chemicals

Nature of Contamination: Various Inorganic Chemical Compounds Items.

Environmental Liability & Risk Transfer, Management: > \$180,000,000 AUS

Status: Eleven of thirteen sites have been abated and closed. Two Sites pending closure.



Illustrates portfolio potential and could include negative and positive values

Benefits of Environmental Liability Transactions

1. Transference of Liability
2. Guaranteed Cost Certainty
3. Elimination of Compliance Issues
4. Economic Considerations
5. Clean up balance sheet



OTEK's (trademarked) Positive Liability Transfer product provides these results for Environmental Liability Transactions in Australia.

Positive Liability Transfer Product



Putting the Pieces in Place