

# Submission on the DWER Issues Paper - Legislative Framework for Waste Derived Materials



August 2019

## Status of this Submission

This Submission has been prepared through the Municipal Waste Advisory Council (MWAC) for the Western Australian Local Government Association (WALGA). MWAC is a standing committee of WALGA, with delegated authority to represent the Association in all matters relating to solid waste management. MWAC's membership includes the major Regional Councils (waste management) as well as a number of Local Government representatives. This makes MWAC a unique forum through which all the major Local Government waste management organisations cooperate.

This Submission therefore represents the consolidated view of Western Australia Local Government. However, individual Local Governments and Regional Councils may have views that differ from the positions taken here.

*This Submission was considered and endorsed by the Municipal Waste Advisory Council on Wednesday 28 August 2019.*

## 1 Introduction

The Association appreciates the opportunity to comment on the Department of Water and Environmental Regulation (DWER) Issues Paper – *Waste Not, Want Not: Valuing Waste as a Resource* (Issues Paper). The acknowledgement of the problems associated with establishing a framework, and difficulty in establishing viable markets for waste derived materials, is welcomed. These issues have been an ongoing concern for the sector. As outlined in the Issues Paper, the Department initially proposed a framework for waste derived materials in 2014, which was subsequently withdrawn in 2016. In line with the feedback provided previously, in progressing a risk based assessment and approval process, Local Government favours the use of an outcomes based approach, which clearly identifies the requirements that fit for purpose waste derived materials must meet in guidance and/or supporting documents.

This Submission provides the key outcomes necessary for the legislative framework for waste derived materials, some considerations regarding implementation and administration of the framework and a commentary on the need to review the framework.

## 2 Key Outcomes for a Legislative Framework

The Issues Paper provides a summary of the legislative frameworks used in NSW, SA and QLD, but does not analyse whether these approaches have contributed to the development of viable markets for waste derived materials. Additional work will need to be undertaken by DWER to assess the effectiveness of these legislative frameworks.

The Association considers that the legislative framework needs to deliver the following outcomes:

- Risk based, fit for purpose standards
- Streamlined approval process for waste derived materials
- WA specific evidence base
- Certainty and stability for markets.

### *Risk Based, Fit for Purpose Standards*

The Association has provided comment in previous Submissions that there is support for risk based, fit for purpose standards for waste derived materials. The End of Waste Guidelines that were initially

developed by the Department were not based on a 'fit for purpose' approach. Instead, the Department established a testing regime that if met, would allow the use of waste derived materials in any application. This would have resulted in an expensive and unnecessary testing regime, as not all of the parameters were likely to be present in the various waste derived materials and it is not intended that waste derived materials would be used in some locations. By developing risk based, fit for purpose standards - the source, type of material and its actual use can be accurately assessed and its intended use taken into consideration. In developing a risk based approach, further information is required on the risk matrix that will underpin these standards. Any risk matrix for waste derived materials, will need to align with the Department's existing approach to risk used by the licencing, compliance and enforcement teams.

#### *Streamlined Approval Process for Waste Derived Material*

In developing a streamlined approval process for waste derived materials, it is essential that the Department develops guidance and/or supporting documents for industry that clearly identifies the requirements that waste derived materials must meet in order to be considered suitable for use in pre-determined applications. Once this guidance has been developed, materials that meet the requirements could be considered suitable for use, without the need for approval by the Department. This approach is in line with that taken in other jurisdictions. There is an expectation that guidance and/or supporting documents will be developed in consultation with industry in a timely manner.

There is likely to be differing views amongst stakeholders as to which guidance and/or supporting document should be developed first. To determine priorities, the Association suggests that the Department focuses on initiatives listed in the WARR Strategy that are clearly linked to the achievement of state targets. These include Construction and Demolition (C&D) and Food Organics and Garden Organics (FOGO) derived material. There is a risk that the implementation of FOGO in the Perth and Peel region by 2025 will be compromised if rigorous standards on waste derived materials and acceptable end uses are not in place prior to the establishment of processing infrastructure. Further commentary on this issue was provided in the Association's Submission on the Department's Review of the Better Bins Program<sup>1</sup>.

When undertaking consultation on *Regulating the Use of Waste-Derived Materials* (July, 2014), the DER identified that:

*"DER considers that it may be appropriate to develop material guidelines for the following waste-derived materials:*

- a) waste-derived fill (including clean fill)*
- b) soil conditioners*
- c) construction products*
- d) treated acid sulfate soils*
- e) waste-derived fuel.*

*Other potentially suitable materials include glass, tyres and plastic, as large quantities of these continue to go to landfill with opportunities for re-use being missed."*

#### *WA Specific Evidence base*

As outlined in the Issues Paper, the NSW system provides the NSW EPA with discretion to approve specific orders and exemptions, on an application basis. For such a system to work in Western Australia the DWER would need to establish a reliable WA specific evidence base, and secured staff with the necessary skills and experience to successfully implement a framework with similar levels of discretion.

#### *Certainty and Stability for Markets*

The establishment of a legislative framework for waste derived materials will not automatically create market demand for waste derived materials. A range of other initiatives are required to support uptake

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<sup>1</sup> WALGA (May 2019). Submission on the DWER Better Bins Program Review. Available online. <https://www.wastenet.net.au/documents/359/walga-submission-on-the-dwer-review-of-the-better-bins-program-may-2019>.

of these materials, such as active engagement with potential end users and the inclusion of recycled content targets in Government procurement. It is suggested that the DWER investigates the legislative regime and incentives that are in place in other jurisdictions where viable markets exist for waste derived materials.

### 3 Implementation and Administration of the Legislative Framework

As the agency responsible for the legislative framework for waste derived materials, the Department of Water and Environmental Regulation will need to dedicate resources to its implementation and administration. This will include the development of guidance and/or supporting documents, the establishment of a streamlined assessment and approval process, and the delivery of compliance and enforcement activities. To be successful, the framework will need to be resourced with staff that have an appropriate level of skill and experience.

### 4 Review mechanism

In NSW, an approach has been taken where specific orders and exemptions are reviewed every two years on a rolling basis. The information provided in the DWER Issues Paper on the other jurisdictions did not state if a similar approach is used in other jurisdictions. There is an expectation that the framework for waste derived materials in Western Australia is regularly reviewed to ensure it delivers the key outcomes listed in Section 2 of this Submission.

The industry requires long term certainty to confidently invest in infrastructure and market development. A change in direction, such as revoking approval, would undermine confidence and result in disruption to a number of stakeholders, including Local Government.

### 5 Conclusion

Local Government appreciates the opportunity to comment on the Issues Paper. The Paper clearly identifies the current challenges with establishing a legislative framework for waste derived materials. An outcomes based approach needs to be used in the development of the legislative framework, with the requirements that fit for purpose waste derived materials must fulfil clearly articulated in guidance and/or supporting documents. Where waste derived materials fulfil these requirements they can be used. There is an expectation that guidance and/or supporting documents will be developed in consultation with industry in a timely manner. WALGA looks forward to working with the Department as it develops a legislative framework for waste derived materials.