

18 December 2020

Waste Reform
Department of Water and Environmental Regulation
Locked Bag 10,
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Via: wastereform@dwer.wa.gov.au

SUBJECT: WASTE NOT, WANT NOT: VALUING WASTE AS A RESOURCE DISCUSSION PAPER

Cement Concrete & Aggregates Australia (CCA) welcomes the opportunity to provide a submission to the Department of Water and Environmental Regulation on the *Waste not, Want not: Valuing Waste as a Resource* Discussion Paper.

CCA is the peak industry body for the heavy construction materials industry in Australia including the cement, pre-mixed concrete and extractive industries. Our members operate cement distribution facilities, concrete batching plants, hard rock quarries and sand and gravel extraction operations throughout Western Australia. For your information, a list of CCA Western Australia's members is provided in Appendix 1.

CCA supports the establishment of a commercially viable circular economy where the regulatory barriers to reuse/recycle material are removed, and the system incentivizes innovation and the commercial application of previously classified waste streams. Overall, the proposed framework is positive and will provide greater certainty around the use of waste derived materials, but additional refinements will increase the likelihood that the promised environmental and commercial benefits will be delivered.

CCA makes the following recommendations:

1. A similar approach is required to determine whether material is waste as is proposed for waste-derived-materials.
2. WDM Determinations must cover producer to consumer material flow.
3. The definition of waste needs to also include the concept that useful material can be transferred within a company and used to produce a commercial product.
4. General WDM Determinations must be finalised for priority materials prior to the enactment of the legislative framework.
5. Government should continue to actively engage with industry to develop the detail on the priority WDM Determinations, Regulations and other guidelines.
6. Given the significant changes proposed, a transition period of 5 years is necessary.
7. Results of interstate and overseas research can be used to support an application for a WDM Determination.
8. Government grants should be available to offset the initial cost and investment hurdle of conducting R&D and establishing demonstration plants for WDM.

9. Government defines specifications or codes for use of recycled/waste derived materials in the construction sector prior to the enactment of the legislation.
10. The NSW Resource Recovery Exemptions and Queensland End of Waste Codes should be used as the basis for developing Western Australia's WDM Determinations.
11. Market fluctuations should be considered in allowing stockpiles of material.
12. An open and transparent appeals process through the State Administrative Tribunal is available.
13. The grounds for appeal are constrained and the time when an appeal can be made is limited.
14. An appropriate compliance and enforcement regime are required that enables a consistent commercial environment.
15. Costs associated with Determination applications and licencing are equivalent to similar charges in other jurisdictions.

CCAA makes the following more detailed comments on the Discussion Paper:

Section 2.2 Amending the definition of 'waste'

The definition of 'waste' is a key concept that will enable the success or otherwise of this legislation. The proposed amendment to the definition of "waste" seeks to expand the definition of waste to include waste derived materials however does not address the more fundamental issue and current uncertainty around what is waste? Given the proposed changes and broadened scope of the definition, it is critical that any uncertainty around whether material is waste or not is first resolved.

The heavy construction materials industry in particular has been significantly affected by uncertainty around whether material is waste or not. As the Discussion Paper identifies, the proposed definition to include waste-derived-materials would exacerbate this issue by broadening its scope and potentially capture many more products and materials which are not currently considered to be waste.

The regulatory regime for waste and waste-derived-materials is both onerous and costly. As such it should be limited as far as practicable to material which is genuinely "waste" and not unreasonably burden other materials and products.

To address this, CCAA **recommends** a similar approach is required to determine whether material is waste as is proposed for waste-derived-materials (WDM), i.e., a mechanism to provide for a general or case-by-case rulings on whether material is waste or not, and by consequence whether the waste regulatory framework should apply to that material or not.

WDM Determination must cover producer to consumer material flow

The Discussion Paper could be interpreted as proposing that WDM is no longer considered "waste" only once it has been **used**. This is highly problematic and is not supported by CCAA.

This concept would mean that consumers of WDM would be purchasing the material as "waste" and it only ceases to be considered waste if the end-consumer uses it in the prescribed manner outlined in the Determination.

Not only would this be an unreasonable regulatory burden and significant disincentive to producers and consumers of recycled materials, but it also classifies wholesalers and retailers of products containing waste-derived-materials as "waste depots" and require them to obtain prescribed premises licences. Given the number of everyday products which contain waste-derived-materials (e.g., recycled paper, plastic, glass, aggregates, etc.), this would be a regulatory nightmare.

CCAA further notes that the proposed treatment of WDM is disproportionate and unreasonably more onerous than compared to the controls and restrictions in place for the use of comparable materials which do not contain waste. The additional risk to consumers by using WDM compared to natural materials is currently one of the principal market barriers to recycled materials acceptance and use.

The Discussion Paper appear to perpetuate the perverse and unsustainable notion that materials derived from waste are somehow inherently more harmful than materials that do not contain waste, regardless of the actual source or composition of the material and/or processing of the material undertaken. In order for WDM to have any hope of meaningful market penetration and acceptance by consumers it must be treated by regulators in the same way as comparable non-waste derived materials.

To resolve these issues and improve market acceptance, CCAA **recommends** that WDM must cease to be classified as waste at the point when the WDM has been **produced** in accordance with a WDM Determination (i.e., the material has been transformed into a product). This would additionally resolve the potential unintended consequences to wholesalers and retailers as the storage of compliant WDM would not be considered a prescribed activity.

Internal company transfers

CCAA **recommends** that the definition of waste needs to also include the concept that useful material can be transferred within a company and used to produce a commercial product without requiring unnecessary, additional red tape to authorise the process. An example of this type of material flow is the reuse and recycling of Concrete Wash Water & Liquid Wash Out into the concrete batching process. Whilst a general Determination could be made to cover this process, the material producer and material customer are the same legal entity, even if the material must be transferred to another site, and a Determination does not add value or provide additional safeguards to the environment in this example.

Section 2.4 Types of waste-derived materials (WDM) Determinations

CCAA **supports** developing general WDM Determinations for priority material as outlined in Table 1 **prior** to the enactment of the legislative framework.

CCAA **recommends** that Government continue to actively engage with industry to develop the detail on the priority WDM Determinations as well as Regulations and guidance materials to avoid unintended consequences and deliver a process that delivers the promised benefits for the environment and industry.

Table 1 – Preliminary Assessment of Priority Materials

Material	Estimated Tonnage Produced per Year	Potential for Diversion from Landfill	Potential Use	Estimated Tonnage Currently Being Used	Target in Waste Strategy
Returned Hardened Concrete	Commercial in confidence	High	Road base /sub base Drainage aggregate Concrete Engineered fill/fill that uses a portion of crushed concrete for backfilling/ rehabilitation	85%	Yes
Solid Wash Out					
Recycled crushed concrete					
Bottom ash from waste to energy plants	120,000 when 2 Kwinana sites operational	High	Road base /sub base Engineered fill Concrete		
Fly ash from electricity generation		Medium, research ongoing	Supplementary cementitious material		
Alumino silicate from lithium production	380,000 when Covalent Lithium plant operational	Medium, research ongoing	Supplementary cementitious material Road sub base		
Bricks		High	Road base /sub base Drainage aggregate		Yes
Limestone and limestone waste from scrubber		High	Treatment of acid sulphate soils/acidic dam waters Soil blending		

Section 2.5 Prioritisation of WDM Determinations

CCAA **recommends** the materials listed in Table 1 are priority waste derived materials that must have general WDM Determinations developed **prior** to the legislation coming into force. This will help to resolve concerns regarding timing for industry on WDM Determination and any subsequent appeals.

The Discussion Paper indicates that DWER would be unable to issue WDM Determinations until after the commencement of the legislative changes, with the significant risk of further delays given the proposed rights of appeal against all WDM Determinations.

This scenario has the potential to effectively shut down the industry for an extended period whilst WDM Determinations are resolved, with catastrophic impacts to producers and consumers of WDM. As well as prioritising applications, a transition period for the introduction of the legislation is required to allow producers and consumers to continue to operate under the existing system and provide sufficient time to undertake the requisite assessments and obtain WDM determinations. Given the likely initial high number of WDM determination applications, the level of assessment which will be required, and allowances for appeals, CCAA **recommends** a transition period of 5 years is necessary.

Section 2.6 Trials of waste-derived materials

CCAA **recommends** that results of interstate and overseas research and actual practice should be considered appropriate evidence to support an application for a WDM Determination. There is no need for Western Australia's researchers to reinvent the wheel if the WA material is comparable to that investigated previously.

CCAA **recommends** that Government grants are available to offset the initial cost and investment hurdle of conducting R&D and establishing demonstration plants for waste derived materials. This is an extension of the various Government grants already available to encourage the implementation of a circular economy.

CCAA **recommends** that Government defines specifications or codes for the use of recycled/waste derived materials in the construction sector prior to the start of the legislation that will help commercialise new materials and stimulate market demand. Without these market drivers, the framework will not deliver the expected environmental and commercial benefits.

Some waste derived products cannot be sold in Perth due to poor market demand as natural materials are more cost effective. A potential example of this situation is the bottom ash from the proposed Waste to Energy plants at Kwinana. It can be an expensive and lengthy process to screen, filter and decontaminate the bottom ash from these plants and the quality of the resulting product may not be as good as some of the virgin products available in WA.

Bottom ash material may be viable in markets such as in Europe where it can be expensive to source good quality construction materials to market from distant quarry locations. In WA virgin materials maybe more accessible and cost effective. Commercial drivers will dictate the end use of bottom ash and Government has a role in incentivizing the establishment of new markets for what may otherwise be deemed waste product that is diverted to landfill.

Section 2.7 Content of WDM product specifications

CCAA **recommends** using the NSW Resource Recovery Exemptions and Queensland End of Waste Codes as the basis for developing Western Australia's WDM Determinations. These NSW and Queensland models have been developed in consultation with industry, are understood by industry, are effective in diverting material away from landfill, encourage material reuse and recycling and provide a guidance for implementation.

Note that in New South Wales there has been some confusion in the past with the definitions of naturally occurring materials. In Western Australia, the general definitions are well established, and it is important that natural materials such as soil, sand topsoil and basic raw materials remain outside the waste definitions. In the same way it is important that "waste" continues to only apply to processed materials such as brick and concrete that are disposed of but does not apply to materials that are reused.

Section 2.10 Storage of waste-derived materials

CCAA **recommends** that any limits on approvals for the timing for stock piling material takes into consideration the commercial realities of market fluctuations so that material is not needlessly diverted to landfill or sites required to apply for additional licences during times of low market demand. Variable market demand due to a number of factors in Perth/WA for these products places the ability to sell these products outside of the producer's control, therefore setting time limits is not realistic.

CCAA **does not** support the proposal that the storage of WDM be classified as a prescribed activity and require a Category 61A or 62 Licence.

Section 2.13 Rights of Appeal

CCAA has concerns regarding the appeal process. Industry requires security and certainty around the use of WDM Determinations where a Determination may be challenged, especially if the Determination has been operating for some time. CCAA **recommends** that in effort to limit vexatious appeals, the grounds for appeal are constrained and the time when an appeal to a Determination can be made is limited.

CCAA **recommends** an open and transparent appeals process through the State Administrative Tribunal. There is a risk to both Government and industry if priority Determinations are not in place by the time legislation is in place due to a long, slow, and costly appeals process through the Appeals Convenor.

Section 2.14 Compliance and enforcement

CCAA supports an appropriate compliance and enforcement regime that enables a consistent commercial environment. The Regulator should be well resourced, technically competent and risk based that has the trust of industry and government. Skilled and resourced staff are the key to

realising the full benefit from a modern regulatory framework. The initial focus should be on compliance through education and providing support to operators, so they comply rather than through heavy handed enforcement. Compliance audits should focus initially on high-risk sites.

The regulator should have a range of compliance tools, ranging from infringement notices for relatively minor offences up to significant fines for repeated, serious offences. The regulators decision should also be subject to an external review process.

Section 4 - Implementation of the framework - Cost Recovery

CCAA **recommends** that any costs associated with Determination applications and licencing are equivalent to similar charges in other jurisdictions. The primary aim of Government and real benefit for the community is in avoiding material disposed to landfill and encouraging recycling and reuse.

Government should focus on lowering any barriers to entry, not on cost recovery and unnecessary red tape. Similarly, The Government's priority should be on developing and assisting markets for recycled materials and addressing the current substantial barriers restricting the acceptance of recycled materials before contemplating any changes to the Landfill Levy and/or increasing the costs and regulatory burden on industry.

Western Australia's regulatory environment needs to be internationally competitive to continue to attract capital to invest into the state to ensure a sustainable and competitive heavy construction materials industry. This in turn facilitates Western Australia's productivity, housing affordability and lower infrastructure costs.

The provision of affordable heavy construction materials, including recycled waste derived materials helps to facilitate the delivery of affordable infrastructure, contributing to the completion of Western Australia's infrastructure projects within budget.

There is no more important time than now for the construction sector, supported by an efficient heavy construction materials supply chain, to provide the engine to build Western Australia's post COVID economy and create jobs.

Please do not hesitate to contact me to discuss any of these issues in more detail.

Yours sincerely



ROGER BUCKLEY






State Director Western Australia

APPENDIX 1

CEMENT CONCRETE & AGGREGATES AUSTRALIA

MEMBERSHIP

FOUNDATION MEMBERS

 <p>ADBRI Adbri Limited</p>	 <p>Boral Australia</p>	 <p>Cement Australia Pty Ltd</p>
 <p>Hanson Australia Pty Ltd</p>		 <p>Holcim (Australia) Pty Ltd</p>

WESTERN AUSTRALIA

ORDINARY MEMBERS

<p>Flyash Australia Pty Ltd Fulton Hogan Industries Lime Industries Pty Ltd</p>	<p>Pilatti Bros Transport Ransberg Pty Ltd T/a WA Premix and WA Bluemetal Urban Resources Pty Ltd</p>	
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ASSOCIATE MEMBERS

<p>Concrete Colour Systems Concrete Waterproofing Manufacturing Pty Ltd T/a Xypex Australia</p>	<p>GCP Applied Technologies Sika Australia Pty Ltd Westrac</p>	
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