

Avon Valley Environmental Society Inc.

Statement of Advice

**Review of the
Waste Avoidance and Resource Recovery Act 2007**

February 2015

Preamble

The WARR Act and the Waste Strategy are the key legislative and policy documents governing the State's waste management. Developed after ten years' planning, and now in place for sufficient time to warrant review, suggestions for reform are timely.

The past focus has been on recycling and re-use to improve the State's poor waste-to-landfill performance. Progress has occurred, but waste-to-landfill has not decreased significantly, and will increase in the immediate future.

The causes have been identified but remedial action is currently sidelined.

As the crucial end-phase in the broad spectrum of waste management, the many issues surrounding the waste-to-landfill question must be brought into the mainstream of legislative and policy direction.

It seems extraordinary that, while the discussion paper acknowledges this need to address the issues, it is not clear if the solutions are to be considered and included in amendments to the Act.

Overview

The primary recommendation of the discussion paper is to establish Waste Groups with statutory powers to govern public and private operators involved in waste management.

This is applauded in seeking to improve standards and practices in a large and complex industry.

However, the intention does not go far enough: the vital – and neglected – functions surrounding the end process of landfill seem yet again to be overlooked. What must be included in the Act's amendment is clear regulation of future planning, development and management of waste-to-landfill.

This is crucial to the success of the Waste Groups' intended mandate, as this Statement of Advice will demonstrate.

The solution requires a whole-of-government approach with input from a range of agencies and departments. At present the WARR Act – and its currently proposed amendments – regulates the majority of the many functions of waste management. It is crucial that regulation of the end process, waste-to-landfill,

informed by sources of input described above, be included in the amendments to the Act. This is particularly relevant in the context of a 'top down' approach, with the Act and Waste authority positioned to lead and control all sectors of the waste industry in the future.

Credentials

The Avon Valley Environmental Society Inc. has been the leading proponent of sustainable environmental management in the Avon Valley for nearly a quarter of a century.

The Society's diverse membership has access to a wide range of skills and disciplines associated with environmental matters. This has led to a record of achievement in developing community facilities, environmental protection and management, as well as activist support for local issues.

The Society is a member of the Conservation Council of WA, and a founding member of the not-for-profit community organisation, Conserving the Avon River Environment Inc. (CARE) which is based in Northam to bring together government and private expertise in farm and other land management, river and water management, environmental groups, and residents' groups.

The Society represents a significant stakeholder group experiencing the ramifications of greenfields development of waste-to-landfill under a changing regime. Our Statement of Advice explains how this impact has occurred in a volatile situation, and how the remedy can only come from policy and legislative reform.

Key problems

The waste-to-landfill segment of the total waste management spectrum is currently distinguished by these main factors:

- A ban on new landfill sites on the Perth coastal sandplain
- Private contractors in a competitive market seeking economies in transport logistics, site locations, and scale of operations (> 150,000 tpa)
- Occupiers of prime agricultural land, and their resident communities, outraged by potential social, economic and environmental impacts
- Unclear regulation and overlapping jurisdictions across a diverse range of authorities and agencies

- In most cases, the only arbitration available is the protracted, costly and inconclusive process of litigation and appeal

The ban on waste-to-landfill on the Perth coastal sandplain thus has knock-on effects across the wider economic, social and environmental landscape. No single entity has the capacity to resolve this complex problem.

Situation

Recently, two major landfill projects were proposed in agricultural regions within 100km of Perth. Both attracted intense public opposition, leading to the proponents' applications to the Department of Environment Regulation being withdrawn for the purpose of revision.

This represents a window of opportunity to review waste-to-landfill planning, responsibilities and practices. The WARR Act must be the foundation for the new rules.

In the interim, applicants should be cautioned that only approval-in-principle can be obtained pending the announcement of new waste-to-landfill planning, development and management regulations.

It would be tragic if landfill development applications currently in train were to proceed based on policy which might eventually prove contrary to new, enlightened standards.

Point of clarification

There appear to be contradictory statements in the discussion paper. The Society's recommendations are supported in several statements, but excluded elsewhere.

On Page 16, in dealing with statutory infrastructure planning, it states: "The WARR Act would be amended to provide for the establishment of a statutory State waste infrastructure plan linked to waste group plans and local government waste plans, ***including determining the requirements for landfilling of wastes***" (our emphasis).

Again (Page 14): "It is proposed that waste groups be required to ensure that their waste management plans are aligned with the Waste Strategy and a statutory waste infrastructure plan – ***this includes the requirement to plan for landfill capacity in their region***" (our emphasis).

And on Page 7: “Infrastructure planning – integrating waste into the State’s planning framework and identifying the infrastructure needed to meet the State’s Waste Strategy targets” it states:

“This reform area is one of the key areas being considered as part of the WARR Act review. More detail is provided in Section 2.4” [We note that Section 2.4 is missing from the version downloaded from the website].

On Page 5, under the heading: “Landfill policy – planning and siting – establishing frameworks to assist decision-making for new landfill approval and siting, and existing landfill compliance”, it is stated:

“There is a strong case to reform the landfill policy and regulatory framework to include planning, siting and compliance considerations so that landfills can be managed consistent with government policy.”

Yet the paragraph immediately following contradicts these good intentions:

“Landfill planning and siting considerations are unlikely to require amendments to the WARR Act and are therefore **not** being considered as part of the WARR Act review” (our emphasis).

If these important considerations are “unlikely to require amendments” to the WARR Act, where are they to be included in legislation?

Adding to the context

The waste flow of a successful economy is made up of many streams. The Society acknowledges that improved waste management – driven by statute and financial imperatives – will continue to divert an increasing proportion of those streams towards re-use and recycling.

But many factors ensure that the stream to landfill will continue beyond the forecast life of existing sites, requiring a new approach to this phase of waste management, particularly as it is presently practised.

The discussion paper provides context for the review and states that the Act, and the Waste Strategy, are the **key legislative and policy documents** “that set out the Government’s commitment to reducing waste and increasing resource recovery”. However, the present form of neither the Act nor the Strategy makes specific reference to waste-to-landfill planning, development and management.

Through legislation, regulation and codes of practice, Waste Groups are to have control of the standards required of all public and private operators involved in every stage from primary sources, through the many methods of processing, to a range of final products. In the immediate future, the largest final product will continue to be landfill, direct from households and some industrial sources, but also as a small by-product of other processing methods.

In any consideration – legal, operational, ethical – it is easily argued that the powers of the Waste Groups must include the final end process of waste-to-landfill management.

There are a range of benefits, not least of which is the elimination of the cost burden attached to uncertainty and the challenge and litigation which prevails in the waste-to-landfill sector at present. Bringing the sector into the fold of total waste management under Waste Groups ensures independence for operators; it also maintains transparency and accountability; it provides common standards of design and practices of operation. In a cost-sensitive market, this ensures valuable economies, and could be expected to ultimately lead to savings for the consumer.

The discussion paper states (Page 2) that in the Waste Strategy, the “focus of the planning is on waste processing and recycling facilities to divert waste from landfill to promote the most efficient use of resources”. The focus does not reach beyond “divert(ing) waste from landfill” to address the management of the continuing flow to existing – and future – landfill sites.

The review’s reform proposal (Page 2) includes the statement that “(w)aste infrastructure plans are not intended to replace environmental and planning approval processes as these relate to waste infrastructure development”.

The Society supports all existing environmental and planning approval processes as these relate to waste infrastructure development. But these processes relate to the current development and operation of sites following previous selection by a proponent. This has proved faulty.

What is missing is a clear framework governing the **preceding** stage: the selection of greenfields sites which must in future comply with new legislative requirements and meet public expectations.

This corrects a fundamental weakness in the Waste Strategy. The statement that the strategy “does not specifically address landfill issues” ignores a crucial component of the waste stream, and the majority of waste by tonnage. Waste-to-landfill sites, planning, development and management must be the responsibility of the Waste Authority – and implemented by the Waste Groups.

It may be that the Act only sets the head powers to achieve this, and that regulatory mechanisms find authority through amendments to the WARR Regulations Act and other legislation. But as a “key legislative document” the Act must enshrine a new policy and head powers for waste-to-landfill management.

Background

Currently, diversion rates of waste to landfill are below targets set in the State Government’s *Waste Strategy, Creating the Right Environment*, released in March 2012. The sector is not reaching its full economic and environmental potential.

Under the direction of the Waste Authority, the Strategic Waste Infrastructure Planning Project was developed with the primary objective of correcting the State's poor waste management performance. As already discussed, the focus was on three primary disciplines: recycling, re-use and reduction (of waste-to-landfill). Two of the strategies are achieving satisfactory results. But there has been little impact on the waste-to-landfill stream.

The cause is the Perth region's population growth: total waste generated is increasing; and although the proportion of waste being recycled or re-used improves, waste-to-landfill is not declining.

But this is only half the problem. The second half is the ban on future waste-to-landfill locations on the Perth coastal sandplain. Quite understandably, this forces contractors into a default position of locating landfills beyond the Darling Scarp. Transport economics limit the haul distance to a 100km radius of the CBD, which encompasses the whole Avon Valley, its vibrant communities, scenic towns, and valuable agricultural land. Toodyay and York are already bearing the brunt.

This is an impossible situation for the local governments affected. Landfill applications by SITA Australia Pty. Ltd. at Allawuna Farm, York; and by Opal Vale Pty. Ltd. at Chitty Road, Toodyay are already involved in protracted legal processes following public outrage in each community.

Successive governments have avoided this problem. Even when the Waste Authority was established to resolve the State's poor record in waste management, waste-to-landfill was sidelined. As time passes, three factors become increasingly urgent and difficult:

- Continuing quantity of waste-to-landfill (3.5mta in 2012; 6mta forecast by 2020)
- Social and environmental outrage under present arrangements and planning
- Cost of a viable alternative

Summary

Perth's waste-to-landfill is not declining significantly in comparison to other states.

There is a ban on new landfill locations on the Perth coastal sandplain – forcing contractors to seek new landfill sites beyond the Darling Scarp. This is not environmentally sustainable or socially acceptable in the regions.

The present Strategic Waste Infrastructure Plan does not specifically address suitable locations for new landfills.

Recommendations

Improving the current situation demands a whole-of-government commitment. The Waste Authority cannot be expected to achieve meaningful change independently, as relevant input must come from, at a minimum, the following:

- Planning: Land use/allocation
- Environment: Impacts/acceptable standards
- Local government: Regional and local council management responsibilities
- Transport: Safety and infrastructure, including rail options
- Water: Long-term resource management
- Representative community groups, particularly local environmental organisations

Only legislation can bring these strands together.

In seeking future landfill sites, the process of identification, consultation and reward must be formalised and conducted well in advance of the need for use. This process must be based on comprehensive regulation governing the selection of waste-to-landfill sites – particularly in agricultural areas where local environmental and other expertise must be considered.

Waste-to-landfill policies must be developed through consultation that includes relevant state entities, and the local knowledge and aspirations of stakeholder groups who are impacted as new sites are explored beyond Perth's coastal sandplain. These policies must be reflected in the amended legislation so that the new waste Groups' management will be consistent, predictable, more productive and intrinsically acceptable to stakeholders

The many benefits include removing the unnecessary and expensive process of challenge and litigation that marks the protracted process prevailing in WA.

Excellent paradigms exist in NSW and Victoria, where the system has worked successfully for more than ten years.

Few people happily accept the prospect of waste-to-landfill in their district. But there are areas where, in the past, locals have found the positives outweigh the negatives. Bindoon, Tammin, Wyalkatchem and Southern Cross are examples.

Bearing in mind the examples of successful practice in other states, principally Victoria, and coupled to the groundswell of support in WA's communities, industry and bureaucracy – this must be the best time for government to launch a visionary initiative.

Finally ...

In launching the report, *Waste Strategy, Creating the Right Environment*, the Chairman of the Waste Authority, Peter Fitzpatrick, stated:

“Waste has historically suffered from both Government and community myopia ... it is the ugly side of environmental management but no less important or critical than any form of conservation or biodiversity management.

“In fact, if not given equivalent priority, our shortcomings in waste management will seriously undermine our attempts to improve the environment. There isn’t much point in protecting a habitat if toxic waste from a nearby landfill is leaching into the nearby soil and water, and we can’t keep dumping valuable materials into landfill if we are to conserve our natural resources.”

Amen to that.

23 February 2015

Avon Valley Environmental Society Inc.

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WARR Act Review
Department of Environment Regulation
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23 February 2015

Dear Sir/Madam

Avon Valley Environmental Society Statement of Advice

Thank you for the opportunity to make recommendations to amend the WARR Act 2007 through your process of “stakeholder discussion and input to the review” as stated in your discussion paper. We have developed a case for specific changes to the Act, with supporting evidence.

Our document is attached to this email. We look forward to successful inclusion in the review’s recommendations, and would appreciate any further information regarding progress.

Kind regards

Your faithfully

(Signed): Mike Whittington

President

Avon Valley Environmental Society Inc.

23 February 2015