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NSW Environment Protection Authority
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Parramatta NSW 2124
By email: waste.exemptions@epa.nsw.gov.au

Endorsed by the LGNSW Board
in February 2022

To whom it may concern,

Draft Recovered Soil Order and Exemption

Thank you for the opportunity to comment on the new Recovered Soil Order and Exemption.

Local Government NSW (LGNSW) is the peak body for local government in NSW, representing all NSW general purpose councils and related entities. This is a draft submission until it is endorsed by the LGNSW Board. We will advise at that time if there are any substantive changes to the submission.

LGNSW welcomes the opportunity to provide comment on the new Recovered Soil Order and Exemption. Our organisation has been supporting local government for many years by building capacity within councils, enabling them to improve resource recovery and comply with regulations relating to waste management. LGNSW appreciates the guidance that is available through the Resource Recovery Framework and recognises the important role that such mechanisms as orders and exemptions play in maximising the beneficial reuse of waste products. An extension to these orders will provide increased opportunities for councils to engage in circular economy practice and access fit for purpose recovered soil.

LGNSW supports the intent of the new Recovered Soil Order and Exemption, however we draw the EPA's attention to the possible opportunities and implications for councils.

It is essential that any new order and exemption should allow the maximum uptake of waste products, ensuring the opportunity for beneficial reuse is optimised in line with the circular economy principles as contained in the NSW Circular Economy Policy Statement 2019.

LGNSW supports the principles of reuse in line with the waste hierarchy and that, where possible, the waste product should be avoided. Where it cannot be avoided, that reuse, or recycling should be undertaken wherever appropriate. If there is an opportunity to use recovered soil containing an appropriate quantity of suitable building and demolition waste as engineering fill or for earthworks, then this will allow for a higher order use of more waste products in line with preferred waste hierarchy outcomes.

The global economy consumes 90 billion tonnes of primary materials each year; this is projected to double by 2060 unless we act swiftly and decisively. Such a linear model of production and consumption is clearly not sustainable and as such LGNSW has an advocacy priority to invest in better waste, recycling, and circular economy solutions. Circular economy will continue to represent a priority principle which will underpin effective resource recovery

enabling councils to manage waste effectively to preserve natural resources, provide employment opportunities in new and emerging industries and deliver important community projects.

The NSW EPA Resource Recovery Framework could foster innovation and investment by using orders and exemptions to promote circular economy principles providing on ground opportunity for both waste processors and consumers of waste products. The current definition of waste coupled with aspects of the regulatory framework can stifle innovation and may not support the development of a circular economy. Innovation along with investment in markets is essential to the functioning of a circular economy and local government is well placed to ensure that markets for end products are built collaboratively.

LGNSW sees an opportunity within the new Recovered Soil Order and Exemption to provide increased reuse and recycling of selected building and demolition waste materials by refining the definition of what recovered soil cannot be derived from. Maximising reuse options through the order and exemption will assist to build confidence within the waste industry and encourage industry investment in innovative reprocessing knowing that end markets for products will not be speculative but well defined and regulated. At the same time greater flexibility will give councils greater capacity to consider recovered soil for a wider range of projects, facilitating their increasing role in a circular economy whilst ensuring that the products will not harm human health or the environment.

LGNSW is not implying that there are examples of building and demolition waste which would not be suitable to be included in recovered soil. There may be current or emerging materials that could be considered suitable particularly if processing of the waste product improves because of investment in innovation.

<p>Recommendation 1: That recovered soil may include appropriate processed building and demolition waste rather than this source of waste product being specifically excluded. Further to this, that a subsequent exemption and order covering the use of building and demolition waste may be considered in the future.</p>
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Feedback received by LGNSW from councils indicates that there are inherent issues with the way that sampling of recovered soil and other waste materials subject to exemptions and orders is reported by consultants and that in order for councils to have assurance as to the quality of the material that they are potentially receiving that further controls around the consistency of reporting would be beneficial.

Complex reports relating to existing orders and exemptions are routinely scrutinised by councils where there is a perceived discrepancy and/or questions regarding the sampling results. Unless an audit process is undertaken which is costly and time consuming it can be difficult to reach consensus on the details contained within these complex reports. If the report were to contain an error such as an incorrect waste classification, then the receiving council would be required to manage the lawful disposal of the material and may be subject to regulatory action. Guidance on sampling reports would provide greater assurance to councils both supporting circular economy principles in council procurement processes and protect councils from expensive remediation processes.

LGNSW concurs that a rigorous testing process should be employed both to protect councils and communities from the use of hazardous, dangerous, or otherwise inappropriate materials. Robust testing will also assist with minimising issues and disputes with developers around development consents as they apply to the use of recovered soils.

With respect to definitions, those that cover the areas of desktop assessment, sampling, key definitions, and Table 1 (Chemicals and other attributes) and Table 2 (Key test methods) are clear and would be easily understood by suitably qualified persons undertaking the sampling.

In relation to sampling, LGNSW would recommend that the EPA build upon the rigour of the actions contained within the proposed sampling plan and ensure that the information gathered through the sampling is compiled into a templated format. This allows for council staff across multiple departments to easily understand the detail contained in the report, compare reports, and make recommendations based upon reference to the report. A plain-English style of report, written for the layperson would be advantageous to councils and minimise risk.

Recommendation 2: That recovered soil sampling reports are subject to a consistent template to provide information in a clear and concise way. This would give recipients of recovered soil greater certainty of the quality of the material and eliminate the risk of using contaminated material unknowingly.

Thank you again for the opportunity to comment on the new Recovered Soil Order and Exemption. If you would like further information on LGNSW's position, please contact Alison Thompson, Senior Policy Officer – Waste on 02 9242 4056 or alison.thompson@lgnsw.org.au

Yours sincerely



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