



CONSERVATION COMMISSION OF WESTERN AUSTRALIA

POSITION STATEMENT NO. 12

December 2015

Basic Raw Materials: state government and local government access to lands vested in the Conservation Commission under the *Conservation and Land Management Act 1984*

Context and background

This Position Statement updates and replaces the Conservation Commission's *Policy Statement No. 3: Basic Raw Materials* (July 2006).

Statement of Planning Policy No. 10

The term *basic raw materials* or BRM means sand (including silica sand), clay, hard rock, limestone (including metallurgical limestone), and gravel and other construction and road building materials.¹ Historically, targeting deposits of BRM in Conservation Commission vested lands and other areas of remnant vegetation (i.e. unimproved farmland) has resulted in incremental loss of related vegetation types and has also placed a wider area at risk of dieback infection.²

The need to properly recognise environmental values in the context of BRM was identified in the State Gravel Supply Strategy (1998).³ Similarly, one of the objectives under the *Statement of Planning Policy No 10: Basic Raw Materials*⁴ is to ensure that the use and development of land for the extraction of BRM does not adversely affect the environment or amenity in the locality of the operation during or after extraction. A measure in the gazetted policy also states that any proposals (within the policy area) considered to be environmentally significant need to be carefully reviewed and include a detailed discussion of environmental values.⁵ The policy also states that proposals in these areas are likely to be subject to environmental impact assessment and may be considered environmentally unacceptable.⁶

¹ See Statement of Planning Policy No. 10: Basic Raw Materials (3.1 Basic Raw Materials definition), Western Australian Government Gazette, 28 July 2000.

² Conservation Commission Policy Statement No. 3 (July 2006): Basic raw materials—Government and local government access to conservation estate (national parks, nature reserves, and conservation parks)

³ "Road builders must become better environmental managers, recognising the value of remnant vegetation when targeting extraction areas." (State Gravel Supply Strategy 1998), available at <https://www.mainroads.wa.gov.au/Documents/State%20Gravel%20Supply%20Strategy.PDF>

⁴ Statement of Planning Policy No 10: Basic Raw Materials, Objectives of the Policy 5.1, Western Australian Government Gazette, 28 July 2000

⁵ Statement of Planning Policy No 10: Basic Raw Materials, Policy Measure 6.1.3, Western Australian Government Gazette, 28 July 2000.

⁶ Ibid.

Clause 6.5.2 of the Statement of Planning Policy No. 10 Basic Raw Materials (Government Gazette 2000) states the following:

“The Western Australian Planning Commission may favourably consider limited extraction operations on land reserved or proposed to be reserved in region schemes for State forest or other public purposes, where the purpose and values for which the land is reserved are not jeopardised.”

In addition, the Statement of Planning Policy No. 10 (Clause 6.6.1) specifies that “extractive industry operations will need the relevant approvals of, and comply with relevant legislation, policies and guidelines of other agencies including the Department of Minerals and Energy, the Water and Rivers Commission, the Department of Conservation and Land Management, the National Parks and Nature Conservation Authority, the Lands and Forest Commission and the Environmental Protection Authority.” One of the policies listed in the Gazetted Policy is the Conservation Commission’s policy on Basic Raw Materials.⁷ This policy update captures the principles contained in that policy.

See Appendix 1 for more information on planning policies and legislation relevant to basic raw materials in Western Australia.

EPA Interim Strategic Advice to the Minister for Environment under section 16(e) of the *Environmental Protection Act 1986* (Perth and Peel @ 3.5 Million: environmental impacts, risks and remedies).

In July 2015, in its Interim Strategic Advice to the Minister for Environment under section 16(e) of the *Environmental Protection Act 1986*⁸ the Environmental Protection Authority (EPA) recognised that historically, the case by case approach to BRM proposals has resulted in significant land use planning conflict and sub-optimal environmental outcomes. The EPA also indicated that the extraction of these materials—which are often coincident with areas of high biodiversity value—can have a significant effect on the environment. In its advice, the EPA put forward the following four recommendations that specifically relate to BRM:

1. That the State Government, in finalising activity footprints for the extraction of BRM, should preference existing cleared land to avoid clearing high value vegetation.
2. That the Western Australian Planning Commission should ensure the Sub-regional Structure Plans or other appropriate planning instruments are consistent with and reflect interagency master planning undertaken for basic raw materials.
3. That the State Government support the development of demand management policy responses to ensure that the basic raw materials are used sustainably.
 - a) Promote novel development approaches in the urban and industrial areas to efficiently use BRM and minimise demand.
 - b) Promote the use of waste-derived products (such as mining and industrial by-products and construction and demolition waste) as a replacement source of raw materials and to modify or recreate landforms for approved land uses.

⁷ Basic raw materials policies of the Land and Forests Commission and the National Parks and Nature Conservation Authority.

⁸ EPA (WA). Interim Strategic Advice to the Minister for Environment under section 16(e) of the *Environmental Protection Act 1986*. July 2015. Available at <http://www.epa.wa.gov.au/EPADocLib/Perth-Peel-s16e-interim-advice-2015-web.pdf> (Perth and Peel @ 3.5 Million: environmental impacts, risks and remedies)

4. That the State Government develop a contemporary Government policy and regulatory regime for BRM including a review (including an update of *State Planning Policy 2.4 Basic Raw Materials*).⁹

Old-Growth Forest

The exploration and extraction of basic raw materials is not permitted in old-growth forest.¹⁰ Vehicles involved in extraction of basic raw material are not permitted to leave the road through old-growth forest unless the approval of the relevant Regional Manager (Department of Parks and Wildlife) has been obtained. Existing extraction sites in old-growth forest should, where reasonable and practicable, be closed and rehabilitated.¹¹

For more information on standards for the management and rehabilitation of areas quarried for BRM on lands vested in the Conservation Commission and managed by the Department of Parks and Wildlife see *Guidelines for the Management and Rehabilitation of Basic Raw Material Pits* available at http://www.dpaw.wa.gov.au/images/documents/conservation-management/forests/FMP/preparing_FMP_2014-23/guideline_brm_rehabilitation.pdf.¹²

See also Appendix 2 *Operations proposed to be undertaken (management activities) under the Forest Management Plan 2014-2023 specific to BRM*.

Processes under the *Mining Act 1976* and the *Conservation and Land Management Act 1984*

If the following substances occur in Crown land (as opposed to private land), they are considered minerals for purposes of the *Mining Act 1978* (section 8)¹³:

- limestone, rock or gravel;
- shale;
- sand; and
- clay.

The Commission's role in the approvals process through the Mining Act is therefore the same as in mining tenement applications. See the Conservation Commission's Position Statement on Mining (Attachment 6).

Although a principal mechanism for the extraction of BRM is therefore available through the *Mining Act 1978*, access to BRM by government agencies and local governments has generally followed the process for leases issued under the *Conservation and Land Management Act 1984*.

⁹ Ibid. *State Planning Policy 2.4 Basic Raw Materials* refers to the Gazetted Statement of Planning Policy No 10, supra note 4.

¹⁰ Department of Parks and Wildlife (2009) *Guidelines for Protection of the Values of Informal Reserves and Fauna Habitat Zones* available through <http://www.dpaw.wa.gov.au/management/forests/about-our-forests/171-protecting-our-biological-diversity>

¹¹ Ibid.

¹² The Guidelines also refer to heritage values, landscape values, water conservation, and weed control.

¹³ Oil shale, mineral sand, silica sand, garnet sand, kaolin, bentonite, attapulgite, and montmorillonite are covered by the *Mining Act 1978* on all land holdings (see section 8 of the Mining Act 1978 and Western Australian Planning Commission (2009) *Basic raw materials Applicants' Manual* available at http://www.planning.wa.gov.au/dop_pub_pdf/BRM_Text.pdf

The Conservation Commission's position:

The Commission will be guided by the following principles in considering applications by local government authorities to access BRM within lands vested in it under the CALM Act:

1. The Conservation Commission expects to be consulted in cases where access to BRM from conservation reserves is proposed and:
 - the road or facility to be constructed is not adjacent to and not within the boundaries of CALM Act reserves; or
 - the use of that BRM does not serve the protection and management of the reserve; or
 - only after proper on-site environmental considerations, such as avoidance and mitigation have been fully documented by proponents.

2. In their project design, government agencies and local government authorities that seek to obtain BRM from CALM Act reserves must ensure that the biophysical values of conservation reserves are maintained by siting pits only in areas:
 - that are adequately represented in the local conservation estate and with the lowest biophysical values; and
 - where rehabilitation and dieback management will result in a completion and closure outcome that is compatible with the use and purpose of the reserve; and
 - that are positioned:
 - to provide the minimal risk of dieback introduction and spread
 - where sufficient vegetation occurs to accurately map/detect the *Phytophthora* dieback pathogen if present, and
 - where the vegetation community is not highly vulnerable to *Phytophthora* dieback.

Note: Access to BRM from lands vested in the Conservation Commission by other proponents, for purposes under the *Mining Act 1978*, will be considered on a case-by-case basis and may require referral to the EPA.

References:

Conservation Commission of Western Australia 2011, *Position Statement No. 2: Implementation of conservation reserve proposals*, Conservation Commission of Western Australia, Perth.

Conservation Commission of Western Australia 2012, *Position Statement No. 7: The threat of Phytophthora dieback to biodiversity values on lands vested in the Conservation Commission of Western Australia*, Conservation Commission of Western Australia, Perth.

Conservation Commission of Western Australia 2013, *Forest Management Plan 2014-2023*, Conservation Commission of Western Australia, Perth available at <http://www.conservation.wa.gov.au/management-planning/management-plans/forest-management-plan-2014-2023.aspx>

Department of Parks and Wildlife (2008). *Guidelines for the Management and Rehabilitation of Basic Raw Material Pits* available at http://www.dpaw.wa.gov.au/images/documents/conservation-management/forests/FMP/preparing_FMP_2014-23/guideline_brm_rehabilitation.pdf.

Department of Parks and Wildlife (2009) *Guidelines for Protection of the Values of Informal Reserves and Fauna Habitat Zones* available through

<http://www.dpaw.wa.gov.au/management/forests/about-our-forests/171-protecting-our-biological-diversity>

Environmental Protection Authority WA (July 2015). Interim Strategic Advice to the Minister for Environment under section 16(e) of the *Environmental Protection Act 1986*. July 2015. Available at <http://www.epa.wa.gov.au/EPADocLib/Perth-Peel-s16e-interim-advice-2015-web.pdf> (Perth and Peel @ 3.5 Million: environmental impacts, risks and remedies)

Government of Western Australia. *State Gravel Supply Strategy* (1998). Main Roads, Western Australia.

Government of Western Australia. Statement of Planning Policy No 10: Basic Raw Materials, Policy Measure 6.1.3, Western Australian Government Gazette, 28 July 2000

Appendix 1

Planning legislation and policies specific to Basic Raw Materials in Western Australia

Legislation	Policy and relevant studies	Public sector agency
Main Roads Act 1930 ¹⁴	State Gravel Supply Strategy WA (1998)	Main Roads
Planning and Development Act 2005 ¹⁵	Statement of Planning Policy No.10: Basic Raw Materials (July 2000) ¹⁶ Western Australian Planning Commission: Basic Raw Materials, Demand and supply study for the Bunbury-Busselton Region (August 2012) ¹⁷ Western Australian Planning Commission: Basic Raw Materials Applicants' Manual (February 2009) ¹⁸	Western Australian Planning Commission Department of Planning

¹⁴ An Act to consolidate and amend the law relating to and making provision for the construction, maintenance, and supervision of highways, main and secondary roads, and other roads, the control of access to roads and for other relative purposes.

¹⁵ An Act to provide for a system of land use planning and development in the State and for related purposes.

¹⁶ A Planning Policy approved under section 29 of the *Planning and Development Act 2005*. This document also appears as *State Planning Policy 2.4 Basic Raw Materials* on the Department of Planning's website: <http://www.planning.wa.gov.au/State-planning-policies.asp>

¹⁷ A regional supply and demand analysis of the basic raw materials such as sand, gravel, hard rock and limestone required on the Bunbury- Busselton Coastal Plain to 2030, available at <http://www.planning.wa.gov.au/publications/6448.asp>

¹⁸ A manual to assist in understanding the legislative requirements in relation to access to basic raw materials, available at <http://www.planning.wa.gov.au/Planning-guidelines-and-manuals.asp>

Operations proposed to be undertaken (management activities) under the Forest Management Plan 2014-2023 specific to BRM.

Source: Forest Management Plan 2014-2023

No.	Forest Management Plan Operations proposed to be undertaken (management actions) specific to BRM (page 123)
109	<p>The Department will seek to ensure that all BRM removals from lands vested in the Conservation Commission:</p> <p>109.1 comply with relevant legislation, and policies and guidelines which will be reviewed</p> <p>109.2 contribute to the ongoing implementation of relevant government strategies, including the <i>State Gravel Supply Strategy</i></p> <p>109.3 where practicable, are sourced from a network of (fewer) strategic pits, which it will identify in consultation with relevant government agencies and BRM users.</p>
110	<p>The Conservation Commission will require that all BRM removals from land vested in the Conservation Commission are subject to the provision of certified returns to the Department for removals by the government agency or local government authority which has access to and is removing the BRM.</p>
112	<p>The Department, in consultation with the Conservation Commission, will develop management guidelines and processes to allow for sterilised BRM, including that from other land tenures, to be used on land to which the plan applies.</p>
113	<p>The Department, FPC and other proponents where required by the Department, will contribute to the maintenance of a database of areas from which BRM have been extracted, and will continue to progressively develop plans and works programs for the rehabilitation of these areas to standards agreed with the Department.</p>
114	<p>The Conservation Commission and Department will provide comment or advice in relation to proposals to extract BRM on land to which the plan applies that are forwarded to them, with a view to seeking:</p> <p>113.1 the timely rehabilitation of all pits to acceptable standards as set by the Department, developed in consultation with relevant stakeholders</p> <p>113.2 that the full cost of rehabilitation of areas from which BRM are extracted is borne by the organisation responsible for the extraction of those materials.</p>