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NSW Environment Protection Authority
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Via waste.updates@epa.nsw.gov.au

Draft Protection of the Environment Operations (General) Amendment (Thermal Energy from Waste) Regulation 2021

Local Government NSW (LGNSW) is the peak body for local government in NSW, representing NSW general purpose councils and associated entities. LGNSW facilitates the development of an effective community-based system of local government in the State.

LGNSW welcomes the opportunity to make a submission on the Draft Protection of the Environment Operations (General) Amendment (Thermal Energy from Waste) Regulation 2021 as this is a matter of significance to several NSW councils and other stakeholders within the local government sector. Councils support an efficient, fair, and locally-led planning system that prioritises quality of life and meets the needs and expectations of local communities. Decisions of successive state governments have gradually diminished councils and communities' authority to determine what and how development occurs in their local areas. Restoring community-led planning powers to local government is a long-standing advocacy priority for LGNSW.

LGNSW has consulted with councils to help inform the content of this submission.

Background

Councils provide waste, recycling, and resource recovery services to their communities. They also provide and operate recycling and disposal infrastructure and work tirelessly to reduce the amount of waste ending up in landfill by educating residents, businesses and schools about waste avoidance and recycling. Councils continue to face significant challenges from increasing waste generation and lack of markets for Australian recycled content. All levels of government, as well as business and the community need to work together as we move to a more circular economy where materials and products remain within the economy for longer and waste is reduced.

LGNSW supports waste management opportunities in line with the waste hierarchy, which is a set of priorities for the efficient use of resources; this underpins the objectives of the **Waste Avoidance and Resource Recovery Act 2001**.



Image 1: Waste Hierarchy in Australia

Source: <https://www.epa.nsw.gov.au/your-environment/recycling-and-reuse/warr-strategy/the-waste-hierarchy>

LGNSW advocates for further research and engagement on waste to energy options in line with the waste hierarchy to ensure that future waste to energy options;

- i. Are only considered where other waste management options are not available,
- ii. Represent a suitable method of disposal depending on the composition of the waste material,
- iii. Are in appropriate locations, as per the relevant regulations,
- iv. Don't generate unintended negative impacts on human and environmental health.

In April 2021, LGNSW made a submission on the Draft revised NSW Energy from Waste Policy Statement based on NSW Chief Scientist and Engineers Recommendations and welcomed the revisions around air emissions recommendations. The submission also called for the establishment of clear rules to guide development and operation of waste to energy facilities, including a ban on co-generation or energy recovery plants in the Greater Sydney Area. Given this position, it is pleasing that the Draft Protection of the Environment Operations (General) Amendment (Thermal Energy from Waste) Regulation 2021 proposes changes in the provision for energy from waste in NSW to;

- Improve certainty to communities and industry around acceptable locations and facilities,
- Apply the precautionary principle where there is a greater risk of harm to human health due to proximity to high population areas (now and into the future), and in areas where there are regular exceedances to air quality standards from existing sources,
- Maximise efficiencies in infrastructure, waste management, innovation, and energy recovery,
- Ensure that energy from waste plays a sustainable role as NSW transitions towards a circular waste and resource recovery framework.

LGNSW broadly supports the proposed outcomes which are anticipated from the draft regulation, however at the recent LGNSW Special Conference the sector expressed concerns over the impact of waste to energy incinerators and encouraged diversion rather than incineration:

Conference Resolution: Randwick City Council - Waste to energy incinerators

That Local Government NSW:

- a) Acknowledges concerns regarding the impact of waste to energy incinerators on communities and the environment;*
- b) Notes that the Draft Regulations and the Environment Protection Authority's (EPA) Energy from Waste Infrastructure Plan would prohibit waste to energy incinerators in some places and not others;*
- c) Considers burning waste for energy an outdated technology and encourages diversion rather than incineration.*

Response

The LGNSW response to the Draft Protection of the Environment Operations (General) Amendment (Thermal Energy from Waste) Regulation 2021 is detailed below.

128A Definitions

Within this clause, the definition of *thermal treatment* is clarified by detailing the variety of mechanisms which are included under the broad term *thermal treatment* and therefore prohibited under the regulation. LGNSW supports the retention of this definition, in that it should provide clarity to communities as to what types of thermal treatment processes may be allowed outside the four designated precincts however, we make the following comments.

There are a variety of treatment processes which are excluded from the current definition of *thermal treatment*, the most significant of these is (d) the incineration of waste for destruction or disposal. There is some concern that the way this is currently drafted could allow for misinterpretation where councils are led to believe that incineration of waste that does not generate energy could be permissible. LGNSW received advice from the NSW Environment Protection Authority (EPA) that this process would still be subject to the usual regulatory processes and therefore is likely to only occur in very few circumstances where waste material cannot be disposed of by other means and as such the likely impact on councils and communities is low. There is an opportunity to make this clear within the Draft Regulation to avoid any confusion and provide greater clarity for industry, the community, and councils.

LGNSW also supports the exclusion of (a) autoclaving processes from the definition of *thermal treatment*, noting that this is a waste disposal option currently being trialled in at least one NSW Council area and may represent a suitable waste to energy option in the future.

Clause 128B Prohibition on energy recovery from thermal treatment of waste

To protect the health and environment of NSW communities, there should be no exception to the proposed prohibition of the thermal treatment of waste to energy as contained in Clause 128B.

This clause currently states that (1) A person must not carry out, or cause or allow to be carried out, the thermal treatment of waste if –

- a) It involves or results in energy recovery from the waste, and
- b) 1 or more activities carried out at the premises are scheduled activities that require a licence.

However, this clause would appear to allow energy recovery from waste at premises that fall below the environment protection licensing threshold, i.e., where councils are the ARA. Has the EPA prepared a RIS and/or conducted any analysis on the likely number of such premises (existing and future) and cumulative impacts of these? While energy recovery from non-licensed premises would be small-scale, the cumulative impacts could be significant. Is the EPA proposing to provide guidance for councils on regulating energy recovery activities?

LGNSW suggests that by making the Draft Regulation clearer as to the kinds of activities that are allowed (and not) that this could potentially alleviate concerns from councils and communities. Similarly, guidance for councils is required on assessing and regulating potential energy recovery activities where they are the ARA.

Clause 128C Exceptions to prohibition on energy recover from thermal treatment of waste

LGNSW recommends that Clause 128 C part 3 be retained in its present form without change. The Draft Regulation puts into law the Energy from Waste Infrastructure Plan by prescribing that prescribed energy from waste activities only be established and operated in four locations in NSW unless specific exceptions apply.

1. West Lithgow Precinct
2. Parkes Special Activation Precinct
3. Richmond Valley Regional Jobs Precinct
4. Southern Goulburn Mulwaree Precinct

LGNSW understands from consultation with the NSW EPA that the purpose of the exceptions is to exempt only necessary, currently active thermal waste treatment processes or genuine recycling activities to ensure these are lawfully permitted to continue after the regulation becomes law.

Clause 128D Effect of prohibition on environmental protection licences

The note under Clause 128D represents a significant concern to councils as it could potentially negate Section 128B by stating that “a licence cannot be refused if it is necessary for carrying out State significant development authorised by a development consent.” The note could be interpreted to mean that State significant development (SSD) is exempt from the regulation.

LGNSW understands that the note reflects section 4.42 of the *Environmental Planning and Assessment Act 1979* which specifically states an environment protection licence cannot be refused if it is necessary for carrying out an approved SSD consistent with the consent. LGNSW recommends that the EPA confirms that SSD involving energy from waste will be considered against the principles in the Regulation (via the separate approvals process for SSD), and that the Regulation or supporting information makes this clear.

Conclusion

LGNSW supports the principle within the Energy from Waste Infrastructure Plan 2041 which will allow thermal energy recovery from residual waste where it can deliver positive outcomes for communities, whilst protecting human health and the environment. LGNSW on behalf of the local government sector has previously supported the NSW Energy from Waste Policy Statement and concurs with the purpose of the draft Protection of the Environment Operations (General) Amendment (Thermal Energy from Waste) Regulation 2021 to improve certainty for communities.

However, it should be noted that there are varied views within the sector with some councils and communities resolutely opposed to waste to energy in any location.

LGNSW would strongly encourage the NSW EPA to consider all feedback received from stakeholders on this important matter. We would also reiterate that any variation to the Draft Regulation as it currently stands should require proof that no detrimental impact to the health of surrounding communities or the environment is caused and should only be considered after extensive and meaningful community consultation with affected communities.

Thank you again for the opportunity to comment on the draft Protection of the Environment Operations (General) Amendment (Thermal Energy from Waste) Regulation 2021. For further information in relation to this submission, please contact Alison Thompson, Senior Policy Officer – Waste on 02 9242 4056 or alison.thompson@lgnsw.org.au.

Yours sincerely



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