

Response to the – *NSW EPA Food and Garden Organics mandates Proposal paper*

22 July 2024

Prepared by Northern Sydney Regional Organisation of Councils

Member Councils: Hornsby Council
 Hunter’s Hill Council
 Ku-ring-gai Council
 Lane Cove Council
 Mosman Council
 North Sydney Council
 City of Ryde Council
 Willoughby City Council

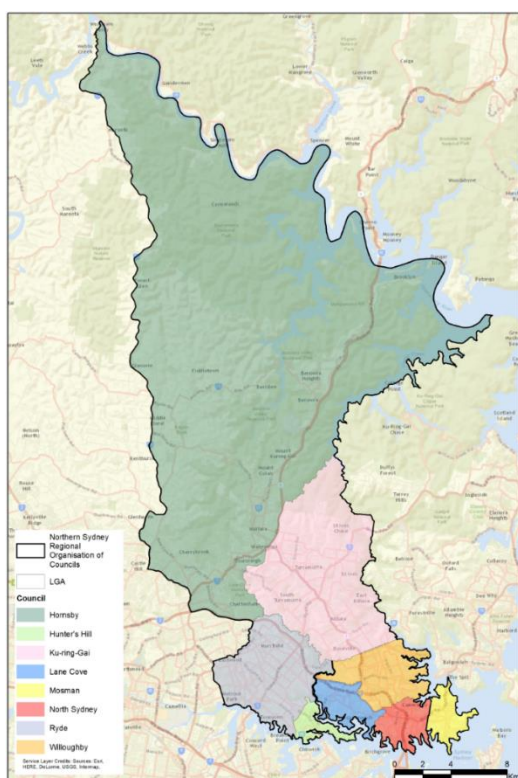
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Introduction and context

The Northern Sydney Regional Organisation of Councils (NSROC) is pleased to respond to the NSW Environment Protection Authority’s Food and Garden Organics mandates Proposal paper (the Proposal), while noting individual councils may also make independent submissions. This submission has been prepared with the input and support of our member councils but should be considered draft until it is formally endorsed by the NSROC Board.

NSROC is a voluntary association of eight local government authorities in Sydney. NSROC assists member councils collaborate on key issues and activities, develops regional solutions and generates social, environmental and economic benefits – for local communities and the region overall.

NSROC member councils service an area of 639km² with a population of 633,978, extending from the Hawkesbury River in the north to Sydney Harbour in the south, west to Meadowbank on the Parramatta River, as shown in Map 1.



The eight NSROC member councils are:

- Hornsby Shire Council (HSC)
- Hunter’s Hill Council (HHC)
- Ku-ring-gai Council (KMC)
- Lane Cove Council (LCC)
- North Sydney Council (NSC)
- Mosman Municipal Council (MMC)
- City of Ryde (CoR)
- Willoughby City Council (WCC)

Our member councils employ approximately 2,700 people across the region, delivering a wide range of services, including operational waste management for public and private domains. Collectively the eight councils have a waste budget of over \$90 million per year and manage around 14% of metropolitan Sydney’s municipal waste.¹

Map 1: Northern Sydney Regional Organisation of Councils area

NSROC supports reducing organics going to landfill and offers suggestions on how the NSW Environment Protection Authority (EPA) may improve implementation, including undertaking closer cooperation with councils and regions of councils. Targeted State assistance to solve councils’ common food and garden organics (FOGO) implementation challenges, rather than leaving them to individual councils, will hasten implementation and reduce public expenditure. Mandate aspects upon commercial providers of organics processing will also aid FOGO implementation.

¹ Based on 2021/22 figures

Councils operate in complex resource-constrained environments and are challenged by mounting infrastructure and services costs. Growing populations and greater housing density, more frequent extreme weather events, impacts of climate change, increasing cyber security needs and cost shifting by other levels of government - are some of the challenges. The needs and priorities of local communities often outpace councils' capacity to generate income and meet expectations.

Using genuine co-design processes for new legislation, providing clarity on how EPA discretion will be applied to exemptions, and with careful regard for individual councils' circumstances - the uptake and coverage of FOGO separation can be maximised.

Recommendations List

1. Infrastructure – Transfer stations and processing capacity

That the EPA expedite FOGO by prioritising new waste transfer facilities for councils and facilitating new organics processing capacities.

2. Co-design of New Legislation

That the EPA conduct extensive co-design processes with local government through mechanisms such as LGNSW and the Greater Sydney Waste Leadership Forum, as well as industry and community to jointly create effective and robust FOGO legislation suitable for the long term. That mandates are also applied to commercial waste service providers.

3. State Implementation Assistance

That the EPA expand the scope of detailed practical FOGO assistance to councils, to reduce unnecessary work replication and public resource expenditure. Provide balanced cost/benefit assessments of councils' FOGO implementations, to help other councils decide their implementation pathways.

4. Exemptions

That the EPA conduct extensive co-design processes as per recommendation 2 to ensure a practical and transparent FOGO exemption process - including allowances for individual councils' local circumstances.

5. Penalties and Fines for Councils and Executive Liability

That there are no penalties or fines for councils, councillors, general managers or individuals in the FOGO mandate.

6. Business Compliance Enforcement

That the EPA work closely with other relevant State agencies and local government, to design, resource and implement detailed and effective FOGO business compliance systems.

7. Residential Development Planning

That the EPA increase and prioritise work with the Department of Planning, Housing and Infrastructure, other relevant agencies and local government to create appropriate infrastructure provisions for all waste streams in all residential development planning and delivery.

8. Communications

That the EPA acknowledge and map differing details and timing of councils' FOGO implementation and collaborate with regions of councils to jointly manage delivery of targeted and bespoke FOGO communications.

9. Local Processing and Trials

That the EPA: work with councils to support and expand home and community organics processing; ensure FOGO communications encourage local processing; conduct and fund trials of new technologies and systems for local organics processing.

10. Woodlawn Mechanical and Biological Treatment (MBT)

That the Woodlawn MBT continues to be available to receive councils' red bin waste, maintaining production of organic output for rehabilitation of mine sites.

1. Infrastructure – Transfer stations and processing capacity

Greater Sydney region will reach current landfill capacity in 2028 for non-putrescible waste and by 2036 for putrescible waste. Unlike other cities in Australia, Sydney does not have a short or long-term waste infrastructure plans reserving sites for waste management, including landfill.

Separating food waste from municipal solid waste has extensive ramifications for existing collection, transfer and processing systems. Current EPA waste infrastructure work must appropriately provide for FOGO, to ensure councils are able to comply with mandates.

Industry is failing to provide adequate responses to FOGO tenders from councils. Despite their attempts to provide commercially attractive volumes to make contracts appealing and worthwhile, the response from the industry has been lacking. The State needs to provide significant market interventions, beyond mandates upon councils, to help ensure there are sufficient organics processing capacities.

1. Infrastructure – Transfer stations and processing capacity

That the EPA expedite FOGO by prioritising new waste transfer facilities for councils and facilitating new organics processing capacities.

2. Co-design of New Legislation

The Proposal provides limited information about the actual amendments to the *Protection of the Environment Operations Act 1997*. To ensure the best possible outcomes for communities and increase the likelihood of successful implementation, the EPA should conduct a comprehensive co-design process working closely with local government as well as industry stakeholders.

For FOGO implementation to meet our goals of halving organics going to landfill and achieving net zero emissions from organics in landfill by 2030, the mandate should consider additional factors such as organics processing availability and methodology, plastics contamination and increases in transport emissions, including from compost end-product movements.

NSROC agrees the mandate could cover all NSW local government areas, however the process and conditions under which the EPA may grant part or full exemptions should be transparent and clearly communicated.

The Business Mandate is slated to be phased in from 1 July 2025. Most commercial complexes do not have an existing garden organics collection on which food organics might 'piggyback'. Therefore, this will potentially require the introduction of an additional collection along with the associated costs and complexities. For locations with limited/difficult access, the addition of new bins and collection services will be particularly challenging. Additional information on how the EPA will support implementation under these scenarios will be important.

The Mandate will also need to apply to commercial waste service providers. This would ensure that the mandate captures commercial and residential premises with non-council waste service providers.

2. Co-design of New Legislation

That the EPA conduct extensive co-design processes with local government through mechanisms such as LGNSW and the Greater Sydney Waste Leadership Forum, as well as industry and community to jointly create effective and robust FOGO legislation suitable for the long term. That mandates are also applied to commercial waste service providers.

3. State Implementation Assistance

Although there is strong agreement between the EPA and councils on the necessity for reducing emission of Green House Gas (GHG), there is a lack of evidence that FOGO implementation by councils is the best way to achieve that. The State's Net Zero Emissions Guidance for NSW Councils 2020 says "achieving net zero at a community level will mean first reducing emissions as much as possible in a way that balances the economic, social and environmental needs of an LGA or place".

There is some suggestion that organic waste from the few metropolitan councils who have implemented FOGO going to remote facilities such as those at Forbes and Blaney may have high contamination rates. Several recent procurement actions in greater Sydney failed to receive tender responses, suggesting a lack of collection and processing options.

Whilst the over-arching rationale for FOGO is strong, there is great uncertainty on the best and most effective implementation pathways and options for councils. Balanced and even-handed cost/benefit assessments of councils' FOGO implementation activities are needed, as they roll out.

Providing convincing data and evidence for net reductions of GHG from Sydney councils' FOGO activities will help uptake. Fair comparisons of councils' different FOGO implementations will assist others in deciding the best path for their communities and circumstances.

Most of councils' FOGO implementation challenges are common with other similar councils, making those problems ideal for solving at State and regional levels. Although resources such as the EPA's *NSW guide to food waste recovery in multi-unit dwellings, 2021* are a step in the right direction, they fall short of the detailed and specific information required.

There are comprehensive examples from Victoria, such as *Introducing a kerbside food and garden organics collection service - A guide for local government (Victorian Metropolitan Waste and Resource Recovery Group, 2018)* and [Sustainability Victoria's resources for Waste and recycling in multi-unit developments](#), which could be emulated and adapted for NSW.

EPA provision of detailed planning and building design guidelines to enable FOGO, are needed for effective implementation. This guidance will enable councils' to apply and defend conditions of consent.

3. State Implementation Assistance

That the EPA expand the scope of detailed practical FOGO assistance to councils, to reduce unnecessary work replication and public resource expenditure. Provide balanced cost/benefit assessments of councils' FOGO implementations, to help other councils decide their implementation pathways.

4. Exemptions

The provision for mandate exemptions in the Proposal is welcome, however the examples suggested are narrow. The larger proportion of rural councils implementing FOGO does not indicate a lack of will on the part of metropolitan councils. Rather, it evidences the implementation challenges, especially for higher density accommodation and multi-unit dwellings. Recent University of Wollongong mapping shows that rural FOGO uptake has occurred where councils have landfills.

Although the EPA's Arcadis studies show a general state-wide capacity to add food waste to existing garden organics bins, there remains much uncertainty about greater Sydney processing availability. Catering for the specifics of each councils' circumstances must be a feature of the exemptions regime.

Another matter is councils' existing waste collection contracts. For example, NSROC councils have waste and garden organics collection contracts running past 2030.

To ensure community, local government and industry confidence the exemptions process must be transparent and well communicated. It should include publishing requests, results and rationale, helping councils' preparation of applications and understanding of the process. Transparency and publication will also provide for public education and appreciation of councils' FOGO implementation challenges, as well as timeframes.

NSROC would welcome the opportunity to co-design the exemption process.

4. Exemptions

That the EPA conduct extensive co-design processes as per recommendation 2 to ensure a practical and transparent FOGO exemption process - including allowances for individual councils' local circumstances.

5. Penalties and Fines for Councils and Executive Liability

The Proposal includes 'court penalties' and 'executive liability' where a council is in charge of management and control of residual waste collection services (e.g. commercial building complex owner, not individual tenants). It is understood that the EPA is proposing executive liability at the Councillor, Council GM and potentially next level down - for non-compliance with the mandate. This is of significant concern to NSROC councils. No similar penalties or liabilities appear to be in place for recycling and it is unclear why they are required in the case of FOGO.

There is clear alignment between NSROC councils and the EPA on the necessity of recovering resources from organics in the waste stream and diverting them from landfill. NSROC continues to work closely with councils on their preparation for new organics collections. The proposed penalties for councils and individuals are against a spirit of cooperation and are not appropriate.

5. Penalties and Fines for Councils and Executive Liability

That there are no penalties or fines for councils, councillors, general managers or individuals in the FOGO mandate.

6. Business Compliance Enforcement

The Proposal advances councils as *'the appropriate authorities to monitor and enforce compliance with the business mandate'* and an EPA FAQ website popup states *'annual inspections of food retail businesses undertaken by health inspectors include checking if food waste bins are present and in use – which would add two more questions on the checklist and not necessarily require additional resourcing.'*

Regulatory and food safety staff from NSROC councils, including in discussions with EPA staff at a 28 June 2024 meeting, advise the compliance activities may be more burdensome for councils than the EPA estimates, and would require additional resourcing. Councils are also concerned about a possible lack of involvement by the NSW Food Authority.

Further work and consultation is required to clearly articulate an appropriate approach to business education and compliance. The best approach may not identify local government as the appropriate regulatory authority (ARA). Barriers to compliance and how these interact with exemption processes should be considered. As well as the interaction of the *Food Act 2003* and the *Protection of the Environment Operations Act 1997* with regard to compliance activities.

Although allocating the funds from fines to councils is appropriate, the reputational damage making large fines causes councils means maximum amounts are not always sought.

6. Business Compliance Enforcement

That the EPA work closely with other relevant State agencies and local government, to design, resource and implement detailed and effective FOGO business compliance systems.

7. Residential Development Planning

Residential land use planning and development in NSW must adequately account for waste services provision. The FOGO mandate provides a driver for the NSW Department of Planning, Housing and Infrastructure (DPHI) to include new legislative requirements for commercial building developers to provide room and functional systems to manage organic and residual waste in high-rise, mixed-use and commercial developments as well allowances for local processing and truck movements. Putrescible food waste has particular requirements, such as dedicated chutes and bin rooms in residential high rise, which satisfy health, safety and amenity requirements in building codes.

7. Residential Development Planning

That the EPA increase and prioritise work with the Department of Planning, Housing and Infrastructure, other relevant agencies and local government to create appropriate infrastructure provisions for all waste streams in all residential development planning and delivery.

8. Communications

The success of FOGO depends upon effective State and local government education and behavioural change campaigns. Although the ideal would be harmonisation of messages across NSW (and Australia), the reality of different implementation approaches means we need different messages for different locations. Digital delivery of key messaging makes customisation easier than previously. For example, Inner West Council made highly targeted foreign language FOGO messages to communities with low English proficiency.

With close EPA, council and regional collaboration on the design and delivery of FOGO communications, results and return on investment will be maximised. Conducting generic state-wide campaigns is unlikely to be as effective.

8. Communications

That the EPA acknowledge and map differing details and timing of councils' FOGO implementation and collaborate with regions of councils to jointly manage delivery of targeted and bespoke FOGO communications.

9. Local Processing and Trials

Many households already compost or otherwise process their food waste. Studies show the rates of home composting range from 34% across Australia (*Cleanaway Recycling Behaviours Report 2024*) to 60% in a Sydney council (*Western Sydney Waste Research Summary of major findings 2022*). Studies have found home composting favourable for reducing GHG, compared to collection, remote processing and further end-product transporting and distribution. Home and local-community composting has greater resilience to systemic shocks and failures, further making it preferable to remote processing.

Given rates of existing home and community composting, the GHG reductions and resilience benefits, we need to consider how to best support these hyper-local solutions and how not to displace them with new FOGO collection and processing.

This approach includes gaining greater understanding of the extent and potential of home composting, ensuring FOGO communications support home processing, as well as support for trials of new technologies and systems.

9. Local Processing and Trials

That the EPA: work with councils to support and expand home and community organics processing; ensure FOGO communications encourage local processing; conduct and fund trials of new technologies and systems for local organics processing.

10. Woodlawn Mechanical and Biological Treatment (MBT)

NSROC FOGO trials, consistent with the experiences of councils who have implemented FOGO, show significant proportions of food waste remain in the red-lidded bin. This can be expected for years to come, whilst behavioural change embeds.

About 29% of NSROC Councils' red bin contents (of which around 35% is food waste) is currently processed by MBT, and of this around 40% is diverted from landfill. All other remaining red bin waste goes to the Woodlawn Bioreactor (landfill), which has an (at least) 75% landfill gas capture rate. The Woodlawn MBT organic output is showing promising results for remediation of the adjacent mine site.

NSROC's Regional Organics Implications Study 2024 shows FOGO implementation without continuation of Woodlawn MBT processing, results in emissions rising by 23% and costs rising by 31% above baseline.

The figures above demonstrate the importance of ongoing EPA allowance for continued operation of the Woodlawn MBT, which effectively processes red bin waste to reduce GHG and makes an organic product successfully being used to remediate an adjacent mine site.

10. Woodlawn Mechanical and Biological Treatment (MBT)

That the Woodlawn MBT continues to be available to receive councils' red bin waste, maintaining production of organic output for rehabilitation of mine sites.

Conclusion

NSROC supports action to reduce organics going to landfill. Implementation of the FOGO mandate is a significant commitment for State and Local Government. Uncertainty around the capacity of organics processing services and the costs associated with additional service offerings creates challenges for councils. Ongoing investment by the State to assist local government and communities transition to FOGO will be required.