



ABN 19 949 536 343

59 Bonville Avenue | PO Box 3137 | Thornton NSW 2322
P (02) 4978 4040 | F (02) 4966 0588

FOLLOW OUR PROGRESS  

NSW Environment Protection Agency
59-61 Goulburn Street
Sydney NSW 2000

16 July 2024

To whom it may concern:

Re: Food and Garden Organics Mandates Proposal Paper

The Hunter Joint Organisation (Hunter JO) and its Member Councils welcome the recent invitation from the NSW Environment Protection Authority (NSW EPA) to review and provide feedback on the Food and Garden Organics Mandates Proposal paper and look forward to actively collaborating with the EPA on the implementation of Food and Garden Organics (FOGO) services in our region.

The ten Member Councils of the Hunter JO support the policy aims of diverting valuable organic material from landfills, however, are concerned about the reality both Councils and industry face in implementing their roles in the proposed mandate. Given the system level change proposed and in the current context of the FOGO processing infrastructure in NSW, considered government intervention is required to ensure the smooth transition to a mandated system.

In summary, Hunter JO member councils believe that:

- Direct allocation of waste levy revenue should fund the implementation and ongoing management of FOGO mandates.
- State Government should develop and fund a statewide place-based infrastructure plan to support adequate planning and implementation of FOGO infrastructure in NSW.
- Councils should be appropriately resourced and granted discretion to manage localised implementation of their FOGO services.

The position provided below is informed by council feedback as well as the insights gained through the Hunter JO's Circular Economy program work completed to date.

Member councils generally support the introduction of FOGO services to their residents in principle however, the implementation of the FOGO mandate should ensure:

1. Unintended outcomes are avoided by taking a partnership approach to changes of law

Issues

- The current consultation paper does not provide the necessary detail councils require in order to fully understand and evaluate the implications of the FOGO mandate once legislated. It is our understanding that beyond this current consultation, there will be limited if any opportunity for councils' input before the legislation is passed into law.



- Given the complexity and place-based nature of FOGO service implementation, its essential that the detail of the mandates be robustly tested with representatives from all the relevant sectors and contexts, ideally through a further public consultation.

Recommendation: The NSW Government:

- a. Enlist an advisory group comprised of local government staff and other relevant stakeholders;**
- b. Release a draft of the proposed legislation package seeking input from the advisory group and a short period of broader feedback of public consultation to help mitigate any perverse outcomes from inappropriately worded legislation;**
- c. Any future legislation and regulation be clear and unambiguous in its intent and wording in the legislation and informed by multiple legal and operational perspectives and build certainty into guidance documents and regulation.**

2. Protection of existing end markets for Garden Organics (GO) and development of new end markets for Food Organics (FO)/FOGO through a State Government coordinated and staged implementation program

Issues

- It is critical that existing end markets for organic material aren't adversely affected by the introduction of FO material into existing processes. The contamination profile of FOGO and particularly that of FO differs considerably to that of GO. Consequently, existing processing facilities for organics are likely to experience greater issues with contamination, and unless infrastructure and processes are upgraded or modified, this presents a considerable risk to GO end markets should these streams be combined. Given that end markets for products with a higher contamination profile such as that of FO and FOGO are currently limited, the priority of the NSW Government should be to capture FO material of acceptable quality and alternative processing routes developed for the more contaminated FO waste streams. This approach may not be the most cost efficient process but would result in better environmental and end market outcomes while still avoiding organics in landfill. A measured approach to policy interventions should be taken that protects existing end markets, then strengthens and expands as new end markets develop over time.
- Given that the NSW Government is intervening with a legislated FOGO mandate, the NSW Government should ensure there is an appropriate infrastructure system to support the mandate and integrated into existing planning processes and pathways. This includes facilitating adequate and appropriate processing infrastructure across the state to effectively and safely deal with this material stream.
- The State government should send strong signals (including financial investment) to the market on what technologies, processes and material inputs are considered appropriate, and derisk



the marketplace by facilitating and underwriting investment in appropriate FOGO processing technologies through committed state government contracts for output material.

Recommendation: The NSW Government:

- a. **Recognise the essential nature of FOGO infrastructure in NSW and oversee and support a place-based approach to the planning and implementation of FO/FOGO processing infrastructure for NSW to ensure capacity and appropriate processes are in place to deal with this material stream;**
- b. **Urgently commit to the NSW Government procurement of FO/FOGO material outputs, publish likely tonnages and any specifications associated to help derisk the market place.**

3. Ensure council implementation of mandated FO and FOGO services is empowered financially and operationally to succeed

Issues

- The continued delivery of effective domestic waste management services is already placing councils under financial stress due to the rising costs of service delivery, changes in consumer behaviours, and pressure to keep domestic waste management charges down. The introduction of new FOGO services will incur additional substantial financial costs and liabilities, which need to be offset with state government assistance. This could be through mechanisms such as non-contestable infrastructure grants or direct allocation of waste levy revenue to councils. [\[Question 4\]](#)
- Some Hunter JO member councils are experiencing challenges with procuring FOGO collection and processing contracts due to issues such as the distance to existing facilities, limited competition in the market, and the lack of sufficient tonnages to make new local processing facilities financially viable. In instances where the financial viability of services cannot be achieved, councils should be either given a clear exemption process to follow or be financially supported to achieve viability through state government financial assistance. This could be through a co-developed place based assessment in the context of a statewide infrastructure plan. [\[Question 1 and 4\]](#)
- Councils should also be financially enabled to manage the ongoing operational viability of their FOGO services through mechanisms such as contamination management and education programs. Councils are not currently resourced to undertake the significant and ongoing behaviour change programs that are required to ensure a FOGO service with an acceptable feedstock for processing. This requires localised collaboration to be facilitated across the value chain in order to ensure effective processes and feedback mechanisms are planned and established. Whilst state government communications campaigns can be useful in raising awareness of service changes, localised programs with relevant stakeholders across diverse communities are required in order to change behaviour and achieve acceptable service



participation by residents. The mandate legislation and any associated guidelines should also make it explicit that Councils be granted discretion to refuse FOGO services to properties where repeated contamination or other adverse operational problems persist. [\[Question 4\]](#)

- Implementing FO or FOGO services to Multi Unit Developments (MUDs) is operationally complex for councils and their service providers. The implementation of mandates to MUDs should be carefully planned by the State Government to ensure council and industry are not burdened with adverse outcomes such as unacceptable material inputs, and navigating inappropriate bin infrastructure and access arrangements. MUD inclusion in the mandate should allow for existing (legacy) MUDs to be opt-in services, or at the least have a staggered commencement to allow adequate financial, educational and operational support packages to be developed by the NSW Government to assist councils to implement these services given their operational complexity. Any mandate applicable to MUDs should apply to both council services and privately contracted facilities, providing equity to NSW residents. Furthermore, all new MUDs approved in NSW are designed to adequately accommodate FOGO source separation and storage for collection. [\[Question 1\]](#)
- Mandate deadlines should have sufficient flexibility for councils to demonstrate their 'best endeavours' to meet those deadlines given many timing factors that sit outside their direct control such as the granting of EPL licences and construction delays.

Recommendation: The NSW Government:

- a. Provide direct, non-contestable financial assistance to councils to support the implementation of FOGO services and access to adequate associated processing infrastructure;**
- b. Provide guidance and training on best practice contamination management practices to councils and industry;**
- c. Provide non-contestable funding to councils to resource behaviour change and contamination management programs prior to commencement and for a minimum of five years post service implementation;**
- d. Make explicit in legislation and regulation the discretion of councils to remove services from residents where operationally appropriate;**
- e. Take a staged approach to the mandate of FOGO in MUDs, beginning with an opt-in system initially, and potentially progressing to compulsory requirement as it becomes operationally feasible for councils or private collection companies to service;**
- f. Develop and fund a statewide capacity building program to support councils to implement FO/FOGO services in MUDs;**
- g. Work with the Department of Planning to identify and reference precinct and building design guidance in the legislation, for the purpose of requiring commercial building developers to provide space and functional systems to manage organic and residual waste in high-rise, mixed-use and commercial developments.**



- h. Ensure flexibility and a clear process is built into the mandate legislation to allow councils to demonstrate 'best endeavours' to meet mandate requirements before enforcement action is undertaken.**

4. Commercial mandates do not adversely impact councils and their ability to meet their mandate responsibilities

Issues

- In some areas, there is already insufficient processing capacity for FO or FOGO for councils to access. The introduction of commercial mandates could in some instances provide the required tonnages to incentivise new or expanded processing facilities, however, in many localities this competition in the marketplace could be problematic for councils tendering for FOGO processing services given their commitment to keep operational costs down for their ratepayers. Initial intervention by State Government in the overseeing and approval of processing facilities is required to ensure that councils are not disproportionately impacted and more efficient financial and market outcomes are delivered.
- The proposal to appoint councils as the Approved Regulatory Authority (ARA) for the commercial mandates is inappropriate and should not proceed. The reasons for this include:
 - the proposal would result in the imposition of an additional regulatory burden to local government without adequate ongoing resourcing and training required to perform this role
 - councils are aware that the NSW Food Authority also does not support the use of EHOs to undertake compliance activities for the FOGO business mandate
 - any such move to expand the responsibilities of EHOs will exacerbate the chronic nationwide workforce shortage.
 - One Hunter JO member council notes that last financial year, \$15.3 million of unfunded regulatory costs in NSW were shifted from state to local government for the Protection of the Environment Operations alone. "Costs shifted to councils are not able to be covered by rate increases due to rate pegging in NSW necessitating the diversion of resources from other commitments to fund the cost shift involved."

Recommendation: The NSW Government:

- a. Consider the sequencing of the commercial mandate implementation as part of the state FOGO infrastructure plan, using a place-based approach to ensure processing infrastructure capacity availability for councils;**
- b. Retain the role of ARA for the commercial mandates such as the NSW EPA is for the Plastic Ban;**
- c. Provide adequate and ongoing resourcing and training to the appointed ARA to undertake its responsibilities.**



ABN 19 949 536 343

59 Bonville Avenue | PO Box 3137 | Thornton NSW 2322
P (02) 4978 4040 | F (02) 4966 0588

FOLLOW OUR PROGRESS  

To discuss this submission further, please do not hesitate to contact Eloise Lobsey, Program Lead, Circular Economy on 0448 160 800 or eloisel@hunterjo.com.au.

Regards,

A handwritten signature in black ink, reading "S. P. Wilson", written in a cursive style.

Steve Wilson

Director Hunter JO