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The Committee Manager
Standing Committee on Public Works
Parliament House
Macquarie Street
SYDNEY NSW 1232

Dear Ms James

SUBMISSION TO STANDING COMMITTEE ON PUBLIC WORKS INQUIRY INTO MUNICIPAL WASTE MANAGEMENT IN NSW

I refer to a letter from Kevin Greene MP dated 30 January 2006 inviting submissions to the above Parliamentary Inquiry.

Further to that invitation, please find attached a submission which addresses issues of concern for Council related to the particular points listed in the Terms of Reference for the Inquiry. Points within the Terms of reference are identified as sub-headings within the submission.

Please note that whilst many of the points raised in the submission appear critical of current regulatory regimes and administrative frameworks, Council remains a strong supporter of waste avoidance and resource recovery.

Council has a strong history of responsible waste management and had made significant investment in a modern, engineered landfill prior to the introduction of the Waste Minimisation and Management Act. That landfill receives municipal waste from Newcastle residents, as well as waste from commercial customers. The design and operation of that landfill has incorporated waste minimisation initiatives such as differential pricing for source-segregated loads and the re-processing and re-use of those source-segregated materials.

Despite the large investment in a landfill facility, Council has not relied entirely on landfill disposal to manage municipal waste. Instead, over recent years Council has participated with neighbouring councils in a Regional Waste Project which seeks to develop an alternative waste technology (AWT) facility to treat approximately 160,000 tonnes of municipal waste from four local government areas.

The points raised in Council's submission relate largely to Council's frustration with aspects of the current and proposed regulatory framework which make it difficult to maintain existing resource recovery initiatives, which punish financially wastestreams which have no better disposal alternatives other than disposal or use at a landfill and which hamper the development of a viable AWT facility.

Council notes that the Inquiry relates to municipal waste, and that some of the points raised by Council relate at least equally to commercially generated wastestreams. However, as Council owns and operates both a collection fleet and landfill, issues relating to commercial sector wastes impact directly on municipal waste management and hence generators. Where initiatives affect the economic viability of managing some components of the overall wastestream, then the significant fixed costs associated with developing and running an engineered facility must be met by other components of the wastestream.

I trust the information presented in the submission is of interest to the Committee and thank you for the opportunity to make the submission after the published closing date. Should further information be required regarding the submission, or should you wish a Council representative to appear before the committee, please contact the undersigned on 4985 6600.

Yours sincerely

Gavin Cooksley
ENVIRONMENT & POLICY COORDINATOR
WASTE MANAGEMENT

NEWCASTLE CITY COUNCIL
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Impediments and incentives to best practice municipal waste management.

Council notes that varying opinions exist regarding what constitutes best practice municipal waste management. In this instance, Council is not considering management practices utilising alternative waste technologies (AWT) as issues relating to AWT are addressed below (Terms of Reference dot point 4). Council will restrict comments here to those matters which act to influence its attempts to effectively manage a business consisting of a collection fleet, modern engineered landfill and associated resource recovery activities.

Within the current regulatory regime, the major factor immediately affecting Council's ability to efficiently manage wastes is administration of the waste levy. Council notes that the DEC has identified that administering the levy is problematic, and that current legislative reviews are aimed at addressing this. Council made a submission regarding the draft POEO (Waste) Regulation (copy attached as Attachment 1) in October 2005, but has been disappointed with outcomes of that review. Council considers that changes to the legislation have been aimed at simplifying administrative difficulties experienced by the DEC, but no consideration has been given to difficulties faced by operators.

Council is not philosophically opposed to the imposition of a waste levy, as it obviously provides one avenue of internalising environmental costs associated with excessive waste generation. However, the simplistic approach to levies adopted by the NSW government, whereby increasing levies are collected in a broad–brush approach for all materials which enter a licensed landfill facility, appears more suited to revenue generation than to discouraging waste generation. No levy concessions are available which reward capital investments in environmentally responsible landfilling of materials suited to no alternative purpose. Similarly, levies on landfilled wastes act as a minimal deterrent to manufacturers whose products may have a useful life of several years, as the financial impost on consumers is not apparent until the product reaches the end of its lifespan.

With respect to household wastes, the DEC has argued that the levy is needed to deter waste to landfill, but acknowledges (in the Regulatory Impact Statement for the POEO (Waste) Regulation 2005 – (RIS)) that the levy is not a significant factor in determining waste generation rates from households. In that event, Council questions why increasing levies will continue to apply to household waste.

Similarly, the levy system previously recognised that source-segregated wastes which were re-processed would be levy exempt, on the basis that this was an outcome preferable to landfilling. However, where those materials are re-used at a licensed facility, the levy will now apply. In Council's case, differential disposal fees which encourage source-segregation have applied since 1996. Those source segregated materials have been re-processed into mulches or concrete based road construction materials. Some mulch has been sold off site under contract, whilst other material has remained on site and been used in final capping or as a temporary erosion control measure. All processed concrete is used on site to construct roads within the landfill to permit all weather safe access. Under the new legislation, levies will apply to all material used on site, and so differential pricing will no longer be practical. Gate fees will need to reflect the sum of processing and site supervision costs, along with the levy. Hence Council anticipates that material will be presented in mixed loads, and very little re-processing will occur. Thus the levy will effectively encourage waste disposal to landfill.

Levies are also being applied to wastes where no option other than landfill exists. This includes residual wastestreams from waste processing facilities or resource recovery activities, where the additional disposal costs impact on the viability of the process. In addition, levies are applied to soil materials where these are accepted and used at a licensed landfill (for example as compulsory

daily cover), but no levies apply if these soil materials are deposited elsewhere (for example as fill or top-dressing).

Regardless of these broader questions regarding the effectiveness of imposing the current levy, Council remains extremely concerned about the system in place to administer the levy.

Local Government or private landfill operators are obliged to collect levy monies on behalf of the State Government, but significant financial risks associated with administering the system lie with the operators. Council considers that these financial risks exist largely because the legislative and administrative frameworks are not sufficiently mature, robust or resourced to cater for the scale of the financial transactions involved and that these systems rely too heavily on discretionary powers of DEC officers.

The system does not recognise that landfill operators are not the waste generators, and so the creation of financial risks for operators provides no incentive for waste minimisation. As the scale of financial risk is dependent on the amount of waste received, one option which must be considered by operators is to limit the amount of wastes received at a facility. In the case of local government, an argument can be mounted that only domestic waste from ratepayers be received as this would permit obligations under the Local Government Act to be met, whilst removing potential levy liabilities, such as the potential $100,000 liability for Newcastle Council due to recent legislative amendments which commenced on March 1 2006.

Particular concerns regarding levy administration are detailed in the attached submission regarding the draft Waste Regulation. These concerns can be summarised as:

- A lack of any legislative obligation on the DEC to provide responses in a timely manner. As levy rebate schemes have relied on DEC determination of applications, their failure to respond can result in ongoing uncertainty and unreasonable delays in relation to monies due. For instance, Council recently spent over $10 000 on legal fees in an effort to elicit an EPA determination of a rebate application submitted (in accordance with EPA guidance documents) 12 months previously. As levies relating to the undetermined application were still being paid on a monthly basis, Council was owed approximately $250,000 by the end of the 12 month period. That outstanding amount existed simply due to a failure of the DEC to determine an application, and did not relate to the merits of the application. Punitive interest payments and potential legal action apply in the event that an operator fails to make levy payments by the due date, but no such protection is provided to operators.

  As operators must make a decision on whether to incorporate levies into gate fees, failure to respond to applications can have a direct impact on a business. Operators are forced to gamble in setting their fees on the basis of an assumption on the outcome of the DEC's eventual decision. This level of uncertainty exists only because the operators are forced to play a role in collecting levies, but can not do so from a sound position.

- The system has relied on the discretion of individual DEC officers which contributes to an unreasonable level of uncertainty. Council has again spent considerable sums of money on legal advice regarding a separate rebate application. That application referred to published EPA landfill guidelines in determining an amount of soil required for an operational purpose. Council received an amount of topsoil free of charge and used it for revegetation. However, despite the fact that Council used an amount of soil equivalent to only 20% of the amount recommended in the published landfill guidelines, a DEC representative refused the application claiming that the guidelines were obviously in error. Approximately $50,000 was outstanding to Council over a period of about 2 years. Due to typical response timeframes, Council was unable to have this matter determined in advance and so did not charge levies from the generator (which would have precluded Council from receiving the material as the material would have been transported elsewhere).

- No recognition is given regarding the resources required for operators to administer the levy. In fact, the DEC has proposed (in the (Waste) Regulation RIS) that a facility could administer its levy requirements utilising 2 person-days per year. Monitoring of staff activity over a 4-month period in 2003 showed that one officer spent over 20% of their time on levy-related matters. This reinforces the perception that the regulator is not in step with the logistics of the system.

- The levy and associated regulatory system does not provide for constraints imposed on local government operators by mechanisms such as the Local Government Act (LGA). For instance, the LGA limits the ability of operators to vary fees once they have been exhibited and approved. This makes it difficult to cater for changes to levy administration which occur outside the annual increase. For instance, Newcastle Council has a current potential levy liability of over $100,000 due to changes to the levy rebate system implemented in the (Waste) Regulation on March 1. Interestingly, in this case, Council has received correspondence from the DEC's Deputy Director General dated 9 March, which supports DEC's earlier advice provided in December 2005 that the relevant changes would be implemented on July 1 2006. This level of uncertainty by senior DEC officials regarding administration of the levy provides an indication of the difficulties faced by operators.

Council notes that recent and proposed amendments to the legislation have removed many administrative tasks from the DEC, as operational rebates essentially no longer exist. However, these changes appear designed to simply reduce the DEC's workload and increase revenue, and are not based on any real environmental outcomes.

The development of new technology and industries associated with waste management.

As noted in the attached cover letter, despite Council's significant investment in a modern engineered landfill, Council has also committed significant resources to a Regional Waste Project over recent years. This project is a joint initiative with neighbouring councils which seeks to treat up to 160,000 tonnes of municipal waste in an AWT facility.

The complexity and levels of financial commitments associated with such developments have meant that the project has proceeded through an extensive planning stage. Timeframes for these projects extend over 20 years or beyond, and financial liabilities run into many millions of dollars. During this project development stage, the project team has sought advice from the DEC, particularly regarding regulatory aspects which have significant potential implications on the financial viability of the project.

Of particular interest has been application of the waste levy to these developments. To date no clear advice has been available which allows levy impacts to be quantified in financial modelling of proposed developments. The recently announced changes to the waste levy and rebate system associated with the "City and Country Environment Restoration Program" have done nothing to increase certainty. Many of the AWT facilities utilise new, unproven technologies and Councils assume risks when adopting them in their attempts to comply with State Government diversion targets. These risks are demonstrated by recent failed processing technologies. The uncertainty around levy impacts further increases Council's level of risk as they are forced to commit to long term agreements in a changing regulatory regime.

Minimising harm to the environment in the provision of waste management services

Regardless of any AWT that may currently be adopted, a residual wastestream will require landfilling. Similarly, some wastestreams are not suited to resource-recovery processes. As noted above, the current levy system provides no incentive to operators that invest in the construction and operation of modern, engineered landfills. Regulatory regimes should act to encourage or reward best practice facilities.

The licensing system which regulates scheduled facilities also creates an uneven "playing field" as individual licences contain vastly different conditions governing operations. The variation between licences appears to be due to the reliance of the system on individual DEC-officer discretionary powers. The differences introduce significant variations in operational costs, and can act to punish operators who voluntarily adopt or are forced to adopt (by relevant DEC officers) more stringent controls. For example, many licences contain prescriptive conditions specifying the type and thicknesses of materials to be applied as daily cover, yet other licences permit no daily cover to be applied.

Due to the nature of landfill operations, sediment and erosion control are important aspects of a site's environmental performance. As noted above, Council has traditionally made use of processed greenwaste to cover areas of disturbed ground in an effort to minimise erosion. This practice is supported by the Universal Soil Loss Equation, which recognises the primary importance of applying cover as a soil loss prevention technique.

Despite this, recent amendments to the legislation mean that material used in this manner will now attract the waste levy. This will make previous practices cost prohibitive, and Council anticipates that significant less processed material will be available for those purposes.

Similarly, soil products which were suited to an operational purpose at the landfill, such as daily cover, were also eligible for rebate of levies due. Whilst Council has been frustrated by administration of this system, it did allow smaller-scale excavations to occur on site, which reduced erosion, fuel consumption and greenhouse emissions. Once rebates no longer exist, Council expects that differential pricing which encourages this material to be presented will no longer be viable and more reliance will be placed on cover reserves on site. Not only will additional excavations occur, but higher quality material suited to final capping works will likely be utilised as daily cover.

NEWCASTLE CITY COUNCIL
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ATTACHMENT 1
NEWCASTLE CITY COUNCIL SUBMISSION REGARDING DRAFT POEO (WASTE) REGULATION AND RIS

Introduction

Below are comments relating to the Regulatory Impact Statement (RIS) and draft Regulation. The headings below refer to chapters within the RIS, with some general comments at the end. Comments are restricted to those chapters dealing with the s88 waste levy. Comments on the legislation are incorporated with comments on the RIS.

Chapter 7

Council agrees with the philosophy underlying application of the levy, as stated at the end of section 7.1 – ie that the levy should act as an incentive for waste avoidance and resource recovery. However, Council is concerned that the levy as currently administered, or as it would be administered under some of the changes proposed, actually acts as a disincentive for effective resource recovery or positive environmental outcomes.

Council notes language used in section 7.2 of the RIS, whereby it is stated that "...levies collected totalled" an amount. Conversely, it is stated that "...levy exemptions claimed cost" an amount. In fact by definition, no levies are due on wastes which are levy exempt, hence the fact that those levies are not paid should not be regarded as a "cost". This language suggests that the levies are regarded primarily as a revenue source that the State Government is entitled to and that any initiatives which reduce waste to landfill result in a budgetary impost and as such should be discouraged. If it is assumed that an RIS should provide an objective assessment of impacts of legislative changes, the use of such "coloured" language is questioned.

Further, it is noted that the restriction of approved operational purposes during 2004 is justified by the fact that some facilities re-used wastes for valid construction projects located off-site. Whilst such projects may possibly add some complexity to administration of the levy, surely any projects which divert material from landfill should be encouraged, not taxed. The location of re-use projects within or outside scheduled premises should not determine whether they are operational purposes.

Further, many of the materials suited to such uses as playing field construction, track construction or revegetation are suited to those uses on sites other than licensed landfills. However, in many cases, opportunity to stockpile such material exists on scheduled premises, and hence the material enters those premises. In that situation, the levy is applied simply because of the location of the stockpile and does not reflect the inherent value of the material. A case in point is VENM such as clean topsoil. This material, once excavated, can be applied to any premises at any thickness without application of the levy. However, once the material enters a scheduled premises (which is likely to have disturbed areas requiring topsoil), the waste levy applies. Any rebate of that levy is then at the whim of DEC officers and is potentially subject to unrealistic conditions regarding methods of application. This acts as a strong disincentive to re-use or quality rehabilitation.

The RIS further supports the limitation of operational purposes by noting that reprocessing or recycling rebates were much smaller in scale than operational purpose rebates. This is to be expected, as source-segregated materials are far more suited to reprocessing, and these would be levy exempt. The use of material for an operational purpose is more consistent with the waste hierarchy. Any beneficial use of potential waste that is not reliant on re-processing/recycling should be encouraged, not taxed.

The argument that operational purpose rebates have not been taken up evenly should not be used as justification for removing access to those rebates. Facilities that have familiarised themselves with requirements and then made beneficial use of waste materials should not be punished because other facilities have not done so. Facilities that claim operational purpose rebates are not being subsidised (unless levies are incorporated into gate fees). Incorporation of fees would not be necessary if DEC determinations of rebate applications were made in a timely fashion that allowed facilities to budget accurately. (Council's experience is that levies must be incorporated into some fees due to financial risks associated with DEC response times in the order of 6-12 months).

Council also notes the need to regulate the levy, in the same manner that any tax must be regulated, and that levy avoidance will occur along with other forms of tax avoidance. However the example provided within section 7.3, whereby a facility was regarded as avoiding the levy because it used "clean separated inert waste" as daily cover instead of road building, does little to support the notion of the levy being aimed at resource recovery and positive environmental outcomes. In fact, some facilities are licensed to use inert waste as daily cover, whilst others are not even required to apply daily cover. Surely these gross variations between licence requirements acts as a greater competitive disadvantage than the uneven take up of operational purpose rebates? Similarly, facilities which "regularly amend their waste management plans to take advantage of available waste" are working in accordance with the intent of the legislation and should be applauded for maximising resource recovery, rather than being criticised for maximising rebate claims.

Chapter 8

Council agrees that administration of the levy has shortcoming which need to be addressed, and as such supports a review of the legislation. However, Council is disappointed that shortcomings detailed in the RIS exist from the perspective of the DEC, and that many of the basic difficulties experienced by Council as a facility operator are not considered.

Council supports the use of the December quarter CPI to calculate upcoming levy rates (cl 5) as an inability to carry out accurate forward planning during budget preparation has been an ongoing problem. Council assumes that formal advice from the EPA regarding levy changes will be provided at an earlier date following these changes.

The revised clause relating to interest on unpaid levies (cl 8) whilst being less punitive, still lacks flexibility to deal with oversights or inadvertent omissions. For example, Council has previously paid levies after the due date because of invoices being mis-directed within internal mail systems or levies being calculated on waste data for incorrect reporting periods. These instances were inadvertent and were not designed to delay payment. However, both the current and proposed clause do not provide flexibility regarding whether interest is imposed. Due to the amount of monies involved in monthly payments, punitive interest payments are at a scale disproportionate with these errors.

The proposal to apply levy to any waste that was source-segregated and re-processed at the facility if that processed waste is used at the facility (cl 10 (4)(b)) is a major concern for Council. In fact, it is likely that Council would discontinue all processing of greenwaste and masonry products on site as they would no longer be financially viable.

Council has traditionally charged differential pricing to encourage source-segregation. Resultant greenwaste and concrete stockpiles have then been re-processed.

Stockpiled concrete has been processed under contract, and all processed concrete has been used on site for road construction. Ongoing road construction is needed if trafficability and adequate safety standards are to be maintained, particularly in wet weather. Council previously also used unprocessed concrete for road construction, however since this is no longer recognised as an approved operational purpose, Council has been forced to process all concrete instead of re-

using it so that the material is levy exempt. Thus, administration of the levy has forced Council to operate contrary to the waste hierarchy. If material used on site is no longer levy exempt, Council will be forced remove differential pricing, landfill all concrete received, and purchase road construction material as this will be a significantly cheaper option.

Greenwaste has also been processed under contract, and either removed for use/sale off site by the contractor, or retained on site for compulsory rehabilitation works associated with final capping or previous mining activities. In some cases, Council has sought to have processed material removed from site under contract, but contractual difficulties have resulted in material remaining on site. Council's landfill is located on a 260 ha site that was previously used for open cut and underground mining, and so significant opportunity exists to use processed greenwaste on site. In addition, daily cover excavations etc need ongoing rehabilitation to minimise erosion. Again, imposition of levy to these materials would render differential pricing and processing unsustainable and Council would be forced to cease those activities.

The proposed changes to clauses governing rebates (cl 11) do not address difficulties experienced by Council to date, and again, potentially work against the intent of the levy. Council strongly supports the need to address timeframes involved in administration of the levy (see comments below), however imposition of a 2 year timeframe for rebate claims is not consistent with waste minimisation, and potentially makes it impossible to beneficially re-use some resources without suffering financial penalty.

Council's experience is that the DEC enforces strict limits on the amount of material approved for operational purposes (in some cases approved amounts have totalled only 10% of published EPA guidelines). Thus, if significant amounts of useful material such as VENM are received and stockpiled during a period that does not coincide with major capping works, it is feasible that DEC approval to use that material will not be received within the 2 year timeframe as demand could not be justified. Operators could then, for example, be forced to use high quality topsoil as daily cover, or alternatively pay levies to use the material at a cost similar to market rates to purchase equivalent material.

Council notes that the RIS supports the 2 year timeframe by noting that consideration of claims over long periods "creates uncertainty over levy revenues". In view of the RIS also recognising that levy exemptions are largely self-governed with periodic audits, then perhaps the 2 year liability limit could be extended to exemption refusals arising from audits (which Council understands currently operate on an approximate 5 year schedule). This would protect operators from the "uncertainty" of 5 year old levy liabilities which arise as a result of audits not occurring during that period.

The removal of the need to support rebate claims with Environmental Waste Management Plans (EWMPs) appears to provide no benefit. In fact, operators have less certainty over the information required to be submitted, as cl 11(3)(b) provides that "evidence as may be required by the EPA" should accompany the application. No details are provided as to the format of the "approved form" to clarify this issue. Thus EPA discretion is increased by this clause.

The provisions of cl 11(5) are totally inadequate from an operator's perspective in that no avenue of appeal over EPA determinations is provided or specified, no parameters are defined within which EPA determinations must be made and no timeframes for EPA determinations are set out. This is a core issue from an operator's perspective, as these shortcomings make the current system unworkable from the perspective of operators who are obliged to operate as a business.

This reliance of the system on discretionary powers of individual EPA officers means that operators have no certainty with regard to levy imposts. In the case of Council's facility, levies total approximately 23% of the facility's total annual turnover. This is obviously a very significant amount, yet Council (and other operators) must attempt to administer these amounts within a system that lacks the certainty or "checks and balances" of other more mature taxation legislation. The RIS points out a number of times that proposed changes to the legislation are aimed at

addressing these issues from the government's perspective, but no such consideration is given to operators.

Council also notes that the legislation provides strong powers for the EPA to set timeframes for levy payment and related reporting, as well as punitive interest payment provisions where these timeframes are not met (even if inadvertently). The application of interest to overdue payments is supported by an argument that the value of unpaid levies to the government needs to be preserved. This notion is supported by Council if similar protection is provided to operators.

The legislation (current or proposed) does not incorporate any obligation on the EPA to respond to rebate claims or other levy matters in a timely manner. Council notes that planning legislation provides for a default assumption of refusal in the event that applications are not assessed within specified timeframes, and also specifies an appeals process in that event. Various taxation legislation also ensures a response from government within certain timeframes and in some cases allows for interest payments where response times are not met. The RIS notes that consideration of applications over extended timeframes is "not good corporate governance and creates uncertainty about levy revenues". Ignoring the underlying philosophy of regarding levies as revenue streams, Council strongly agrees with this point. However, Council continues to be frustrated that no protection is extended to operators regarding this issue. As noted elsewhere, Council has experienced repeated and ongoing delays in attempting to have levy matters determined, and currently has undetermined claims for 2005 which total in excess of $180 000 and extend back to January.

Council has previously expressed concern over any proposal that requires volumetric surveys to be conducted by a registered surveyor. Council has been unable to identify any advantage from utilising a registered surveyor in place of any other qualified surveyor, as volumetric surveys do not involve the determination of site boundaries.

In Council's case, adoption of the proposed legislation (cl 14(1)) would prevent Council from using its own qualified surveyor. That Council surveyor has extensive landfill experience and site familiarity due to ongoing involvement with the site – for example Council conducts its own monthly airspace surveys. Council strongly objects to the proposed change and regards it as an unreasonable restraint of trade.

General Comments on the Impact Assessment – Chapter 9

Council finds it scarcely credible that any assessment could assume that an individual facility could meet its levy administration requirements through "two person-days per year". As noted elsewhere, Council's levy impost equates to approximately 23% of its facility's annual turnover – administration of this amount by one person over 2 days per year would be a significant achievement.

Monitoring of staff activity during a 4 month period in 2003 revealed that one Council officer spent 22% of their time attending to waste levy issues. (This did not include another 10% spent on licence administration). This further excludes time spent by accounting staff in payment and budgeting, additional site resources conducting activities such as transporting operational material over the weighbridge, or survey staff conducting surveys to record operational uses etc. In addition, Council has spent in excess of $10 000 during the previous 12 months on legal advice directly relating to levy issues.

It is noted that the RIS states that approximately one third of the total levy is raised from municipal sources. The RIS also states that "the levy is not considered to be a major determinant of upstream behaviour...by households generating municipal waste". This is not surprising as the RIS explains that the levy will cost households an estimated 11 cents per week at its maximum level in 2012. On the basis of this argument presented in the RIS, Council questions why the levy is applied to municipal waste in view of the stated intent of the levy. If it is not acting to deter waste generation, why is the levy applied?