

Submission
No 1045

**INQUIRY INTO PROPOSED ENERGY FROM WASTE
FACILITIES**

Name: Name suppressed

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Partially
Confidential

Although this focus is on Woodlawn ARC, points made are intended to apply to all cases of Energy from Waste infrastructure placements.

With reference to
Environment Protection Authority NSW Energy from Waste Policy Statement
Environmental Planning and Assessment Act 1979, Protection of the environment
Operations (General) Amendment (Thermal Energy from Waste) Regulation 2021
and the Energy from Waste Infrastructure Plan, September 2021

As this document is submitted, I am aware that a new Energy from Waste Framework is in the process of being completed. I would note that under current practice, new policy documents replace earlier versions, which should no longer be referenced. I will be interested to see how much of what was included in the current policy referenced here, will be retained in the new, with particular emphasis on those sections of the policy I refer to below. I would also be looking closely at the justifications for exclusions. I would assume exclusions would be based on scientific evidence, and would hope that references to this evidence are included, and that the scientific papers are published, peer reviewed and independent.

In the Energy from Waste Infrastructure Plan, September 2021, the government states

“Protecting human health and the environment is a fundamental objective. The NSW government is taking precautionary steps to restrict energy from waste from parts of NSW to protect human health and air quality. This will ensure new industries such as energy from waste are not contributing unnecessarily to health impacts from air quality across NSW”

The Energy from Waste Infrastructure Plan, September 2021 also states

“ urban growth is increasing the spatial extent of human induced emissions and exposing more people to the impacts of adverse air quality. There is a need to avoid the exposure of high pollution centres in NSW to new sources of air emissions and take precautionary approaches for all regional communities, especially those that may be more vulnerable to air quality impacts.

Populations can still experience health impacts when emissions are below the national standards, and for some common air pollutants there is no safe threshold of impact”

In relation to the proposed Woodlawn ARC, if this proposal is approved the NSW State Government are knowingly and by their own admission, placing the health of people in this area at risk. They are knowingly exposing the people of Tarago and it's surrounds to pollution that has “no safe threshold of impact”.

Although “protecting human health and the environment is a fundamental objective”, this is not being applied to some residents in the state of NSW. It is not a “fundamental objective” for everyone. The environmental impacts matter less in some areas, than others.

There are no credible arguments presented to justify this cherry picking of fundamental rights.

If you live in an urban area such as Sydney, the NSW Government is stating that your health is of inherently more value than if you reside in the more sparsely populated rural area of Tarago. Indeed, if you live anywhere in NSW outside of the four named zones,

even though some of these areas are as sparsely populated as Tarago, or less populated than Tarago, your health is being actively protected. A protection that is not provided to the people of Tarago and the people who live in the vicinity of Tarago.

To attempt to justify this action with a comparison of the current levels of air quality between Tarago and urban environments in NSW, assumes that there is documented air quality for Tarago. I am unaware that such documentation exists. Additionally, it implies that there is a set level of poor air quality that is desirable for Tarago to meet. Obviously better air quality for everyone, everywhere should be the objective of the government and “for some common air pollutants there is no safe threshold of impact”.

To summarise the policy argument: Sydney air quality is bad and we don't want to make it worse, so we will make air quality worse in Tarago.

The admission of harm, as outlined in the policy document, requires the minimising of harm. Banning the use of waste to energy projects is the best response. However, if they have to be implemented, surely a proposed location should take into account minimising population exposure. Has Tarago ARC been selected on this criteria? The least number of people impacted? The smallest impact environmentally? Again, I am unaware that any such study was completed. I am also doubtful Tarago would be the answer if such a study was done.

So why Tarago, you may well ask. Was it selected, raffle style, out of a top hat? Is there a pandering to the proponent?

Are there no other exempted places in NSW where air quality is similar to Tarago? Are there no other exempted places in NSW where air quality is better than Tarago? How much of NSW is covered by air quality testing? Surely if we are looking to make good air quality worse, then logically, find the best air quality available and start there.

Has the process that selected Tarago been documented and for the sake of transparency, published?

A definition of criminal negligence is to knowingly cause harm.

“ A person is negligent with respect to a physical element of an offence if his or her conduct involves:

A. such a great falling short of the standard of care that a reasonable person would exercise in the circumstances; and

B. Such a high risk that the physical element exists or will exist; that the conduct merits criminal punishment for the offence.”

The legal understanding of an offence does not take into consideration the number harmed, (although it may affect the sentencing).

Despite the fact that Tarago has gone through a submissions process which overwhelmingly rejected this proposal, and are still waiting on the proponent to respond to submissions FOUR years later, the NSW Department of Planning and the EPA refer to this proposal as a given. On current form it should already be scrapped. The community have said a clear and resounding no. By supporting this proposal the Department will be knowingly ignoring the wishes of the community and making a travesty of community

engagement. By going ahead with this proposal the Department will be taking the position of knowingly causing harm.

This could be seen as the legal equivalent of amending the law to say you cannot commit murder except if the person(s) you murder live(s) in Tarago.

Another example to highlight the nature of the flaw in current policy, would be to build a children's playground on a site known to be contaminated with asbestos.

We know waste to energy technology causes pollution that can harm human health. So much so, we have banned it. Except for places ruled as being outside the protection of the law.

The Environment Protection Authority NSW Energy from Waste Policy Statement states "In NSW, two key policy objectives are enshrined in the state's waste legislation. Firstly, the Protection of the Environment Operations ACT 1997 sets the framework to ensure that human health and the environment are protected from the inappropriate use of waste"

I argue that the current Environmental Planning and Assessment Act 1979, Protection of the environment Operations (General) Amendment (Thermal Energy from Waste) Regulation 2021,

contravenes the stated principle of the act itself. It contravenes the Act by placing the health of Tarago residents outside of the overarching objectives of the Act.

There is no justification for this.

I am expecting all direct references to harm will be removed from the new Energy from Waste Framework. If challenged on this, vague assertions of improvements in technology will be made without references or evidence. The Department of Planning may believe that rewriting policy erases the past, but I am not sure a court of law would hold that view.