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Submission from Tweed Shire Council

## **Proposed Legislative Changes to the POEO Legislation in NSW – Consultation paper, New minimum standards for managing construction and demolition waste in NSW**

### **Summation**

Tweed Shire Council submit the following information as a response to the Consultation Paper on the new minimum standards for managing construction and demolition waste in NSW, and proposed amendments to the Protection of the Environment Operations Act and Regulation.

The amendments are being proposed to prevent environmental harm and to protect public safety and health, however Tweed Shire Council is concerned that the changes will lead to an intensification of the operations at a number of small regional landfills and waste processing facilities without achieving any of the stated goals.

This proposal appears ideology based around a premise that all waste, no matter the value or existence of a market, should be recovered, and does not take account business or economic reality. The amendments have been proposed to address particular issues but will be much wider in application and scope if adopted, as recommended in the discussion paper.

The proposals also appear to have been reached to solve issues related to the metropolitan area and have ignored the economic imperatives and circumstances of regional operations. The likely results of the amendments proposed are; significant increases in the cost of operations which will impact on customers and illegal dumping, the production of large quantities of low value low demand products, and no real reduction in risk or exposure for residents.

It is Council's thought that the operational elements of the proposed amendments are ill conceived and not appropriate for dealing with waste issues outside the metropolitan area for the reasons listed below.

The analysis is from a Regional Council perspective and in particular notes the Tweed Shire Council's perspective taking into account Council's location and proximity to Queensland and the economic and rational need to use Queensland markets for processing, sales and disposal.

It is believed that Tweed Shire is somewhat unique in sharing the Queensland border, and the proposed changes and consequences for Council of each change in light of its uniqueness has been assessed. Much of what is included in this is also relevant to other Northern NSW Councils including Byron Bay Shire and Ballina Shire Councils.

We have also tried to consider what the impacts will be on our daily operations and not just on disposal and processing as the likely consequences of these changes will impact the day to day operations of Council.

### **Tweed's current position**

Tweed Shire Council currently own and operate the Stott's Creek Resource Recovery Centre (SCRRC) under two Environmental Protection Licenses; EPL 12181 for landfilling of solid waste and EPL 6108 for the sorting and processing of source separated organics and demolition waste for diversion from disposal to landfill. The landfill has been in operation since the 1980s with the old part of the site closed under direction from the EPA in 2006.

The current operational landfill is broken up into cells for the burial of putrescible and non-putrescible (wet and dry) waste. The cells are designed and managed differently. The wet or putrescible landfill cell is designed to receive mixed waste including household food, and mixed industrial and commercial waste. This cell is approaching capacity with only minimal space left to be filled. The non-putrescible cell has significant capacity remaining for the receipt of dry or mixed demolition type waste.

Council has the ability to build one more cell at the SCRRC, and this currently has consent in the form of a DA to allow this be developed as a non-putrescible waste cell.

Council has sought and has in principle support from the EPA to develop the final cell at the SCRRC as a putrescible waste cell, however in order to do this the DA on the site needs to be amended and the design of the new cell needs to be prepared in line with the EPA landfill design parameters.

Council also own and operate a number of maintenance depots for the day to day operations of Council and are responsible for the management of water and sewer. The depots are used to handle all types of operational materials that would likely be classified as waste. These changes will likely impact these operations as well.

### **Tweed Shire Council's Waste operations**

Tweed Shire has been exporting waste to Qld on the basis of open tenders and a contract awarded as per the procurement requirements of the Local Government Act and as per the POEO legislative provisions. The contract for transport and disposal was awarded to a firm proposing to take that waste to a best practice landfill (Veolia's Ti Tree Bioreactor, Champions Way, Willowbank QLD 4306). The Ti Tree facility lists the following attributes to support their environmental credentials:

Ti Tree Bioenergy is a waste disposal facility that utilises "best practice" bioreactor technology to rapidly stabilise waste while capturing environmentally damaging methane and converting it into electricity.

The facility utilises the 36 million cubic metre void left over from a previous open cut coal operation on the outskirts of Ipswich. As the site is filled, completed areas are rehabilitated to complement the surrounding natural environment.

Ti Tree is located adjacent to main roads and rail transport, further enhancing its appeal for economically sustainable waste management in Australia and the world.

At Ti Tree Bioenergy, they are committed to sustainable development of renewable energy. Their bioreactor facility is an exciting, environmentally sound alternative in waste management and they are proud to be leading innovators in the environmental industry.

In conjunction with the development of the green energy from the bioreactors, the facility also focuses on sustainable development in all facets of its operations, such as the development of forestry plantations and wildlife corridors.

This facility is much better appointed than the Tweed Shire landfill and therefore able to process waste and ensure methane is captured and managed to the benefit of the community. The production of landfill gas at the Stotts Creek Resource Recovery Centre (SCRRC) has been falling in quality and quantity over the last four years to the point where the methane produced is no longer able to support the motor generating power and this has been removed from the site with the landfill gas being treated by flaring.

During the most recent tender process for the transport and disposal of waste (tenders closed 7/11/2016), no NSW based operation submitted a tender and Tweed Shire do not have landfill capacity at the site to continue disposing of putrescible waste beyond a very short term. Without capacity or a legitimate tender submission Council is not in a position to dispose of putrescibles in NSW until new capacity has been developed at the SCRRC however developing new capacity is significantly more expensive than continuing to export putrescibles to Qld and the environmental outcomes are improved with the Qld option.

### **Proposed changes to POEO (waste) Act and Regulations NSW**

The EPA has released a Consultation Paper proposing a number of changes to the POEO Act and Regulation which will on Tweed Shire Council landfill and processing operations as well as potentially impacting our day to day operation. These amendments proposed include;

- Extensive amendments affecting the monitoring, inspection, sorting, processing, testing and disposal of mixed and sorted demolition waste streams at processing facilities and landfills, and any material that meets the definition of waste in the POEO legislation, (Consultation paper item 2,7and8)
- The ability to use sorted fines (fill) as an exempt landfill cover (Consultation paper item 2)
- Clarification on asbestos handling requirements and operational purpose deductions at landfills (Consultation paper item 4 and 6)
- Removal of the ability of a landfill to export waste elsewhere for disposal when that landfill have an approved site with capacity to accept that type of waste, and

- proposed change to the onus of proof when using an alternate disposal of processing facility (Consultation paper item 3 and 5
- Removal of the proximity principle offence and the creation of levy liabilities for transported waste, (Consultation paper item 9), and
  - Clarification of the application of POEO General Regulation in regard to land pollution offences on landfills (Consultation paper item 10).

The amendments are spread across three main themes;

- Those that are administrative in nature to remedy issues with the current legislation that have been identified since 2014 when the POEO Act was reviewed,
- The removal of the Proximity Principle offence in clause 71 of the Protection of the Environment Operations (Waste) Regulation 2014, and the creation of an offence when a site chooses to export waste for disposal if they have the ability to dispose of that waste on their site, and
- Provisions relating to the inspection of loads, and the need to sort, process and test mixed demolition material and screened fill.

The discussion below will outline the issue identified by the EPA that requires redress and the proposed means of redress as well as any likely and unforeseen consequence on the operations of Council likely to occur as a result of the proposed change.

### **Consultation paper item 1 - Introduction**

Item 1 refers to the successes of the 2014 POEO Legislative reforms before highlighting ongoing issues in the Construction and Demolition sector.

The EPA then proposes a list of changes to the waste regulatory framework in NSW to meet the objectives of the POEO Act. The changes are meant to complement waste policy in NSW including the WARR strategy 2014 – 21, and significant investment through the Waste less Recycle More program.

### **Item 1 - Council's response and potential issues for Tweed Shire**

Tweed Shire Council has been operating our landfilling and waste processing businesses as per the POEO legislation and have put a number of arrangements in place that take account of our location and proximity to Queensland. These have been structured around the current legislation that we believed provided a degree of certainty, by establishing the conditions of operations for Council.

Our Integrated Waste Strategy and policies have all been informed by the current legislation including the Waste Avoidance and Resource Recovery Act as well as the object and provisions with the POEO legislation, the waste hierarchy and economic reality and the need to provide value for money to residents and customers.

Below are the Objects of the POEO Act 1997;

The objects of this POEO Act are as follows:

- (a) to protect, restore and enhance the quality of the environment in New South Wales, having regard to the need to maintain ecologically sustainable development,*
- (b) to provide increased opportunities for public involvement and participation in environment protection,*

- (c) *to ensure that the community has access to relevant and meaningful information about pollution,*
- (d) *to reduce risks to human health and prevent the degradation of the environment by the use of mechanisms that promote the following:*
  - (i) *pollution prevention and cleaner production,*
  - (ii) *the reduction to harmless levels of the discharge of substances likely to cause harm to the environment,*
  - (iia) *the elimination of harmful wastes,*
  - (iii) *the reduction in the use of materials and the re-use, recovery or recycling of materials,*
  - (iv) *the making of progressive environmental improvements, including the reduction of pollution at source,*
  - (v) *the monitoring and reporting of environmental quality on a regular basis,*
- (e) *to rationalise, simplify and strengthen the regulatory framework for environment protection,*
- (f) *to improve the efficiency of administration of the environment protection legislation,*
- (g) *to assist in the achievement of the objectives of the Waste Avoidance and Resource Recovery Act 2001.*

The transport of waste to Queensland has been assessed at a Council level and regionally as the most environmentally responsible manner of managing waste. The Ti Tree Bioreactor landfill facility where the waste is currently being taken is a state of the art design with the economies of scale of operation to ensure best practice is maintained. The SCRRC is a smaller facility which is not able to match the Ti Tree facility for processing or performance.

The changes as proposed will have much more far reaching impact than what is proposed. The discussion paper is couched in terms referring to the purpose and intent to regulate the management of Construction and Demolition waste, however the proposed amendments will impact on all waste streams and methodologies of processing as well as the day to day operations of Council.

### **Consultation Paper item 2 - Construction and demolition waste industry reforms**

The EPA has highlighted ongoing issues in the regulated area at licenced facilities, of which Tweed is one. These include

- Poor screening and inspection processes prior to removal of waste from site,
- Negligent handling of waste leading to contamination,
- Sending mixed loads of C&D waste off site including recoverable resources, for disposal,
- Non-compliant production of recoverable fines under the resource recovery order.

The criterion proposed by the EPA on which to determine the need to maximise recovery is that a facility meets the licensing threshold, and this is determined based on Schedule One of the POEO Act. The licensing threshold for a processing facility that deals with the materials Tweed process on site is any site that has more than 1,000 tonnes of waste on site at any time or more than 6,000 tonnes of waste through the site per year.

### **Item 2 - Council's response and issues for Tweed Shire**

Tweed Shire Council's SCRRC has two licenses, being EPL 6108 (Waste processing non-thermal treatment) and EPL 12181 (Waste Disposal application to land). The Consultation paper refers to construction and demolition waste processing; however our license is used to facilitate processing of more than just C&D waste.

The SCRRC is a joint facility with one entry and a dual weighbridge. The material brought into the site on EPL: 6108 typically consists of source separated recyclables, recoverable items, specialised waste streams, concrete, bricks and tiles, chemicals and paint, and garden waste. Soil (VENM and ENM) is also accepted at the site, and currently stored on EPL 12181.

In 2015/16 Tweed Council received 11,306 tonnes of green waste, all of which was processed and reused, and 16,385 tonnes of demolition or dry waste. The demolition waste was made up of;

- 3,814 tonnes of mixed builders waste,
- 6,050 tonnes of clean and or processable fill,
- 5,785 tonnes of processable concrete, bricks and tiles,
- 251 tonnes of reusable VENM, and
- 485 tonnes of mixed metals.

The only products that are not directly processed or recycled at present are the mixed builders waste and some of the mildly contaminated fill. Any clean fill is largely screened and sorted on site on the basis of risk assessment and inspection. Most of the clean fill is being used for the rehabilitation of landfill cells, the development of phytocapping to address legacy issues on older long closed section of the site and for the capping and cover on newer operational cells at the site.

Council is currently diverting over 64% of the waste received on EL 6108 inclusive of the organics, concrete, bricks and tiles, and the VENM and mixed metals. If Council was able to divert 50% of the clean and or processable fill in the aforementioned capping projects, the percentage salvaged or reused comes to over 75% of the waste received on EPL 6108.

It is likely that Council will be able to reuse a greater amount of the fill received however the proposed amendments for processing of fines will add significantly to this cost, particularly for soil that is proposed for use in landfill phytocaps or on site. This material should be fit for purpose but not require laboratory testing and extensive processing.

The current recommendation to inspect every load whilst the waste is still in the vehicle is almost unworkable on a moderately busy weighbridge such as at the SCRRC. This will require that every load, which if legally transported will be tarped to have their tarps removed, and for the weighbridge operator to leave the office and climb onto the side of the vehicle to inspect loads. Whilst it is possible to have a look at using a camera, it is not clear that this would be adequate. Council currently have overhead cameras on the entry weighbridge.

Further, the weighbridge officers do not have direct access to the weighbridge deck and the weighbridge would need to be reconfigured to allow this. This would also present issues for security in the weighbridge and the protection of staff.

If somebody is seeking to hide waste or trying to conceal a mixed or contaminated load it is unlikely that they will expose themselves, and if they do so once, they will be unlikely to do so in future. Further scrutiny already occurs on site and contaminated loads, once identified, are always segregated and acted upon. Council does not

however have enough staff to supervise every receivable point on the site and it would be impractical to do so as many of these will receive only a few loads per day.

The requirement to spread mixed loads of waste on a surface and to have trained personnel examine the whole load for contaminants will mean sites such as the SCRRC will need to employ additional staff, plant and equipment at significant increase in cost to operations subsequently our customers. This will reflect in significant cost increases which Council is not in a position to recover if introduced on such short notice during the middle of a financial year.

The introduction or modification of fees and charges requires advertising for a period of at least 30 days, and consideration of all responses by the elected body in Council. It is neither equitable nor feasible to foist such a change on operators with such short notice, and on the basis of a discussion paper which may or may not be adopted. However Council will need to consider this as likely given the way this paper is couched.

The recovery of material also appears to be a philosophical position taken by the EPA on the recovery of resources, which ignores economic imperatives and sustainability. Many of the products that Council is being asked to recover have very little if any value and virtually no market. The cost of sorting and validating on a small site will not allow cost recovery without extremely high tipping fees. Higher tip fees are likely to encourage illegal dumping. This approach focusses on punitive measures and not rewarding good behaviour.

Council has a number of educational and pricing strategies in place to recover higher amounts of material and to incentivise source separation, however the infrastructure, plant, equipment and labour necessary to comply with the proposed amendments will cost hundreds of thousands of dollars.

Whilst the Consultation Paper mentions the Waste Less Recycle More Grants as a potential source to fund these costs, no consideration is given to ongoing cost of operations or the timeframes necessary to apply for grants, and if successful, deliver the outcomes necessary. Further, Tweed Shire Council was advised that they were not entitled to apply for funding in the early years of the WLRM programs despite paying a considerable amount in waste levies, as we were exporting waste to Qld.

Small scale non-metropolitan facilities such as the SCRRC with both a disposal license and processing license will not be able to afford to process the material viably without increasing rates considerably, and will be in breach of the new provisions if they do not process the mixed waste prior to disposal.

The reforms relating to construction and demolition waste processing appear ill considered, unequitable, and driven by ideology that takes no account of practicality or economics. The consequence of the introduction of these changes at best will be significant increases in cost to residents and customers, and at worst, an increase in cost with higher levels of exposure to staff and customers for no real increase in recovery. The nominal scale of operations proposed to identify a site that has the ability to process C&D does not take into account cost or timeframes or the complexity of smaller regional sites.

The resource recovery targets that are listed are reasonable and achievable if Council is able to include all waste processed on their site including organics. The high influx of soils that are being experienced currently are however likely to lead to the generation of products with limited demand and low value. Poor quality fills such as

sandy soils may have no contamination, but will still remain poor quality soils, and there is virtually no demand for these other than as a mixable product to manufacture a capping type material.

Council can manufacture soils for phytocaps, and as cover material, but both demands are finite and eventually supply will outstrip demand. The economics of soil screening and cleansing with poor quality sandy soils does not make sense as this makes very poor cover material for landfill. Lab testing and validation is expensive and unnecessary, and it would appear that this provision has been proposed to deal with illegal operations in the metropolitan area that may not get picked up.

The mixing of sorted products is also listed as an offence however Council will regularly mix and blend soil to develop certain properties in that material, or mix mulch with soil with mulch to produce a growing medium that is capable of supporting plants.

Reference is made in Section 2.3 is to the application of these provisions to most facilities in the metropolitan area; however the legislation is applicable to all areas.

This amendment may also impact our operational depots. Council currently operate a number of smaller depots that receiver construction and demolition waste, mainly soils and road materials. In most situations Council would remain below threshold for licensing at these facilities however annual fluctuations in works programs may inadvertently lead to thresholds being reached.

To avoid problems from this EPA representative advised at a meeting on 4 November 2016 in Lismore that Council should work towards licensing at the depots. The infrastructure requirements including fencing, gates, weighbridges and personnel are significant and whilst materials are separated on site this is not the core business. This change will likely lead to all material being disposed of and if the material needs to be processed the cost would be considerable which would reflect in reduce programs for Council.

### **Consultation Paper item 3 - Improving performance at landfills**

The EPA have identified that a number of metropolitan landfills have been exhuming and exporting waste. This practice has been identified as causing a number of environmental, health and human safety risks and as being inconsistent with the aims of the landfill guidelines.

The proposed remedy as proposed would be to make it illegal to exhume waste within the 'regulated' area, and to create an offence to send mixed waste from a facility when that facility can accept that waste. Mixed waste is then defined to include;

- A mix of different waste types as defined in table 3.1 in the Waste Levy Guidelines,
- Any unprocessed building and demolition waste,
- Asbestos waste.

Whilst there is a defence, this is limited to exemptions such as emergencies and EPA direction or approval, or in complying with the law.

The basis of this decision is human health risk and to prevent double handling of waste. The requirement is being put in place to discourage poor landfill practices, protect the environment and human health.

### **Item 3 - Council's response and issues for Tweed Shire**



Whilst exhuming waste to export to another site can be seen as poor practice, it is necessary to dig up waste on a daily basis operationally, even if just to remove daily cover or in the preparations of void space necessary to bury asbestos. The granting of an approval on a case by case basis is not practical as the EPA do not act quickly enough. Tweed Shire applied for an application to land approval nearly six months ago for capping remediation and is yet to get the approval.

This means that Council is working toward an outcome without the requisite approval in place and relying on the retrospective granting of that approval. Whilst this may be workable on a large 'one off' proposal such as major rehabilitation works, it would not work on a daily basis, with a general exemption more appropriate for those activities.

The contended basis for this change is human health and double handling, with the problem being exhuming waste; however the discussion then branches over into sending mixed loads of demolition material and or waste off site. The use of the term waste is of particular concern given the far sweeping definition of waste in the POEO Act.

The POEO Act defines waste to be;

- (a) *any substance (whether solid, liquid or gaseous) that is discharged, emitted or deposited in the environment in such volume, constituency or manner as to cause an alteration in the environment, or*
- (b) *any discarded, rejected, unwanted, surplus or abandoned substance, or*
- (c) *any otherwise discarded, rejected, unwanted, surplus or abandoned substance intended for sale or for recycling, processing, recovery or purification by a separate operation from that which produced the substance, or*
- (d) *any processed, recycled, re-used or recovered substance produced wholly or partly from waste that is applied to land, or used as fuel, but only in the circumstances prescribed by the regulations, or*
- (e) *any substance prescribed by the regulations to be waste.*

A substance is not precluded from being waste for the purposes of this Act merely because it is or may be processed, recycled, re-used or recovered.

This definition would clearly cover every product that enters the SCRRC, meaning that anything that is received on site could not be transported off site prior to validation under a resource recovery order which would not be applicable to mixed ferrous and non-ferrous metals, batteries and other materials that are currently salvaged. Nearly all Tweed processing markets for such work are in South East Queensland with whom our local government area shares the state border. The activities and operations in Queensland are not regulated by the NSW EPA.

If Tweed Shire is forced to recommence landfilling inert or non-putrescible at the SCRRC, the requirement to process mixed demolition waste prior to burial is seen as onerous and unreasonable as no reasonable notice or timeframe has been allowed to introduce this major change, and the cost of setting up and commencing this type of operation will be significant. The implementation date of 1 March 2017 falls within the current budgeted year and will occur if adopted just three months after this feedback is provided on the consultation paper, with Christmas to occur in the intervening period.

This will place considerable cost on Council and residents which cannot be adequately planned for or recovered on such short notice and within a financial year. The scale necessary to make such an operation viable is significantly greater than what the EPA appear to have considered and is not achievable for many smaller Councils in non-metropolitan areas. Tweed Shire Council is at least double the size of most other Councils in Northern NSW and not able to make the economics balance in favour of resource recovery over disposal for low value products, even with the imposition and ability to avoid the waste levy.

Producing low value products without markets does not make sense.

The level of supervision required to manage a small facility with the types of inspections and sorting prescribed in the Consultation Paper might work in the metropolitan area where the economies of scale are available, however most small rural and regional disposal and processing sites would need to double the number of staff on site to achieve the outcome. The site itself will need to prepare areas with many sites not having all weather hardstands for processing on which to sort demolition waste, or the staffing and plant necessary to allow this to occur.

The Waste Less Recycle More Grant funds alluded to in this consultation are not available on short notice and are specifically targeted at programs, and not available for gap filling unless it fits into the tailored EPA program. A program such as this would typically require months if not years of consultation and education, and with the border so close, the differential in disposal fees is likely to continue the flow of customers north to Queensland. This amendment will not address market forces outside the gate.

Council also believe that soils suitable for rehabilitation works on landfill sites, whether current or closed, should not be subjected to the same rigorous requirements as soils for reuse off site, as the costs of processing are inhibitive and unnecessary when the material is effectively to be entombed in the landfill cap. Material should be fit for purpose and not sorted and processed for no foreseeable reason

The transport of mixed waste to a licensed disposal and or processing site does not present further risk when that site is better equipped and the transportation is undertaken appropriately. The scale of operations at Tweed's SCRRC does not allow the economics to establish the requisite processing or landfill gas management infrastructure to allow best practice gas recovery and management. The best you can hope for at a small regional landfill is flaring of gas and this has less benefit than a site which is harvesting gas and generating power from the gas. Retrofitted vertical gas extraction wells is less efficient than purpose built gas extraction systems on larger landfills such as that used to dispose of Tweed Shires waste in SE Queensland.

Council should not be punished financially for providing better environmental outcomes such as those provided by using state of the art landfill disposal, whether the facility is in Queensland or NSW.

#### **Consultation paper item 4 inclusive of Councils response - Improving the handling of asbestos waste**

Council agrees with the recommendations for the processing of asbestos waste and will be proceeding to review our current procedures which we believe are already compliant.

It is also recommended that a guideline and state wide education program be implemented by the EPA to ensure community awareness of the requirements, and that this be conducted in conjunction with other State based agencies having responsibility for the management of asbestos.

### **Consultation paper item 5 - Clarifying the application of transported waste**

The EPA has stated that the transport of mixed waste that can be received at a site for disposal can have significant environmental and human harm through unnecessary exposure of the community and the environment. The removal of the Transported Waste Exemption is proposed to stop operators from transporting waste to an alternate facility if they can dispose of that waste at their site.

The requirement will be to prove that the waste is taken to a licensed facility for disposal and or further processing, with the intent to place the onus of proof on the facility seeking to claim the exemption, of the lawfulness of the receiving facility for the stated purpose. In particular this relates to the receiving site's planning approval and Licensing.

### **Item 5 - Council's response and issues for Tweed Shire**

The recommendations are part of the standard due diligence that is and should be applied to any contractual arrangement for the transport, processing and disposal of waste.

The Courts have very clearly stated that the onus of proof for an offense should always rest with the crown or authority trying to establish guilt as the law provides a presumption of innocence unless shown to be otherwise.

The basis of this proposed change is to protect the community and the environment from unnecessary risk. By forcing Councils to process waste on site and to bury that waste in smaller regional landfills the EPA is ensuring that the requisite economies of scale necessary to enact viable landfill gas capture and sorting are not achieved. This could potentially have significantly greater impacts on the environment and human health. The management of many smaller receiving sites cannot be done as well as at a larger, better equipped site.

When waste is being disposed of lawfully into a best practice facility that is complying with the relevant licensing in that area, it does not make sense for the NSW EPA to intervene.

It is believed throughout the waste industry that the focus of this change is about lost landfill levies and not environmental best practice, resource recovery, risk or safety concerns, and it would be hard to argue otherwise based on the facts in the Northern Rivers region.

### **Consultation paper item 6 - New operational purpose deductions**

The EPA is recommending changes to the Operational Purposes Deductions to recognise shortfalls in the current system to recognise the use of waste for operational purposes for bedding layers and bio-filters.

### **Item 6 - Council's response and issues for Tweed Shire**

Council agree that this will help to address short falls in the current POEO Act and Regulation.

### **Consultation paper item 7 - Clarifying the application of the levy at resource recovery facilities**

The EPA are seeking to clarify the levy liability of resource recovery facilities in relation to breaching of thresholds and or waste retained on site for longer than 12 months without processing.

#### **Item 7 - Council's response and Issues for Tweed Shire**

This amendment is largely administrative and will have very little impact on Council. It is in line with the current understanding of how this should be applied.

### **Consultation paper item 8 - Monitoring waste at licensed facilities**

The EPA is recommending modifications to the way in which records are kept and monitoring is undertaken at licensed waste facilities. The discussion then appears to change to refer purely to processing facilities and not landfill.

The current means of monitoring and recording of information are discussed with alternative interrogative measures suggested including video monitoring, stocktakes, survey, and 'any other form of stocktake deemed necessary,' with those other means of examination to be published in the Waste Levy Guidelines.

Video Monitoring orders are also clarified to provide that information must be kept for six years when a site is required to keep it.

#### **Council's response and issues for Tweed Shire**

Council maintains video monitoring of the entry of the SCRRC site and record a photo of the registration of every vehicle that enters the site using the weighbridge software. The amount of information and memory requirements are extensive but relatively easy to manage in the era of the Cloud. These are the current powers and measure that have been implemented without an order to video.

Along with periodic site survey and stockpile assessment, this allows monitoring for all operations. Council cannot see how higher levels of monitoring will add to EPA efficacy and believe any additional requirements will provide more unnecessary burdens for small sites. The EPA already has sufficient power to put orders in place.

The saving of video information for six years will have an effect on software licensing and data retention, and will need to be considered in light of the storage requirements for the protection of CCTV information. Sites will need to maintain availability to certain types of software to allow information to be viewed in the future and software changes a lot in six years.

### **Consultation item 9 - Improved waste transport**

The EPA have highlighted the unnecessary transport of waste with the identified issues being the clogging of arterial roads, undermining investment in resource recovery, placing the community at risk and inefficient consumption of resources.

The proposal is to remove the Proximity Principle offence in clause 71 of the Waste Regulation from 1 March 2017. There is also the creation of offences for the mixing of sorted or segregated waste streams, and penalties proposed for licensed facilities taking waste interstate.

These measures are proposed to ensure waste is transported in a responsible and environmentally sound manner, to discourage the double handling of waste and to

make sure the EPA has reliable waste transport data. It is contended that these measures will provide greater regulatory certainty for industry.

### **Item 9 - Council's response and issues for Tweed Shire**

The EPA has used spurious arguments to defend a decision to make the transport and disposal of waste to Qld illegal. Tweed Council believe that the transport of waste to a best practice landfill with the most up to date gas capture can be seen to protect the public, and the environment with the outcome likely to be better than what can be achieved at a small regional landfill, provided the transport means is appropriate. There is also much greater ability at a larger facility to provide the infrastructure, plant and equipment to viably sort and recover materials, particularly when it is economically viable to do so.

Whilst the Consultation Paper talks about the new minimum standards for managing construction and demolition waste in NSW, the impact of the changes will be felt across all waste streams and in particular for the transport of putrescibles at Tweed Shire. Tweeds landfill has minimal putrescible air space and no landfill cell proposed that will be able to be constructed to receive putrescibles for at least three years.

Council went to the market with open tenders as required in Section 55 of the Local Government Act in October 2016. This tender closed on the 7 November 2016 and no submissions were received from NSW disposal sites. With no landfill capacity for putrescible waste disposal and no option to transfer to a NSW landfill, Tweed Shire Council has no option but to export waste to Qld. The uncertainty that this consultation paper raises however makes it impossible for Council to award a contract for Transport and disposal of putrescibles.

Under the proposed amendments the transport of waste will require an application to the EPA, whereas currently the proximity principle is used to exempt this activity. Whilst the proximity principle has weaknesses that have resulted in Metropolitan operators sending waste to Queensland, Councils in the Northern Rives including Tweed Shire should not be punished.

The Queensland landfill that will receive Tweed's putrescible waste is fitted with the latest gas management technology that cannot be afforded or justified in a small regional landfill. The management of landfill gas will more than offset any initial transport cost.

Additionally, Council can show that they are actively pursuing the diversion of waste. In July 2017 a FOGO service will be introduced to all residential households. There are currently over 17,000 households provided with a green bin and from 1 July this will increase by approximately 7,500 services, to all residential properties in the urban footprint. Council has submitted a DA to install organics processing infrastructure to process the organics and has been working with the agricultural industry in the Tweed to ensure we have markets for our product.

Every effort is being made to divert waste from landfill using a triple bottom line approach, the waste hierarchy, the WARR Act targets and through the development of better business practices. The constrain that would occur due to this proposed amendment is unreasonable and would likely lead to lesser environmental and public health outcomes in the Tweed Shire.

**Consultation item 10 - POEO General Regulation: changes to land pollution offence**

The EPA has proposed administrative changes to POEO General Regulation, and specifically clause 109, which would apply to the application of waste on site. The amendment is proposed to clarify that the land application of hazardous waste on a landfill site will not automatically constitute a land pollution offence.

**Item 10 - Council's response and issues for Tweed Shire**

This proposed amendment is largely administrative in nature, helping to clarify the application of the POEO regulation. Council is supportive of this recommendation.

**Consultation paper item 11 - POEO Act: Changes to licensing requirements**

The proposed amendment provides clarification as to which sites require licensing as defined by those facilities that pose significant environmental risk.

**Item 11 - Council's response and issues for Tweed Shire**

Council's waste operations is not impacted by this amendment, however the various depots may be if they reach the thresholds defined here. Council should seek clarification on the application of this amendment to the various regional depots where significant amounts of materials may be stored.