

Submission on the Mulch Order 2015 and the Mulch Exemption 2015

December 2015

Table of contents

Opening	3
Response	3
Definition of 'Mulch': Section 1.1	3
A risk-based approach	3
1. Assessment by suitably qualified person: Section 5.2 and 6.3	4
2. Notification: Section 5.7	4
3. Risk management protocol requirements: Section 6	4
4. Sufficient Information: Section 6.2	5
5. Orphan or storm damaged mulch: Section 6.3.3	5
Definition of 'suitably qualified professional'	6
Education about the changes	6
Conclusion	6

Opening

Local Government NSW (LGNSW) is the peak body for councils in NSW. It represents all the 152 NSW general-purpose councils, 12 special-purpose county councils and the NSW Aboriginal Land Council. In essence LGNSW is the 'sword and shield' of the NSW Local Government sector.

LGNSW is a credible, professional organisation representing NSW councils and facilitating the development of an effective community-based system of Local Government in NSW. LGNSW represents the views of councils to NSW and Australian Governments; provides industrial relations and specialist services to councils; and promotes NSW councils to the community.

LGNSW welcomes the opportunity to comment on the *Mulch Order 2015 and Mulch Exemption 2015* (the Order and Exemption). Due to the limited consultation time allowed however, LGNSW sought feedback from small number of council waste staff only. This feedback has been incorporated into this submission.

Response

Local Government commends the EPA for reviewing the Mulch Order and Exemption in response to feedback received. Local Government is supportive of the aim of establishing an order and exemption that are both practical in their use but also protective of human health, the environment and agriculture.

As you would appreciate, council operations can be significantly impacted by the Order and Exemption. Council parks and garden operations typically include a combination of the following: mulch on or off site, transfer mulch to a holding yard, application at the same or another site, or distribution to the community. In other situations, self-haul domestic and commercial loads are delivered to a council facility for mulching and subsequent land application. Additionally, incidences of illegally dumped material on council managed land are increasing in frequency, as is the frequency of storms, resulting in increased storm-generated plant material. All council operations are currently carried out at a local level for use within the local area at a low or no cost basis.

Definition of 'Mulch': Section 1.1

The new Order and Exemption contain a new definition of mulch in Section 1.1. Local Government is supportive of this new definition which no longer excludes leaves, flowers, fruit and plant propagules, rendering it more practical from an operational perspective. It is noted however that this definition is not contained in the definitions section (Section 7) of both the Order and Exemption.

A risk-based approach

Local Government has long advocated for a risk-based approach to be applied to the Order and Exemption. While a genuine attempt has been made to apply a risk-based approach, the result is an unfortunate hybrid of prescriptive measures along with the requirement for a risk based protocol. It is the Local Government view that this is unlikely to achieve the aim of being both "practical" and also "protective of human health, the environment and agriculture".

Local Government routinely delivers a range of activities and services for the community utilising risk management controls and is adept in applying a risk-based approach. Consequently, LGNSW considers it somewhat impractical to include a mix of prescriptive measures and risk management controls as the likelihood will be a focus more on complying

with the prescribed outcomes rather than focussing on risks and continuous improvement at a local level.

The following sections of the Order are considered too prescriptive to allow a true risk-based approach to be applied:

1. Assessment by suitably qualified person: Section 5.2 and 6.3

The requirement for a suitably qualified professional to approve the supply of mulch is considered onerous, inconsequential to the outcome and at odds with a risk-based approach (Section 5.2). Further, the 'assessment at the source' prior to mulch generation is neither practical nor possible, seeing mulch could be generated from potentially hundreds of sources across any given Local Government Area (Section 6.3.1).

While a surface inspection may highlight the presence of weeds, pests or plant disease in some instances, there is no practical way to ensure that all material will be inspected by a suitably qualified person prior to mulching, nor that all weeds, pests or disease will be detected by such inspection. To supply mulch to the community proclaiming it to be free of weeds, pests and disease would be deceptive and potentially dangerous from an ecological perspective. A risk management approach is considered much more effective.

Recommendation: That Section 5.2 and 6.3 are deleted because Section 5.4 adequately covers the issues without being unnecessarily prescriptive.

2. Notification: Section 5.7

While notification is a risk strategy that is likely to be adopted under a Risk Management Protocol, it is only one of a number of risk management strategies available for Local Government to manage risk. Notification, along with the other strategies, may be better placed in the notes section (or as an advisory addendum) for optional use by councils in developing their Risk Management Protocol.

Recommendation: That Section 5.7 is deleted from the body of the document and relocated as an optional risk management strategy.

3. Risk management protocol requirements: Section 6

The purpose of the Risk Management Protocol should be to identify specific risk mitigation strategies that are most effective for managing weeds, pests and disease for the specified area. There is a wide range of potential risk mitigation strategies available to councils to manage the spread of weeds, pests or plant disease. However, the prescriptive nature of the Order and Exemption is likely to inhibit the effective use of such strategies due to a guided focus on compliance rather than risk mitigation in the Risk Management Protocol.

Below is a list of some of the risk mitigation strategies a council may adopt through a genuine risk based approach in their Risk Management Protocol:

- A requirement that all mulch supplied is only applied at a local or bioregional level.
- A requirement that all mulch is only to be used for small scale purposes and not for agriculture.
- A requirement that only pasteurised or composted material can be applied to environmentally sensitive areas.
- In some cases the above requirement may extend to a perimeter around the environmentally sensitive area, while in others it may not. For example, the

- application of mulch to a residential kerb or roundabout directly adjacent to an environmentally sensitive area may in some cases be deemed appropriate.
- Routine consultation with the local weed authority to determine current ecological threats.
 - The use of identification charts showing locally relevant weeds, pests and diseases endemic in the area. At point of drop off, residents are asked to declare any at-risk material which can be separated for pasteurisation or composting. This will help educate *all* staff and the community at the same time.
 - A well communicated warning that the council-derived mulch is sourced from local gardens and may contain weeds, plant disease and pests endemic to the area. The community is advised to contact the council if they experience any related concerns with the mulch. This would then be fed into the Risk Management Protocol for continual improvement.
 - Any material which is identified as high risk should be fully pasteurised or composted prior to land application.

It is vital that a case by case assessment of risk is taken and that identified risks are addressed with appropriate strategies for the area. Clearly, the use of high risk mulch in a built up area such as say, Ashfield will have differing ramifications to those in environmentally sensitive areas such as Ku-ring-gai or those in remote areas such as Bourke.

Recommendation: That the Risk Management Protocol is redesigned to genuinely reflect a risk management approach.

4. Sufficient Information: Section 6.2

Section 6.2 is deemed unnecessary in the body of the document and may be contained with other optional risk mitigation strategies. In high risk situations, within environmentally sensitive areas for example, the recording of equipment hygiene procedures and other such information may be deemed imperative. In other situations recording of such information may be of no consequence. Again, a risk-based approach is recommended.

Recommendation: That Section 6.2 be deleted from the body of the document and relocated as an optional risk management strategy.

5. Orphan or storm damaged mulch: Section 6.3.3

While it is considered reasonable to assess orphan or storm damaged mulch for physical contamination, it is unreasonable to expect a 'suitably qualified professional' to determine whether the material contains weeds, disease or pests. Again this situation may be dealt with via a variety of risk management strategies. For example, a suitable risk strategy may be that this material is not to be applied in environmentally sensitive areas and/or is for local application only.

Recommendation: That Section 6.3.3 be deleted from the body of the document and relocated as an optional risk management strategy.

Prescribing visual inspections/approvals by a suitably qualified person is likely to impact many councils financially, particularly those located regionally/remotely. If training for these qualifications or suitably qualified consultants are costly or unavailable locally, urban wood residues may well be sent to landfill. This results in an unfortunate perverse environmental outcome from a resource recovery and greenhouse gas perspective.

Definition of ‘suitably qualified professional’

The definition of a ‘suitably qualified professional’ is unclear throughout the document. It appears the meaning of a ‘suitably qualified person’ differs in Section 6.3.1, Section 6.3.2 and in the definitions at the rear of the document. The qualifications listed in these sections are generic qualifications and are unlikely to have local weed, pest and disease identification specificity. An adept understanding of local risks will change over time as local weed, pest or diseases also shift. The requirement for a suitably qualified person to inspect and approve mulch is considered onerous, impractical and misleading.

Education about the changes

It is noted that the draft Orders and Exemptions are not publicly available for comment, but were sent to a select few stakeholders during the one month consultation period. While it is in Local Government’s interest to protect the local environment from risks that the Orders and Exemptions set out to manage, this is not necessarily the case amongst other sectors that readily supply and apply mulch throughout NSW. It is therefore critical that the EPA communicate the requirements via a range of media with all stakeholders, thereby ensuring full understanding of responsibilities and how stakeholders can best achieve compliance.

Conclusion

LGNSW appreciates the opportunity to provide this feedback on behalf of Local Government in NSW. Overall Local Government is disappointed that the Order and Exemption are more prescriptive than risk based. This submission outlines in some detail potential changes which could enhance the Order and Exemption to make them more practical operationally, financially and ecologically. Importantly, LGNSW considers that a managed risk based approach will afford better control of weed, plant disease and pests potentially present in mulch than is currently provided for in the draft Order and Exemption. Specifically the use of a suitably qualified professional in lieu of other targeted risk strategies is likely to fail in managing the risks at hand across the state. You are urged to reconsider this critical element of the Order and Exemption.

Thank you in advance for consideration of our submission, and we await notification of the EPA’s intention regarding development of these documents once consultation has concluded.