NSW LEGISLATION ON WASTE TO ENERGY

In summary:

- Planning approval pathways vary according to the size and location of the EfW facility. For example, the EfW at Parkes won't be treated as state significant development and may not even need an environmental impact statement.
- There are lots of loopholes in the general prohibition - meaning that EfW facilities may end up in many more locations than the 4 that are listed in the NSW Energy from Waste Infrastructure Plan.
- The general prohibition in the "Greater Sydney area" (including the Central Coast) has the same loopholes that apply elsewhere in the state.

Planning approval pathway:

- Under the Environmental Planning and Assessment Regulation 2021, Schedule 3, clause 25, an energy recovery facility is **"designated development"** if it
    - processes more than 200 tonnes of waste per year or
    - stores more than 200kg of hazardous, liquid, restricted solid or special waste.
        - ***hazardous waste***, ***liquid waste***, ***restricted solid waste*** and ***special waste*** have the same meaning as in the *Protection of the Environment Operations Act 1997*, Schedule 1.

Designated development means that the development application needs to be supported by an Environmental Impact Statement (EIS - which is a higher level of impact assessment than is usually required for a DA). Designated development may still be assessed and approved by a local Council unless it is also identified as regionally significant development OR state significant development.

- Under the State Environmental Planning Policy (Planning Systems) 2021, Schedule 1, clause 31, development involving the thermal treatment of waste that generates energy is declared to be **"State Significant Development"** if it has a capital investment value of:
    - more than $30 million (generally), or
    - more than $10 million if it is in an environmentally sensitive area of State significance - such as land in a conservation zone; in a coastal or Ramsar wetland; in a Crown reserve dedicated for the protection of flora, fauna or other environmental protection purpose; or on land identified in the LEP has having high Aboriginal cultural significance or biological significance.

State Significant Development means that, as well as the development application needing an EIS, the entity that may grant development consent is either the Minister for Planning OR the Independent Planning Commission (the latter is the consent authority if there are more than 50 submissions or if the local Council objects to the proposed development or if the developer has donated more than $1000 to a political party or 3rd-party campaigner.

- **But** - to complicate matters - both these declarations (of designated or state significant development) don't apply if the proposal is occurring in the "**Regional Enterprise Zone**" in one of the Special Activation Precincts (e.g. Parkes):

- under the State Environmental Planning Policy (Precincts - Regional) 2021, Schedule 1, clause 6(3) - it is no longer State Significant Development and the "Planning Secretary" (i.e. head of the NSW Department of Planning) is the consent authority
- under the Environmental Planning and Assessment Regulation 2021, Schedule 3 clause 50, an EfW plant generating less than 50MW won't even need an EIS.

Where EfW facilities may potentially occur in NSW

- As advised in previous emails, there is specific mention of "energy recovery from thermal treatment of waste" in the Protection of the Environment Operations (General) Regulation 2022 - Chapter 9, Part 4. This generally prohibits EfW across NSW (in s.143) but then lists the exceptions in s.144:
  - geographical locations:
    - Parkes Activation Precinct
    - the Richmond Valley Regional Jobs Precinct
    - the Southern Goulburn Mulwaree Precinct (aka Tarago and what Veolia has branded "the Woodlawn Eco Precinct")
    - the West Lithgow Precinct
    - any other of the following types of sites that is also identified on a map or specified in a gazette notice **published by the EPA**:
      - an Activation Precinct (or "Special Activation Precinct") - which are currently Parkes, Moree, Narrabri, Wagga Wagga, the Snowy Mountains (Jindabyne) or Williamtown (next to Newcastle airport)
      - a Regional Jobs Precinct (e.g. Namoi, Albury, South Jerrabomberra)
      - former mine premises (there's a lot of those)
      - former thermal electricity generation premises (e.g. all those coal-fired power stations on the Central Coast and in the Hunter that are about to close or any of those that were closed in the 1960s and have remained undeveloped (such as at Koolkhan north of Grafton)
  - pre-existing approvals (e.g. potentially Broadwater and Condong sugar mills but I think their development consent only allows for woody weed waste, forest waste and bagasse to be burnt)
  - where on average (over a 12-month period) 90% of the energy generated is used to power an industrial or manufacturing process and is replacing "less environmentally sound fuels" (so that could cover burning any type of waste to power sawmills or the Harwood sugar mill).

Seemingly to add to this general prohibition, there is a special map (SEPP_TIN_GRS_TEW_001_20221130.pdf) showing that a prohibition also applies to the entire Greater Sydney region under section 2.171 of the State Environmental Planning Policy (Transport and Infrastructure) 2021. However (and this is explained at www.planning.nsw.gov.au/assess-and-regulate/state-significant-projects/energy-from-waste) the exceptions under s.144 of the POEO Regs still apply! So I don't know why they bothered!