

REGULATION REVIEW COMMITTEE

Parliament of New South Wales

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REPORT DRAWING THE SPECIAL ATTENTION OF PARLIAMENT TO THE FACT THAT  
CERTAIN REQUIREMENTS OF THE SUBORDINATE LEGISLATION ACT 1989 APPEAR NOT  
TO HAVE BEEN COMPLIED WITH IN CONNECTION WITH THE MAKING OF THE LOCAL  
GOVERNMENT (WATER, SEWERAGE AND DRAINAGE) REGULATION 1993

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Report No. 25  
March 1994

REGULATION REVIEW COMMITTEE

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The Regulation Review Committee was established under the Regulation Review Act 1987. A principal function of it is to consider all regulations while they are subject to disallowance by Parliament.

In examining a regulation the Committee is required to consider whether the special attention of Parliament should be drawn to it on any ground, including any of the following :-

- (a) that the regulation trespasses unduly on personal rights and liberties;
- (b) that the regulation may have an adverse impact on the business community;
- (c) that the regulation may not have been within the general objects of the legislation under which it was made;
- (d) that the regulation may not accord with the spirit of the legislation under which it was made, even though it may have been legally made;
- (e) that the objective of the regulation could have been achieved by alternative and more effective means;
- (f) that the regulation duplicates, overlaps or conflicts with any other regulation or Act;
- (g) that the form or intention of the regulation calls for elucidation; or
- (h) that any of the requirements of sections 4, 5 and 6 of the Subordinate Legislation Act 1989, or of the Guidelines and requirements in Schedules 1 and 2 to that Act, appear not to have been complied with, to the extent that they were applicable in relation to the regulation.

The Committee may, as a consequence of its examination of a regulation, make such reports and recommendations to each House of Parliament as it thinks desirable including reports setting out its opinion that a regulation or portion of a regulation ought to be disallowed and the grounds on which it has formed that opinion.

LOCAL GOVERNMENT (WATER, SEWERAGE AND DRAINAGE) REGULATION  
1993, Gazette of 1-7-93 at p. 3524

This is one of ten Local Government regulations that complement the Local Government Act 1993. As this regulation was a principal statutory rule, under the Subordinate Legislation Act 1989, a regulatory impact statement (RIS) had to be prepared in connection with the proposal. This requires a statement of the objectives of the regulation and an assessment of its costs and benefits as well as those of any alternative options. These options must be compared to determine the course that is in the best interests of the community.

**Objectives:** The objectives of the regulation are reasonably well set out in the RIS as follows:

*"The objective of the Local Government (Water, Sewerage and Drainage) Regulation 1993 is to protect public health, safety and amenity by providing and maintaining standards and specifications for water, sewerage and drainage works. The Regulation is intended to explain the relationship and responsibilities between the customers and operators of services, the manufacturers of equipment, contractors who install and maintain equipment and the government.*

*The Regulation provides common standards and specifications for various plumbing and drainage works where the water supply or sewerage service is provided by a council under the Act.*

*The previous Ordinances Nos. 45 (Water Supplies), 45A (Water Carting) and 46 (Sewerage) contained detailed provisions on both administrative and technical requirements. Matters relating to the general, approval and directive powers of councils and to offences in respect of water and sewerage have been accommodated in the relevant parts of the new Local Government Act.*

*The remaining relevant administrative provisions and technical standards from the previous Ordinances have been included in a single Regulation."*

The RIS goes on to describe the relationship between the Act and regulation. However a major omission from the RIS is the assessment of the relevant standards. This is described as follows:

*"The prescribed technical standards in the Regulation, as distinct from procedural requirements, are called up from the following:*

- *New South Wales Code of Practice Plumbing and Drainage, 1992.*
- *AS3500 - 1990 National Plumbing and Drainage Code.*
- *SAA MP 52 - 1988 Manual of Authorisation Procedures for Plumbing and Drainage Products.*



*The Code of Practice adopts AS 3500 - 1990, with NSW variations and additional provisions. It provides the regulatory requirements in NSW for work carried out on water supply, sanitary plumbing and drainage, stormwater drainage and hot water supply when referenced in Acts and Regulations. AS 3500 and SAA MP 52 documents have been prepared by Standards Australia with assistance from the water authorities and manufacturers. They represent the best advice of the water authorities and the NSW Health Department on how the National codes can best be applied within New South Wales.*

*The new Local Government Act, with its supporting Regulations, represents a fundamental change in the way that councils will operate. The 1919 Act contained many archaic procedures which have been abolished with the new Act. The supporting Ordinances also contain numerous prescriptive standards. In certain instances where they are obviously no longer relevant, they have not been recreated. There has also been some move from prescriptive standards to performance standards. However, the new Regulation largely re-creates existing standards because:*

- (a) there needs to be time for councils to adapt to introduction of the new system of local government, including the new approvals and orders system. Simultaneous introduction of new standards would have created enormous administrative difficulties.*
- (b) review of standards and codes of practice must involve the Department but would of necessity be a joint exercise involving other Departments and outside bodies. It was not practicable to complete such an undertaking as part of this stage of the local government reform process."*

This statement seems to miss the point of assessment in the RIS. While the Subordinate Legislation Act requires the preparation of a new regulation, it does not of itself require the preparation of new standards. What the Act does require is the assessment of whatever standard, new, old or modified, that is adopted in the regulation. This requires a full assessment in terms of the costs and benefits of the standard as compared with the option of adopting other relevant standards such as those from other states. If the standards are obsolete the relative costs and benefits of preparing a new or revised standard would be one of the options for assessment in the RIS. That assessment would have demonstrated whether or not revision of the standards was impracticable at this stage as the RIS maintains. As the relevant standards are prepared by Government bodies and Standards Australia an estimate of the cost involved in preparing or amending them would have easily been obtained based on the experiences of these bodies. It is not even clear whether the Minister has taken the preliminary step of approaching these bodies to determine whether a cost benefit assessment had been carried out with respect to their adoption in another State or Territory. If the regulatory proposal had

qualified on these grounds for an exemption from the requirements for an RIS then an exemption could have been sought from the Attorney General under section 6 and schedule 3 of the Subordinate Legislation Act, 1989. No evidence was presented to the Committee that this was the case.

**Options:** Alternative options for achieving the objective are presented in this RIS. These are:

1. Make this regulation;
2. Do nothing;
3. Maintain the previous system;
4. Government legislation;
5. Self regulation;
6. Administrative action

These options are discussed very broadly. Option 3 for example states:

*"Option 3 - Maintain previous system*

*Maintaining the use of previous Ordinances would be inappropriate as it would duplicate certain matters now covered in the Act. Standards and specifications are the same as in the previous Ordinances. However, the Regulation is more streamlined than the previous Ordinances with most of the purely administrative provisions included in the Act and only technical specifications and related administrative requirements retained. This option is not viable as the administrative and enforcement procedures relate to the previous Act which is no longer in force."*

This shows that the regulation is an exercise in re-drafting of some administrative provisions without any substantive consideration of the costs and benefits of those provisions or of the standards and their alternatives. These administrative provisions relate to such fundamental matters as apportionment of costs of water supply schemes, payment of fees, cutting off water supply, prohibited substances for discharge and various approvals. These specific provisions have not been assessed in terms of their costs and benefits nor have alternative options been proposed.

**Cost Benefit assessment of the regulation:** The cost benefit assessment section of the RIS only considers the regulation and that in very general terms. It also lays the ground for certain proposed amendments to the regulation referred to later in the RIS. The other options are not considered in any detail. The overall assessment is stated in Item 9 of the RIS as follows:

*"9. OVERALL ASSESSMENT*

*The Water, Sewerage and Drainage Regulation should not increase the cost of water, sewerage and drainage works for consumers, practitioners or local government administration,*

apart from costs relating to the time taken initially to become familiar with the new Regulation.

The standards and specifications themselves have not been altered and no new specifications or compliance requirements are included.

If there were no system of standards and controls, costs could be saved by practitioners carrying out substandard work using substandard materials, and local government would save initially on administration costs. However, the cost to the community would be the loss of its guarantee of health, safety and amenity and subsequent restoration costs.

Strict compliance standards and specifications for water, sewerage and drainage works are essential to ensure protection and maintenance of public health, safety and amenity. The principal legislation is not the appropriate place for these detailed technical requirements and neither is a series of guidelines unless these guidelines are applied by a Regulation."

The overall assessment is summarised in table form on p. 12 of the RIS as follows:

OVERALL ASSESSMENT SUMMARY			
Option	Costs	Benefits	Net Effect
1. Regulation	Possible costs if standards in excess of those needed to safeguard public health	Single Regulation for industry in this area based on industry-recognised standards, with public health and amenity benefits	Positive
2. Do nothing	No guarantee of public health standards with prospect of substantial economic costs	Direct financial savings from work undertaken at lower standard	Negative
3. Maintain previous system	Base case	Base case	Base case
4. Government legislation	As for Option 1 with greater costs for subsequent amendments.	As for Option 1.	Positive but less than Option 1.
5. Self regulation	Costs to industry and community from absence of consistent specifications and standards and cost to councils in setting and enforcing standards.	Greater scope for councils to reflect local circumstances.	Negative
6. Administrative action	Enforcement difficult due to lack of legal basis, with possible public health costs.	None, given that Option 1 can call up codes of practice.	Negative

The assessment of costs and benefits that has been carried out in the RIS departs from the requirements of the Subordinate Legislation Act that were applicable to this regulation. This

is because the regulation has been assessed in a general fashion without any detailed assessment of its substantive provisions, particularly the standards applied, and the alternative options. The net effect of the regulation is expressed purely as positive and negative without any indication of the dollar values involved.

In the case of the standards adopted by the regulation, there has been no assessment whatsoever. These standards comprise over 500 pages. The incorporation of major standards in regulations has concerned the Committee since its inception and in its 10th Report it made certain recommendations to improve their availability to Parliament and the public.

It also recommended in that Report that section 42 of the Interpretation Act be amended so as to provide for the disallowance in whole or in part of any publication that had been applied, adopted or incorporated by a statutory rule.

Although the Attorney General has with some qualifications, supported those recommendations, no substantive action has been taken by him to implement them. The legal position therefore, in a case such as the present, is that Parliament cannot disallow even one page of the 500 pages comprising the adopted codes unless it chooses the course of disallowing the whole regulation. This points to the need for action to be taken by the Attorney General on the Committees previous recommendations.

**Consultation:** A further requirement of the Subordinate Legislation Act is that the RIS detail the proposed consultation program to be undertaken in connection with the regulatory proposal. Consultation should be undertaken with persons and bodies likely to be affected by the regulation.

The consultation program in this case is summarised as follows:

*"Consultation has generally been with councils, the Public Works Department and professional organisations. The public have been involved in consultation on the new Act throughout the drafting stages. Practitioners have not been consulted on the Regulation as standards and specifications are not being altered."*

Again the limited nature of the review has restricted the consultation program in this case to only those persons at the most senior levels of Government and industry representative groups. The actual practitioners who apply the regulation on a day-to-day basis were not consulted because the Department chose not to assess the technical standards and their practical operation.

The Department prepared a summary of its responses to the public submissions for the Minister, and has provided a copy

of it to the Committee. This summary appearing as Appendix 3 to this report, shows that the first submission, from Guyra Council has been forwarded by the Department to the Public Works Department for comment. Similar action has been taken with the submissions from Environmental Management Pty Limited and Holroyd City Council and the summary also shows that the submission received from Shellharbour Council has resulted in the Department proposing an amendment to the regulation. There is no consideration of the respective costs and benefits of this amendment or alternative options to it. From the submissions and the consideration of them by the Department and Minister it would appear that the regulation is still very much under discussion both with other authorities such as the Public Works Department and within the Department itself.

**Amendments:** The RIS contains an appendix which sets out proposed amendments to the regulation. These amendments emerge without any consideration of their respective costs and benefits and were apparently matters that arose from the first few months of operation of the regulation while the RIS was under preparation. It is not clear which if any of these will be proceeded with. While it is certainly appropriate to include consideration of amendments in the case of an RIS prepared after a regulation was made, as the need for amendments will no doubt emerge during the operation of the regulation, these amendments should be costed to determine whether they are appropriate in the circumstances. This is a requirement of Schedule 1 for ordinary amendments to regulations. A regulation should not normally proceed in terms of that schedule unless the benefits to the community outweigh its costs.

**Disallowance motion:** On 18th November, 1993, the member for Manly, Dr MacDonald MP, moved disallowance of the regulation. He said:

*"The regulation substantially continues the same standards that applied before the repeal of the Local Government Act in the middle of this year. It is worth noting that the standards are largely contained in other documents. For those concerned that the disallowance will leave a vacuum, that is not the case. The standards are largely contained in other documents which were in force before the regulation was made, principally the National Plumbing and Drainage Code, published by the Standards Association of Australia, as in force from time to time, and the Plumbing and Drainage Code of Practice, as published in the Government Gazette of 17th July, 1992, at page 5098.*

*The regulation as gazetted represents a lost opportunity to remedy the errors of the past; a lost opportunity to instigate meaningful change. Nothing has changed in this area of regulation for 20 years, yet we have enormous environmental problems and a dwindling limited water supply."*

In reply the Minister said as follows:

"Proposed changes to the regulation were included in the statement and further changes have been proposed as a result of submissions that have been received. Those changes were included in an assessment report that was forwarded to the Regulation Review Committee on 1st November. The regulations are therefore currently before the Regulation Review Committee and this motion clearly is pre-emptive of that process. The new regulation rationalises the three previous ordinances-45, 45A and 46-under the old Act. It is more streamlined than the previous ordinances and does not duplicate provisions in the legislation. Importantly, this regulation does not pre-empt any Government reforms that might be proposed. It is not a static instrument; amendments can be made as a result of general Government reforms to the water industry, in respect of which the honourable member has obvious concerns.

Mr Knowles, MP, made the following statement on the Committee's position:

"As the Minister said, in substance the regulation is a replica of the previous regulations under the former Local Government Act. In that sense the making of the regulation simply maintains the status quo, and that probably is an appropriate position to take while the Water Board inquiry process continues. The regulations are largely technical in nature. Though that does not mean they should not be subject to scrutiny, to disallow them in haste could lead to unforeseen and unintended consequences. The disallowance of the regulation would leave a gap in the existing regulatory framework. I have consulted with a number of lawyers and others in the parliamentary system, including members of the regulation review secretariat and have confirmed this to be the case. It could mean that public health and safety standards will be placed at risk, and that would be unacceptable."

Dr MacDonald's view that the disallowance of the regulation would not leave a vacuum as the standards were contained in other documents is not correct. This is because the earlier ordinances applying the standards had been separately repealed by section 3 of the Local Government (Consequential Provisions) Act 1993, and would not be revived on the disallowance of this Regulation. While the standards themselves would not be disallowed they would cease to be applied as part of the law of New South Wales if the regulation was disallowed.

Maintenance of the status quo with a few minor amendments-the course supported by the Minister-does not comply with the Subordinate Legislation Act. The "do nothing" option is the basis for assessment under the Subordinate Legislation Act not the "status quo". Section 5 and Schedule 2 of the Act make this plain.

While in the interests of public safety it might be found to be inappropriate to do nothing in this case, that is, to have

no standards prescribed, the present standards or part of them may themselves be found to place at risk public safety on a proper assessment and comparison with alternatives such as standards in other states. This is particularly relevant to the New South Wales Code of Practice which contains provisions which vary AS3500, the National Plumbing and Drainage Code, as well as additional provisions applicable in New South Wales alone.

The statutory responsibility of the Minister to ensure that the Subordinate Legislation Act has been complied with under section 5 and to certify the same under section 7 of the Act is an important one. While other inquiries in the area of water supply may be proceeding they do not excuse the Minister from his statutory functions. It is rarely the case that the subject of a regulation is not also being examined under some more general Departmental or Government review. It is quite appropriate that departmental operations be reviewed at a number of levels. However these reviews at whatever level cannot detract from the statutory review required under the Subordinate Legislation Act.

Indeed these miscellaneous reviews can be accommodated within the provisions of section 11 of the Subordinate Legislation Act which permits the Governor to postpone the formal assessment for periods of 1 year to a maximum of 5 years. This procedure was specifically designed to accommodate the local government regulations. By not following this procedure in this case the Minister has effectively re-introduced the old standards which could now legally go without mandatory assessment for up to 10 years-allowing for the 5 year sunset provisions plus potential postponement of repeal for an additional 5 years. Perhaps the Minister should have considered the option of making the present regulation a transitional regulation with a one year sunset clause.

The level of assessment is not an impossible one to comply with - the Act requires an examination of realistic options, it does not require a minute examination of an infinite range of alternatives. It does require that the substantive matters of the regulation be assessed so far as is reasonably practicable. This requirement of section 5 enables the Minister to take into account the issue of the cost of preparing the RIS in relation to the specific matter requiring assessment.

The Committee is accordingly of the opinion that the RIS fails to properly assess the costs and benefits of the regulation and its alternatives. In particular that the standards adopted in the regulation have not been compared with other options in terms of their costs and benefits. It is also unclear whether any of the amendments proposed in the RIS will be made.

**Recommendation:** The Committee recommends that a supplementary impact statement be carried out by the

Department of Local Government and Co-operatives so as to properly assess the regulation and its alternatives. The impact statement should be prepared within 4 months of the handing down of the Report of the Select Committee on the Water Board. This will enable the Department to have regard to the recommendations in that report. That RIS should fully assess the regulation and relevant alternatives in terms of their quantified costs and benefits.

At the conclusion of the study public consultation should be undertaken in accordance with section 5 and Schedule 2 of the Subordinate Legislation Act as this has not yet been done properly in relation to this regulation and its alternatives.

The Committee also recommends the Attorney General immediately proceed with the recommendations of its 10th Report to Parliament for amendment of the Interpretation Act with respect to standards and codes.

Adrian Cruickshank  
Chairman  
Regulation Review Committee



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APPENDIX 1

TO REPORT NO. 25 OF THE REGULATION REVIEW COMMITTEE

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**LOCAL GOVERNMENT ACT 1993—REGULATION**

(Local Government (Water, Sewerage and Drainage) Regulation 1993)

HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Local Government Act 1993, has been pleased to make the Regulation set forth hereunder.

**GARRY WEST, M.P.,**  
Minister for Local Government and Co-operatives.

**PART 1—PRELIMINARY****Citation**

1. This Regulation may be cited as the Local Government (Water, Sewerage and Drainage) Regulation 1993.

**Commencement**

2. This Regulation commences on 1 July 1993.

**Definitions**

3. In this Regulation:

- (a) expressions that are defined in the dictionary at the end of this Regulation have the meanings given to them by the dictionary; and
- (b) expressions that are defined in AS 3500 have the meanings given to them by that Standard; and
- (c) expressions that are defined in AS 3500 and that are also defined in the Act or in this Regulation have the meanings given to them by the Act or this Regulation, respectively.

**Notes in the text**

4. Notes in the text of this Regulation are explanatory notes and do not form part of this Regulation. They are provided to assist understanding.

**Application of this Regulation**

5. (1) The provisions of this Regulation relating to water supply apply to an area or part of an area in respect of which the council provides or has taken steps to provide a water supply system.

(2) The provisions of this Regulation relating to sewerage apply to an area or part of an area in respect of which the council provides or has taken steps to provide a sewerage system.

(3) The provisions of this Regulation relating to drainage apply to an area or part of an area in respect of which the council provides or has taken steps to provide a drainage system.

**Certain provisions of the Plumbing and Drainage Code of Practice to be complied with**

6. (1) An approval under section 68 of the Act allowing water supply, sewerage or drainage work to be carried out is taken to include a

condition requiring the work to be carried out in accordance with the Plumbing and Drainage Code of Practice (so far as that Code is applicable to that work).

(2) An order under section 124 of the Act requiring water, sewerage or drainage work to be carried out is not complied with unless the work is carried out in accordance with the Plumbing and Drainage Code of Practice (so far as that Code is applicable to that work).

## **PART 2—WATER SUPPLY**

### **Division 1—Council functions**

#### **Joint water supply works**

7. (1) If water supply works have been constructed to serve the areas of 2 or more councils, the council that has control of the works is required to supply water to each of the other councils concerned, either at the boundary of its area or at some other convenient point which may be mutually agreed with those other councils.

(2) If the capital cost of the works has not been notified as a joint debt, the council that has control of the water supply works may make a charge for the supply of water from those works:

- (a) of such amount as may be agreed with each of the other councils concerned; or
- (b) if there is no agreement, of such amount as the Minister may from time to time determine and notify to all of the councils concerned.

(3) Such a charge is recoverable as a debt in proceedings brought in a court of competent jurisdiction.

#### **Fire hydrants in roads**

8. (1) The council:

- (a) must install hydrants in its water mains and other pipes at such convenient distances, and at such places, as may be necessary for the ready supply of water to extinguish fires; and
- (b) must maintain the hydrants in effective working order.

(2) The council may, at the request and expense of the owner or occupier of a building, install a hydrant (to be used only for extinguishing fires) in or in the vicinity of the building.

(3) A council that installs such a hydrant must maintain it in effective working order.

(4) The council must at all times keep charged with water all its pipes to which hydrants are connected unless prevented from doing so:

- (a) by drought or other unavoidable cause or accident; or
- (b) while necessary repairs to the pipe or hydrant are being carried out.

(5) Persons authorised to do so by the council may take water without charge for the purpose of extinguishing fires.

#### **Council to give notice of when certain water will be available**

9. The council that supplies water through a standpipe must display at the standpipe a notice stating:

- (a) the times at which an employee of the council will be in attendance for the supply of water from the pipe; and
- (b) the scale of charges fixed by the council for that supply.

### Inspection and measurement

10. (1) An inspector may, at any reasonable time:

- (a) inspect any service pipe that is connected to the council's water main; and
- (b) install meters or other devices for measuring the quantity of water supplied to the premises; and
- (c) measure the quantity supplied.

(2) The occupier of the premises must provide to the council such information as it requires to enable it to estimate the quantity of water actually supplied to the premises.

### Division 2—Conduct of water supply work

#### Discretionary conditions for carrying out water supply work

11. The council may, in giving an approval to carrying out water supply work, impose either or both of the following conditions:

- (a) a condition that requires the work to be carried out within such time as the council considers reasonable;
- (b) a condition that requires a qualified supervisor to attend the place at which the work is carried out at such times as the council directs.

#### Tapping water mains

12. (1) An approval for the tapping of the council's water main is subject to the following conditions:

- (a) that the approval is only for the occasion for which it is given; and
- (b) that the tapping of the main must be carried out:
  - (i) by a person authorised in writing by the council; or
  - (ii) by a qualified supervisor acting under the supervision and in accordance with the directions of an inspector.

(2) The council may, as a condition of approving the tapping of a water main, require that the tapping must not be started unless at least 2 days' notice of intention to start the work has been given to the council.

#### Council may carry out water supply work itself

13. (1) If the council has resolved that the work of tapping its water mains, laying service pipes or installing stop valves should be carried out by the council, it may, as a condition of approving the tapping of a water main, direct that the work be carried out by the council for a specified charge.

(2) If the council approves the tapping of a water main while such a resolution is in force, the council is not obliged to carry out the relevant work until the charge has been paid.

#### Premises to be connected to the council's water supply by an independent service pipe

14. (1) An approval under section 68 of the Act allowing premises to be connected to the council's water supply system is taken to include a condition requiring this clause to be complied with.

(2) An order under section 124 of the Act requiring premises to be connected to the council's water supply system is not complied with unless the work is carried out in accordance with this clause.

(3) The owner of premises must, unless the council authorises otherwise, ensure that the premises are not connected to a property service pipe linked to the council's water supply system except by an independent house service pipe.

(4) The owner of premises connected to the council's water supply by an independent house service pipe must ensure that the pipe has a stop-valve within the premises that is not more than 450 millimetres from the road alignment or at some other place within the premises approved by the council.

(5) If several premises are supplied by one house service pipe, the council may order that a separate house service pipe be laid to each of the premises.

(6) If the council authorises the connection of 2 or more premises by means of a single house service pipe, the owner of each of the premises must (unless all the premises are occupied by one person or firm as a residence or place of business) ensure that there is installed on each of those premises:

- (a) a separate stop-valve that complies with subclause (4); and
- (b) a separate water meter to measure the water supply to those premises.

(7) The owner of a group of contiguous premises may request the council to lay a large property service pipe or water sub-main to supply 2 or more of the premises in the group.

(8) The council may agree to the request but only on payment of a sum to be agreed between the council and the owner.

#### **Depth of pipe**

15. (1) An approval under section 68 of the Act allowing premises to be connected to the council's water supply system is taken to include a condition requiring that this clause not be contravened.

(2) An order under section 124 of the Act requiring premises to be connected to the council's water supply system is not complied with if the work is carried out in contravention of this clause.

(3) A person must not lay a house service pipe that is to be connected to the council's water supply system otherwise than in accordance with the Plumbing and Drainage Code of Practice.

(4) However, a person does not contravene subclause (3) only by laying a house service pipe at a depth less than that required by the Plumbing and Drainage Code of Practice if the council has, in writing, authorised the person to do so.

#### **Council may carry out certain work itself for a specified charge**

16. (1) The council may, when giving an approval for the purpose of section 68 of the Act in relation to carrying out water supply works involving a large property service pipe or water sub-main to supply more than one premises, direct, as a condition of the approval, that the work be carried out by the council for a specified charge.

(2) If the council so directs, it is not obliged to carry out the work until the charge is paid.

**Fertiliser dispensing units not to be connected to council's water supply system**

17. (1) An approval under section 68 of the Act allowing premises to be connected to the council's water supply system is taken to include a condition requiring that this clause not be contravened.

(2) An order under section 124 of the Act requiring premises to be connected to the council's water supply system is not complied with if the work is carried out in contravention of this clause.

(3) A person must not make a connection between the council's water supply system, or a pipe or fitting supplied with water from that system, and any device or fitting designed to be used to dispense fertiliser or any other chemical compound capable of contaminating the water supply, unless that device or fitting is of a type approved by the Director-General.

(4) The occupier of premises must ensure that the council's water supply system, or a pipe or fitting supplied with water from that system, is not directly connected to a device or fitting designed to be used to dispense fertiliser or any other chemical compound capable of contaminating the water supply, unless that device or fitting is of a type approved for such connection by the Director-General.

**Acts taken to be included in the Table to section 124 of the Act**

18. Without limiting order No. 23 in the Table to section 124 of the Act, the following acts are taken to be included in Column 1 of that Table as acts that may be required by that order:

- (a) the construction of all necessary pipes, and the installation of all necessary fixtures and fittings;
- (b) the construction or installation of a separate service pipe to the premises, or to each of the premises concerned.

**Division 3—Water meters****Installation of meters**

19. (1) For the purposes of section 68 of the Act, an application for approval to install a water meter must be accompanied by a completed meter identification form provided by the council for the purpose.

(2) An approval under section 68 of the Act allowing the installation of a water meter is taken to include a condition requiring that this Part be complied with.

(3) If the council has resolved that the supply of water from its water supply system is to be through water meters, it may order the owner of premises supplied with water from that system to install a water meter on those premises.

(4) Such an order is not complied with unless the installation and the meter comply with this Part.

**Privately owned water meters to be of a size and class approved by the council**

20. (1) If a water meter, other than a water meter hired from or provided by the council, is to be installed on premises connected or to be connected to the council's water supply system, the owner of the premises must ensure that the meter:

- (a) is of a size and class approved by the council; and
- (b) is fitted with stop-valves and such other fittings as may be specified by the council.

(2) Before such a water meter is installed, the owner of the premises concerned must submit the meter to the council for testing and stamping.

(3) If it is proposed to move such a water meter to a new position and more than 2 years has elapsed since the meter was last approved and tested by the council, the owner of the premises concerned must resubmit it to the council for further testing and stamping.

(4) The council is not required to test and stamp a water meter submitted or resubmitted under this clause unless the fee fixed by the council is paid.

#### **Security of water meter**

21. (1) The owner of premises on which there is located a water meter connected to the council's water supply service must, if ordered by the council to do so, protect the meter by enclosing it in a box constructed of metal, wood or other strong durable material and fitted with a lock and key approved by the council.

(2) The owner of such premises must, if the council so requires, deposit with the council the key of the water meter or, if it is enclosed in a meter-box, the key of that box immediately after the meter or box is installed.

#### **Water meter not to be used to measure the water supplied to more than one premises except in certain cases**

22. (1) The owner of premises on which a water meter is installed must ensure that the meter is not used to measure the quantity of water supplied by the council to other premises.

(2) Subclause (1) does not apply:

- (a) if the premises and the other premises are occupied by one person or firm as a residence or place of business; or
- (b) if the council authorises the meter to measure the water supplied by the council to the premises and the other premises.

(3) In those circumstances:

- (a) the council must credit the relevant water account with the water rate paid in respect of all the premises; and
- (b) the owner of the premises on which the water meter is installed must ensure that:
  - (i) the meter is directly connected to the council water main by a single property service pipe; and
  - (ii) the water for each of the premises passes through and is measured by the meter.

(4) However, if there are special circumstances requiring the laying of 2 or more service pipes, the owner of the premises must ensure that each service pipe is connected to a water meter.

(5) In that case, the council must credit the water account of each meter with the water rate paid in respect of the premises supplied through the relevant service pipe.

### Hire of meters

23. (1) A person who wishes to hire a water meter from the council must execute an agreement prepared for that purpose.

(2) The agreement must contain the conditions on which the meter is to be hired.

### Testing of meters

24. (1) At the request of an owner or occupier of premises and on the payment of a fee fixed by the council, the council must arrange for a water meter installed on the premises to be examined and tested.

(2) The council may, on its own initiative, arrange for such a water meter to be examined and tested.

(3) If, as a result of such an examination and test, a water meter is found not to correctly measure the quantity of water passing through it, the council may charge for the supply of water:

(a) on the basis of a daily consumption equal to the average daily consumption during the corresponding meter reading period of the previous year; or

(b) on such other basis as the council and the consumer may agree.

(4) Testing carried out at the request of a person who is the owner or occupier of premises is to be at the expense of the person, unless the meter is one hired from or provided by the council and the testing indicates that the meter is defective, in which case the testing is to be at the expense of the council.

(5) A water meter that registers less than 3 per cent more or less than the correct quantity is taken to correctly measure the water passing through it.

(6) If a water meter provided by the council is found to be defective, the council must replace it with one that is not defective.

(7) If a privately owned meter is found to be defective, the council may order the meter to be rectified or, if the defect cannot be rectified, order the meter to be replaced by one that is not defective.

(8) The rectification or replacement is to be at the expense of the owner of the meter.

(9) When a privately owned water meter is being rectified or is awaiting replacement, the supply of water to the owner of the meter:

(a) is to be regulated by special contract made between that owner and the council; and

(b) is to be restricted to use for domestic purposes.

## Division 4—Water use

### Council to prevent waste and misuse of water

25. (1) In order to prevent the waste of water supplied by the council to premises, the council may, by order, require an appropriate person to take immediate action to repair leaking taps, pipes or fittings located on the premises.

(2) For the purposes of this clause, each of the persons mentioned in Column 3 of order No. 5 in the Table to section 124 of the Act is an appropriate person.



**Misuse of water**

26. (1) An occupier of premises that are supplied with water from the council's water supply system is taken to misuse water for the purposes of section 637 of the Act if the person:

- (a) takes any of the water away from the premises; or
- (b) allows any other person to take any of the water away from the premises.

(2) A person is also taken to misuse water for those purposes if the person washes personal items (such as clothes or vehicles) or animals at a public trough, public fountain or public standpipe.

(3) Nothing in this clause is to be regarded as limiting the generality of section 637 of the Act.

**Water supply may be restricted if there is a shortage of supply**

27. (1) A council that considers the available stored water in its water supply system, or the available capacity of supply from that system, to be insufficient to allow the unrestricted consumption of water for purposes other than domestic purposes may, by notice published in accordance with this clause, restrict:

- (a) the purposes for which the water can be used; or
- (b) the times when the water can be used; or
- (c) the methods by which the water can be used.

(2) The council may, by notice published in accordance with this clause, restrict the use of water from its water supply system for any purposes (including domestic purposes):

- (a) if there is a drought; or
- (b) if the available stored water, or the available capacity of supply, is so limited as to make extraordinary measures necessary in the general interest of water consumers.

(3) Restrictions under this clause can be imposed in respect of all of the area supplied by the council, but can apply to a part of that area if and only if:

- (a) the shortage of water or shortage in capacity of supply is limited to that part; or
- (b) the council orders the supply to be restricted to different parts of the area in rotation.

(4) Restrictions under this clause can be imposed only by a notice of the council published in a newspaper circulating within the council's area.

(5) All agreements made by the council relating to the supply of water by the council are subject to this clause.

(6) This clause does not authorise the council to make orders restricting persons' rights under the Water Act 1912.

**Certain water not to be used otherwise than for domestic purposes**

28. (1) An occupier of premises supplied with water from the council's water supply system must not use the water for purposes other than domestic purposes, unless the permission of the council has been obtained.

(2) Subclause (1) does not apply if the water:

- (a) is supplied under a special contract with the council; or
- (b) is supplied through a water meter.

(3) If the premises concerned are subject to a water rate and the water supply to those premises is measured by a water meter, a special contract must allow a specified maximum quantity of water to be consumed for domestic purposes free of any charge other than the amount of the rate, with that maximum quantity being fixed by reference to the amount of the rate.

(4) A person does not contravene this clause by using water to put out a fire.

(5) A supply of water for domestic purposes does not include a supply for any of the following uses or purposes:

- (a) for buildings (not being buildings used for human habitation) used for housing animals or birds;
- (b) for any manufacturing purpose;
- (c) for irrigation or sprinkling of crops, gardens or lawns;
- (d) for the production of power for fountains;
- (e) for ornamental purposes.

(6) Without limiting the generality of section 637 of the Act, a person who contravenes this clause is taken to have misused water for the purposes of that section.

#### **Restrictions on the attachment of taps and devices to hoses**

29. (1) An approval under section 68 of the Act allowing the installation on premises connected to the council's water supply system of a tap or device to which a hose can be attached is, unless the council otherwise determines, taken to include a condition requiring that this clause not be contravened.

(2) A person whose premises are supplied with water from the council's water supply system must not install or allow to remain installed within the premises a tap or device to which a hose can be attached, unless:

- (a) a water meter is installed on the premises and the water supply passes through the meter; or
- (b) the water is supplied under a contract allowing the use of the tap or device; or
- (c) a special fee for the tap or device, fixed by the council, has been paid to the council.

#### **Restrictions on the attachment of hoses to pipes**

30. (1) If the council supplies water to premises for domestic purposes, a person must not, on those premises, use for any purpose (such as watering a garden or laying dust) a hose attached to a tap or pipe connected to the council's water supply system, unless:

- (a) a water meter is installed on the premises and the water supply passes through the meter; or
- (b) a special fee for the use of the hose, fixed by the council, has been paid to the council.

(2) Without limiting the generality of section 637 of the Act, a person who contravenes this clause is taken to have misused water for the purposes of that section.

**Division 5—Disconnection of water supply service****Cutting off supply**

**31. (1)** The council may cut off the supply of water to premises:

- (a) if any water meter used to measure that supply is out of repair or, in the opinion of the council, incorrectly registers the supply of water; or
- (b) if any rates or charges in respect of the water supplied to the premises are unpaid; or
- (c) if, in the opinion of the council, that action is necessary because of unusual drought or other unavoidable cause or any accident; or
- (d) if the owner or occupier or person requiring a supply of water fails to comply with a lawful order or requirement of the council as to installing water meters or instruments for measuring the quantity of water supplied; or
- (e) if the owner or occupier, or the person requiring a supply of water, fails to comply with a lawful order or requirement of the council to repair or alter water connections, pipes, fittings or fixtures, connected to the council's water supply system; or
- (f) if the occupier of the premises contravenes a provision of Division 4 or fails to comply with any order or public notice of the council requiring consumers of water to economise its use in time of drought or scarcity of supply; or
- (g) if the owner or occupier of the premises fails to comply with a requirement of an order of the council served on that owner or occupier under clause 32.

**(2)** The cutting off of the supply of water under this clause for non-payment of rates does not affect the liability of the rateable person to pay those rates.

**(3)** If the council cuts off the supply of water to premises because:

- (a) there is no water meter installed on the premises; or
- (b) the water meter on the premises registers incorrectly; or
- (c) water rates or charges for the premises are unpaid,

the council may refuse to supply water to those premises until:

- (d) a water meter is installed on the premises; or
- (e) the water meter registers correctly; or
- (f) the water rates or charges are paid.

**Water supply pipe etc. not to be used after notice from council**

**32. (1)** The council:

- (a) may, by order served on the owner or occupier of premises connected to the council's water supply system, require the owner or occupier (as the case may be) to remove, replace, alter, extend or repair a water pipe or fitting located on the premises; and
- (b) may, by the same or a similar order, require the owner or occupier to stop using a specified pipe or specified fitting pending the removal, replacement, alteration, extension or repair of the pipe or fitting.

**(2)** This clause does not apply to a defect to which clause 55 applies.

**PART 3—SEWERAGE AND DRAINAGE****Division 1—Council functions****Common effluent drainage districts**

33. (1) The council may, by resolution, declare any part of its area to be a common effluent drainage district and may, by resolution, revoke any such declaration.

(2) An approval under section 68 of the Act allowing the construction or installation of a non-gravity pipeline from the outlet of a septic tank or sullage tank on any premises located within a common effluent drainage district to the point of connection with the council's sewerage system is taken to include a condition requiring that the pipeline must not be constructed or installed, unless the pipeline conforms to the requirements of the Plumbing and Drainage Code of Practice.

**Plans of sewerage and drainage work**

34. (1) A council that has ordered the owner or occupier of premises to connect the premises to the council's sewerage system must give that owner or occupier a plan showing the location of the connection.

(2) A person who has approval or is ordered to carry out sewerage or drainage work under this Regulation for which the council is required to provide a plan is entitled to receive a copy of the plan, but only if the person has given the council at least 6 days' notice of intention to begin the work.

**Joint sewerage works between council areas**

35. (1) If sewerage works have been constructed to serve the areas of 2 or more councils, the council that has control of the sewer mains through which sewage from another council's sewerage system has to flow must allow that flow.

(2) If the capital cost of the works has not been notified as a joint debt, the council having control of those sewer mains may make a charge for allowing that flow of sewage and for pumping that sewage and treating it at the council's sewage treatment works:

- (a) of such amount as may be agreed with the other council; or
- (b) if there is no agreement, of such amount as the Minister may from time to time determine and notify to all of the councils concerned.

(3) Such a charge is recoverable as a debt by proceedings brought in a court of competent jurisdiction.

**New sewer or drain to be constructed if it is less costly than a connection to an existing sewer**

36. (1) A council that believes that it would cost more to provide for the flow of existing sewers or drains on 2 or more separate premises to empty into an existing sewer or drain than it would to provide for the flow to empty into a new sewer or drain may construct a new sewer or drain for that purpose.

(2) A council, on constructing such a new sewer or drain, may, by order served on the owners or occupiers of the premises concerned, order those owners or occupiers to cause the sewers or drains on each of those premises to empty into the new sewer or drain.

- (3) The council:
- (a) must apportion fairly the expenses of the construction of the new sewer or drain among the owners or occupiers of each of the premises affected; and
  - (b) may, by proceedings brought in a court of competent jurisdiction, recover the apportioned expenses from those owners or occupiers as debts to the council.

### **Division 2—Connection to council's sewerage system**

#### **Joint sewerage services prohibited**

37. (1) An approval under section 68 of the Act allowing premises to be connected to the council's sewerage system is, unless the council otherwise determines, taken to include a condition requiring that the requirements of this clause be complied with.

(2) An order under section 124 of the Act requiring premises to be connected to the council's sewerage system is not, unless the council otherwise determines, complied with unless the requirements of this clause are complied with.

(3) The owner of premises connected to the council's sewerage system must ensure:

- (a) that any house drain on the premises is kept separate from that of all other premises; and
- (b) that the only fittings and fixtures permitted to discharge into the house drain are those located on the premises.

(4) The owner of premises on which a house drain is or is to be connected to the council's sewerage system must ensure that the drain is laid within the boundary of the premises until it:

- (a) reaches that system or the boundary nearest to that system; or
- (b) emerges into a public place.

#### **Pipe etc. not to be used after notice from council**

38. (1) The council:

- (a) may, by order served on the owner or occupier of premises connected to the council's sewerage system, require the owner or occupier (as the case may be) to remove, replace, alter, extend or repair a pipe, fitting or fixture located on the premises; and
- (b) may, by the same or a similar order, require the owner or occupier to stop using a specified pipe or specified fitting or fixture pending the removal, replacement, alteration, extension or repair of the pipe, fitting or fixture.

(2) This clause does not apply to a defect to which clause 55 applies.

#### **Connections to council's sewerage system**

39. (1) If premises are liable to a special sewerage rate, the council may, at the request of the person liable to pay rates in respect of the premises:

- (a) carry out such works as may be necessary to provide for the drainage of sewage from the premises; and
- (b) provide such connections as may be necessary to enable fixtures installed on the premises to discharge their contents into the council's sewerage system.

(2) The council may, in respect of work done or any materials provided under subclause (1), impose on the person a charge sufficient to meet the cost of the work or materials.

(3) Such a charge:

(a) must cover the cost of doing the work, or providing the materials, together with interest on that cost at a rate not exceeding that fixed in respect of overdue rates; and

(b) may be recovered by equated instalments of principal and interest during such period as the council determines.

(4) Any such charge may be recovered as a rate and is to be a charge on the premises in respect of which it is imposed as if it were a rate.

(5) The council is not responsible for the repair, maintenance or renewal of any work done or materials provided under this clause on or in respect of the premises concerned, except as regards defective work or materials.

(6) Any work so done or materials so provided belongs to the owner of those premises.

### **Division 3—Sewerage work generally**

#### **Acts taken to be included in the Table to section 124 of the Act**

40. Without limiting order No. 24 in the Table to section 124 of the Act, the following acts are taken to be included in Column 1 of that Table as acts that may be required by that order:

(a) the construction of all necessary pipes, and the installation of all necessary fixtures and fittings;

(b) the construction or installation of a separate service pipe to the premises, or to each of the premises concerned.

#### **Cutting into council sewer main**

41. (1) When the council has, for the purpose of section 68 of the Act, given approval for a junction to be cut into a sewer main, the approval is taken to be subject to the following conditions:

(a) the approval is only for the occasion for which it is given; and

(b) the cutting of the junction must be carried out by a qualified supervisor acting under the supervision and in accordance with the directions of an inspector.

(2) The council may, as a condition of an approval for a junction to be cut into a sewer main, direct that the work must not be started unless at least 2 days' notice of intention to start the work has been given to the council.

(3) The council may, as a condition of an approval for a junction to be cut into a sewer main, require the work to be carried out by the council for a specified charge if the council has decided that the work should be carried out by the council.

### **Division 4—Discharges into council's sewerage system**

#### **Substances prohibited from being discharged into council's sewers**

42. For the purposes of section 638 of the Act (Discharge of prohibited matter into sewer or drain), the following substances are prohibited matter:

- (a) animal matter (including carcasses but not including human waste), wool, hair, grease, dust, ashes, cinders, soil, rubbish, filth, oil, salt, mud, sand, gravel, garbage, offal, vegetable or fruit parings, rags, house refuse, steam or solid matter;
- (b) any flammable or explosive substance;
- (c) any infectious or contagious substance;
- (d) the contents of a cesspool or privy;
- (e) waste water or other waste liquid:
  - (i) that contains a percentage of common salt or any other mineral salt, acid or gas; or
  - (ii) that is at a temperature, specified by the council as being damaging, or liable to form compounds damaging, to the council's sewerage system or treatment works or to council employees who are engaged in the operation or maintenance of that system or those works;
- (f) roof, rain, surface, flood, seepage or subsoil water;
- (g) other substances that the council believes are likely to damage the sewerage system or injure those council employees.

#### **Matter that must be discharged into sewers**

43. (1) An approval under section 68 of the Act allowing work to be carried out for the purpose of enabling premises to be connected to the council's sewerage system is taken to include a condition that the occupier of the premises must comply with the requirements of this clause.

(2) An order under section 124 of the Act requiring premises to be connected to the council's sewerage system is not complied with unless the requirements of this clause are complied with.

(3) The occupier of premises connected to the council's sewerage system must ensure that there is discharged into the system:

- (a) all human waste, household slops, laundry and bath water and other household liquid refuse (not being pan contents or septic tank effluent); and
- (b) all polluted matter from stables, cow-sheds, dairies, market places, washing areas or other polluted premises; and
- (c) all trade waste.

(4) Subclause (3) is subject to such exceptions and conditions as the council may specify in the approval referred to in subclause (1) or the order referred to in subclause (2).

(5) An approval under section 68 of the Act to connect premises referred to in subclause (3) (b) to the council's sewerage system must not be given unless:

- (a) the premises have roofing sufficient to prevent the entry of rainwater from the roof to the sewerage system and all necessary steps are taken to ensure that no rainwater can be discharged onto that place from adjoining areas; and
- (b) the premises are paved with materials approved by, and the paving is graded to the satisfaction of, an inspector; and
- (c) the drain from those premises are provided with a silt trap approved by the inspector and is connected to the house drain:
  - (i) on the inlet side of the boundary trap; or

(ii) if the interceptor trap or boundary trap is omitted—on the upstream side of the position that would normally be occupied by that fitting.

(6) An occupier of premises referred to in subsection (3) (b) must not discharge trade waste from the premises into the council's sewerage system, unless:

- (a) an order of the council served on the person in accordance with subclause (7) is complied with within the period specified in the order; and
- (b) the waste is passed through settling tanks, or other tanks or appliances approved by the council and is treated in such manner as may be specified by the council; and
- (c) all tank, appliances and apparatus on the premises for the treatment of trade waste are kept clean and maintained in an efficient condition to the satisfaction of the council or an inspector and have not been modified without the approval in writing of the council or an inspector.

(7) The council may, by order served on the occupier of trade premises, require that occupier to ensure that all or any of the following are complied with:

- (a) that the aggregate daily quantity of trade waste allowed to pass from the premises into the council's sewerage system does not exceed a quantity specified in the order;
- (b) that the rate of discharge of trade waste from the premises does not exceed a rate so specified;
- (c) that the size and capacity of the drain for conveying trade waste into the system are in accordance with a size and capacity so specified;
- (d) that trade waste is discharged into the system from the premises only during periods so specified;
- (e) that the volume of trade waste to be discharged into the system is measured and determined by meter or some other means of measurement approved by the council;
- (f) that any specified modifications to any works on the premises for the treatment of trade waste, or to the method of treating trade waste discharged from the premises, are carried out.

#### **Approvals for discharge of pan contents or septic tank effluent**

44. (1) The discharge of pan contents or septic tank effluent from premises is a disposal of waste for which an approval is required under section 68 of the Act.

(2) An application for such an approval is not in the approved form for the purposes of section 79 of the Act unless it is made to the council in writing and accompanied by details of:

- (a) the nature of the waste proposed to be discharged; and
- (b) the quantity of waste proposed to be discharged; and
- (c) the proposed rate of discharge of waste; and
- (d) the proposed frequency of discharge of waste.

(3) On being served with a notice revoking such an approval, the holder of the approval must immediately stop discharging pan contents or septic tank effluent into the council's sewerage system.



**PART 4—PROVISIONS APPLICABLE TO ALL WORKS****Division 1—Approvals and conditions of approvals****Matters to be considered when determining applications for water supply, sewerage and stormwater drainage approvals**

45. (1) In determining an application for the purposes of section 68 of the Act for an approval to do any of the activities to which this clause applies, the council must have regard to the following considerations:

- (a) the protection and promotion of public health;
  - (b) the protection of the environment;
  - (c) the safety of its employees;
  - (d) the safeguarding of its assets;
  - (e) any other matter that it considers to be relevant in the circumstances.
- (2) This clause applies to the following activities:
- (a) carrying out water supply work;
  - (b) drawing water from the council water supply or a standpipe;
  - (c) installing, altering, disconnecting or removing a water meter connected to a service pipe;
  - (d) carrying out sewerage work;
  - (e) carrying out stormwater drainage work.

**Compliance with standards**

46. It is a condition of an approval in respect of an activity referred to in Part B or item 4 of Part C of the Table to section 68 of the Act that:

- (a) the activity approved; and
- (b) any building or work associated or carried out in connection with the activity,

complies with any applicable standards established by this Regulation or by or under the Act.

**Note:** The requirements of the regulations may be varied or not complied with if the council approves. See section 81 of the Act.

**Person carrying out water supply, sewerage or drainage work to hold permit**

47. A person must not begin carrying out water supply, sewerage or drainage work unless the person is the holder of a permit issued in accordance with the Plumbing and Drainage Code of Practice.

**Note:** This provision is in addition to the provisions of section 68 of the Act under which council approval is required before carrying out water supply, sewerage or drainage work.

**Activities for which approval is not required**

48. (1) The following activities may be carried out without the prior approval of the council subject to such of the following conditions as are relevant:

- (a) obtaining water—water may be drawn from the council's water supply system if the water is passed through a property service pipe connected to that system or in accordance with a right or licence conferred by or under an Act;

- (b) obtaining water from water supply or standpipe—water may be drawn from the council water supply system or council standpipe if the water is drawn by the council employee acting in the course of his or her employment;
  - (c) water supply, sewerage or stormwater drainage work—water supply, sewerage or stormwater drainage work may be carried out if the work is permitted by, and in accordance with, rule 2.1.3 of the Plumbing and Drainage Code of Practice.
- (2) Approval is not required for an activity specified in Part B of the Table to section 68 of the Act:
- (a) if approval for that activity is required under Part 12 of the Local Government Act 1919; or
  - (b) if the activity is undertaken by the Crown and approval would have been required under that Part had that activity been undertaken by any other person.

### Division 2—Inspections and tests

#### Inspection and testing of water, sewerage and drainage works

49. (1) A person must not:

- (a) cover up or conceal from view an underground or enclosed water supply, sewerage or drainage work; or
- (b) put into use such a work,

until the work has been inspected and approved:

- (c) by an inspector; or
- (d) if the council concerned is authorised by the Minister to give approvals for the purposes of this paragraph—by a licensed contractor approved by that council,

and the inspector or contractor has certified the work as having been constructed in accordance with the Act and this Regulation.

(2) Any test, inspection and certification undertaken by a licensed contractor must be carried out in accordance with the Plumbing and Drainage Code of Practice and the requirements of the council.

(3) A person undertaking the construction of a water supply, sewerage or drainage work must provide every reasonable facility and all necessary information to enable the inspector to inspect the work.

(4) In particular, such a person must, if required to do so by the inspector, produce the plan (if any) of the work for the inspector to look at.

(5) A person must not put into use a soil, waste or drain pipe until an inspector has water tested the pipe and examined it for leakage.

(6) The council must not supply water through a water supply work connected to the council's water supply system until the work has been tested and inspected:

- (a) by an inspector; or
- (b) if the council concerned is authorised by the Minister to give approvals for the purposes of this paragraph—by a licensed contractor approved by that council,

and the inspector or contractor has certified the work as having been constructed in accordance with the Act and this Regulation.

(7) A person carrying out water, sewerage or drainage work must immediately rectify to the satisfaction of an inspector any defect revealed by a test or inspection under this clause.

**Division 3—Provisions applicable to all water supply, sewerage  
and drainage work**

**Works for which approval is required under section 60 of the Act**

**50. (1)** The Minister for Public Works may give a council an approval for the purposes of section 60 of the Act if and only if:

- (a) the council has made an application in writing for consent that is accompanied by the relevant documents; and
- (b) either the council has complied with any requirement of that Minister to supply further information with respect to the application or that Minister has waived any such requirement; and
- (c) that Minister is satisfied that the council is competent to exercise the powers that it would not be able to exercise without that approval; and
- (d) all inspections of the work and the site of the work that that Minister has directed to be carried out for the purpose of enabling the application to be considered have been carried out.

**(2)** The relevant documents are:

- (a) the plans and specifications of, and documents and data in the possession of the council that are relevant to, the exercise of power in respect of which the approval is sought; and
- (b) any documents containing details sufficient to satisfy the Minister for Public Works of the matters referred to in subclause (1) (b)–(d).

**(3)** If the Minister for Public Works has, for the purposes of section 60 of the Act, approved the exercise by the council of its powers with respect to a work, that Minister may, by notice in writing to the council, revoke that approval if the council has failed:

- (a) to comply with any requirements that that Minister has made with respect to the provision of additional plans, specifications, documents or information with respect to the exercise of those powers; or
- (b) to comply with any directions that that Minister has given with respect to the work; or
- (c) to accept any supervision of the exercise of those powers that that Minister has required.

**Materials for use in water supply, sewerage or drainage work**

**51. (1)** An approval under section 68 of the Act allowing water supply, sewerage or drainage work to be carried out is taken to include a condition requiring this clause be complied with.

**(2)** An order under section 124 of the Act requiring water supply, sewerage or drainage work to be carried out is not complied with unless the work is carried out in accordance with this clause.

**(3)** A person engaged in carrying out water supply, sewerage or drainage work must ensure that all materials used in the work are of a kind authorised for the purposes of work of that kind:

- (a) by the Director-General; or
- (b) under the Manual of Authorization Procedures for Plumbing and Drainage Products (SAA MP 52—1988), published by the Standards Association of Australia, as in force from time to time.

**(4)** If an inconsistency arises under subclause (3), the authorisation of the Director-General prevails.

**Council to prepare map of water supply, sewerage and drainage works****52. (1) The council:**

- (a) must, before or within a reasonable time after water supply, sewerage or stormwater drainage works have been constructed, prepare a map of the works and the surrounding land that is liable to be rated for the works; and
- (b) must from time to time, as the works are extended, amend the map so that it shows the extended works and the land.

**(2) The council must ensure that every such map also shows:**

- (a) the levels of the works at the road frontages of the land; and
- (b) so far as is reasonably practicable, the distances from the works of the nearest boundaries of that land and the location of buildings on that land.

**(3)** The owner or occupier of land affected by a map prepared by the council under this clause or the holder of a licence, supervisor certificate or registration certificate in force under the Building Services Corporation Act 1989 is entitled to inspect the map during the office hours of the council.

**Damage to pipes**

**53. (1)** If a licensed contractor or an agent or employee of such a contractor damages a council's water supply, sewerage or drainage pipes, or any related works, the contractor must immediately:

- (a) report the damage to the council; and
- (b) have the damaged pipes repaired at the expense of the contractor.

**(2) If subclause (1) (b) is not complied with immediately, the council:**

- (a) may carry out the necessary repairs; and
- (b) may, by proceedings brought in a court of competent jurisdiction, recover the cost of the repairs as a debt from the licensed contractor.

**Destruction or removal of timber prohibited**

**54. (1)** An approval under section 68 of the Act allowing water supply, sewerage or drainage work to be carried out is taken to include a condition requiring that this clause is not contravened.

**(2)** An order under section 124 of the Act requiring water supply, sewerage or drainage work to be carried out is not complied with if the work is carried out in contravention of this clause.

**(3)** A person engaged in carrying out water supply, sewerage or drainage work must not, without the approval of the council concerned, destroy, damage or remove a tree or shrub located within the council's catchment district.

**(4)** This clause does not apply to the holder of a licence under the Forestry Act 1916 while acting within the authority of the licence.

**Defective work to be rectified**

**55. (1)** A licensed contractor who undertakes the carrying out of a work of water supply, sewerage or drainage must, if ordered to do so by the council, rectify any defect in the work that is due to faulty

workmanship or defective material, but only if the council notifies the contractor of the defect after the date of issue by the contractor of a certificate to the effect that the work has been carried out as required by the Act and this Regulation.

(2) A licensed contractor so notified must bear the cost of rectifying the defect.

(3) The council must not give an order under this clause in respect of defective work that is the subject of a rectification order made under section 59 (1) of the Building Services Corporation Act 1989.

(4) An order given under this clause in respect of any such defective work ceases to have effect if a rectification order is made under that section in respect of the defective work.

## PART 5—MISCELLANEOUS

### Erection of signs and marks to indicate boundaries of catchment areas

56. The council may, on land in a catchment district (including Crown land), erect such signs or marks as it considers necessary for indicating the boundaries of the district and directing attention to any prohibitions or restrictions applicable to the district.

### Flood retarding basins

57. For the purposes of section 60 (d) of the Act, the following are prescribed as flood retarding basins:

- (a) a work that is, or will when completed be, a prescribed dam for the purposes of the Dams Safety Act 1978;
- (b) a flood retarding basin, the failure of which would, in the opinion of the Minister for Public Works or of a person whom that Minister has designated for the purpose, may endanger human life or public health or may cause substantial damage to the environment or to property.

### Savings and transitional provisions

58. Schedule 1 has effect.

## SCHEDULE 1—SAVINGS AND TRANSITIONAL PROVISIONS

(Cl. 58)

### Definitions

1. In this Schedule:

“**Ordinance No. 45**” means Ordinance No. 45 as in force immediately before the commencement of the Local Government (Consequential Provisions) Act 1993;

“**Ordinance No. 46**” means Ordinance No. 46 as in force immediately before the commencement of the Local Government (Consequential Provisions) Act 1993;

“**the old Act**” means the Local Government Act 1919.

**Savings for plans, specifications etc. prepared for the purposes of Ordinance No. 45, Ordinance No. 46 or the old Act**

2. If a plan, specification, certificate, application, information or other document was prepared or made, or could be used, for the purpose of a provision of Ordinance No. 45, Ordinance No. 46 or the old Act and this Regulation contains a corresponding provision, the plan, specification, certificate, application, information or other document is taken to have been prepared or made, or may be used, for the purpose of the corresponding provision.

**Consents given by the Minister for Public Works**

3. A consent given by the Minister for Public Works for the purpose of section 382A of the old Act is, if not revoked, taken to be an approval for the purpose of clause 50 of this Regulation.

**Approvals by the Chief Engineer, Public Works Department**

4. An approval given by the Chief Engineer, Public Works Department, or by any other authority, for the purposes of a provision of Ordinance No. 45 or Ordinance No. 46 is taken to have been an approval or authorisation given by the Director-General for the purposes of any corresponding provision of this Regulation.

**Requirements and directions made or given under Ordinances 45 and 46**

5. Any requirement made, or direction given, under a provision of Ordinance No. 45 or Ordinance No. 46 that could be made or given under a corresponding provision of this Regulation is, if the requirement or direction has not been complied with before the commencement of this Regulation, taken to be a requirement made, or order given, under the corresponding provision.

**Notices given or served under Ordinances 45 and 46**

6. Any notice given or served under a provision of Ordinance No. 45 or Ordinance No. 46 that could be given or served under a corresponding provision of this Regulation is, if the notice has not ceased to have effect before the commencement of this Regulation, taken to be a notice or an order given or served under the corresponding provision.

**Notices displayed for the purpose of clause 52 of Ordinance No. 45**

7. A notice that was being displayed for the purposes of clause 52 of Ordinance No. 45 immediately before the commencement of this Regulation is taken to be a notice displayed for the purposes of clause 9 of this Regulation.

**Contracts and agreements entered into for the purpose of a provision of Ordinance No. 45 or 46**

8. Any contract or agreement that has been entered into for the purpose of a provision of Ordinance No. 45 or Ordinance No. 46 and that has not ceased to have effect before the commencement of this Regulation is taken to have been entered into for the purpose of the corresponding provision of this Regulation.

### Permits issued for the purpose of Ordinance No. 45 or 46

9. If a permit has been issued under or for the purpose of a provision of Ordinance No. 45 or Ordinance No. 46 and an approval or permit could be issued for a similar purpose under a corresponding provision of this Regulation, the first mentioned permit is, if it has not ceased to have effect before the commencement of this Regulation, taken to be an approval or permit issued under the corresponding provision.

### Common effluent drainage districts

10. A common effluent drainage district declared under clause 22A of Ordinance No. 46 is taken to be a common effluent drainage district declared under clause 33 of this Regulation.

### Fire hydrants

11. A fire hydrant installed in accordance with clause 73A of Ordinance No. 45 is taken to be a fire hydrant installed in accordance with clause 8 of this Regulation.

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## DICTIONARY

(Cl. 3)

**AS 3500** means the National Plumbing and Drainage Code, AS 3500.0—1990, published by the Standards Association of Australia, as in force from time to time.

**house drain** means that part of the sewerage service that conveys (or is intended to convey) the discharges from soil pipes and waste pipes on premises.

**house service pipe** means such part of a water service pipe as is not a property service pipe.

**interceptor trap** or **boundary trap** means a trap for preventing the passage of air or gases from the sewer to the house drain and located at some point between the sewer and the lowest inlet of the house drain.

**inspector** means an employee of the council who is an authorised person for the purposes of exercising the functions of an inspector under this Regulation.

**licensed contractor**, in relation to carrying out water supply, sewerage or drainage work, means the holder of a licence in force under the Building Services Corporation Act 1989 that authorises the holder to carry out that work.

**pan** means any movable receptacle kept in a closet and used for the reception of human waste.

**Plumbing and Drainage Code of Practice** means the code of practice published by the Committee on Uniformity of Plumbing and Drainage in New South Wales under the title "New South Wales Code of Practice—Plumbing and Drainage", as published in Gazette No. 89 of 17 July 1992, at pages 5098–5146.

**property service pipe** means such part of a water service pipe as lies between the service main and the water meter or, if there is no water meter, the boundary of the premises served by the service pipe.

**qualified supervisor**, in relation to the carrying out of water supply, sewerage or drainage work, means the holder of an endorsed licence or supervisor certificate in force under the Building Services Corporation Act 1989 authorising the holder to carry out or to supervise that work.

**septic tank** means a fixed receptacle of watertight material used in connection with the bacterial treatment of sewage.

**service main** means a water main or a sewer main.

**sewer main** means a sewer main forming part of the council's sewerage system, and:

- (a) includes risers or junctions provided by the council to enable a sewerage service to be connected to the main; and
- (b) if the main is located outside premises that are to be served—includes risers and the sewers and fittings connecting the main to the premises, but only up to the boundary of the premises or, if a boundary trap or interceptor trap is installed, up to the trap.

**sewerage service**, in relation to premises:

- (a) means the pipes, fittings and fixtures used or intended to be used in connection with the premises for the purpose of conveying sewage or permitted discharges from the premises to the council's sewerage system; and
- (b) if a septic tank is installed on the premises and connects or is intended to connect (directly or indirectly) with the councils' sewerage system —includes an effluent tank or a sullage tank,

but does not include a septic tank.

**sewerage system**, in relation to the council, includes all sewers, appliances, plant, machinery and other sewerage works of the council.

**sullage system** means any trench, pit, tank or other structure that:

- (a) is used for the purpose of disposing of or collecting sullage from any premises on which any part of the sewerage service is connected to a septic tank; and
- (b) is not connected with, and is not intended to connect with, either directly or indirectly, the council's sewerage system,

and includes all pipes, house drains, fittings and fixtures used for the purpose of conveying sullage from any such trench, pit, tank or other structure.

**soil pipe** means any pipe which conveys the discharge from human waste storage facilities, or from operating theatres or morgues, to the house drains.

**the Act** means the Local Government Act 1993.

**trade waste** means liquid trade or factory wastes or chemical or other impurities from any business, trade or manufacturing premises, other than domestic sewage, stormwater or unpolluted water:

**trap** means any fitting designed to retain a quantity of water to prevent the passage of air or gases through such fitting.

**waste pipe** means any pipe which conveys discharges to a house drain from fixtures (other than human waste storage facilities) or operating theatres or morgues.

**water main** means a water main forming part of the council's water supply system, and, if premises are or are to be connected to the main, includes water pipes and fittings connecting the main to the premises to the point within the premises at which the water meter is or is to be installed.

**water service pipe** means a pipe that connects premises to a water main.



**water supply service** means the pipes and fittings laid or installed on premises for the purpose of enabling water to be supplied from the council's water supply system.

**water supply system**, in relation to a council, means all reservoirs, drains, pipes, tanks, channels, canals, buildings, machinery, mains and appliances of the council for collecting, storing, treating, conveying or supplying water.

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**NOTE**

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SCHEDULE 1—SAVINGS AND TRANSITIONAL PROVISIONS  
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**EXPLANATORY NOTE**

The object of this Regulation is to supplement the provisions of the Local Government Act 1993 relating to the carrying out of water supply, sewerage and drainage work within a council's area and to regulate the use of works installed in such an area.

This Regulation is made under the Local Government Act 1993, including section 748 (the general regulation making power) and various other sections mentioned in the Regulation.

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APPENDIX 2

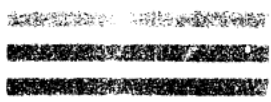
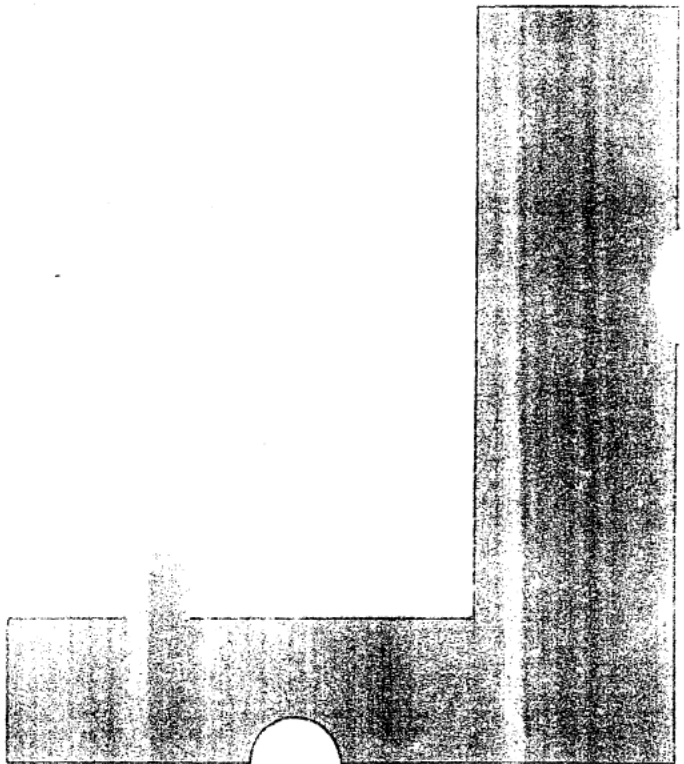
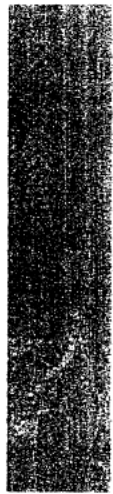
TO REPORT NO. 25 OF THE REGULATION REVIEW COMMITTEE

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**REGULATORY IMPACT STATEMENT**



87  
1993

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## 1. INTRODUCTION

This Regulatory Impact Statement has been prepared for the Local Government (Water, Sewerage and Drainage) Regulation 1993 in accordance with the Subordinate Legislation Act 1989.

Before a regulation may be made, the legislation requires a formal process of review to be undertaken, with the preparation of a Regulatory Impact Statement (RIS) and consultation with the community. The objective is to ensure that the economic and social costs of any regulation are fully considered, and that of the regulatory options available, the one which produces the greatest net good to the community is chosen.

The Local Government (Consequential Provisions) Act 1993 repealed the majority of ordinances made under the 1919 Local Government Act. The Local Government (Water, Sewerage and Drainage) Regulation 1993 (the Regulation) is one of a set of Regulations made under the new Local Government Act.

During the first two months of its operation, some changes have been suggested in relation to the Regulation. These have been included in Appendix I to this RIS.

Submissions or comment on any aspect of the Regulation and the proposed amendments are welcome and may be sent to:

Mr Geoff Barnden  
Director Policy  
Department of Local Government and Co-operatives  
Locked Bag 1500  
Bankstown NSW 2200

The final date for receipt of submissions is 18 October 1993.

Further copies of the RIS are available from:

Michelle Gleeson  
Department of Local Government and Co-operatives  
66-72 Rickard Road  
Bankstown NSW 2200

For further information, telephone (02) 793 0680.

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**2. TITLE OF REGULATORY PROPOSAL**

Local Government (Water, Sewerage and Drainage) Regulation 1993.

**3. NAME OF PROPONENT AND RESPONSIBLE MINISTER**

The Hon. Garry West M.P., Minister for Energy and Minister for Local Government and Co-operatives.

The Regulation is under the Local Government Act, 1993, introduced by the Minister for Energy and Minister for Local Government and Co-operatives, but the Minister for Public Works, who it is anticipated will be responsible for administration of Division 3 of Part 3 of Chapter 6 of the Act, will play an active role in the application of the Regulation.

**4. OBJECTIVES OF THE REGULATION AND RELATIONSHIP TO THE ACT**

The objective of the Local Government (Water, Sewerage and Drainage) Regulation 1993 is to protect public health, safety and amenity by providing and maintaining standards and specifications for water, sewerage and drainage works. The Regulation is intended to explain the relationship and responsibilities between the customers and operators of services, the manufacturers of equipment, contractors who install and maintain equipment and the government.

The Regulation provides common standards and specifications for various plumbing and drainage works where the water supply or sewerage service is provided by a council under the Act.

The previous Ordinances Nos. 45 (Water Supplies), 45A (Water Carting) and 46 (Sewerage) contained detailed provisions on both administrative and technical requirements. Matters relating to the general, approval and directive powers of councils and to offences in respect of water and sewerage have been accommodated in the relevant parts of the new Local Government Act.

The remaining relevant administrative provisions and technical standards and specifications from the previous Ordinances have been included in a single Regulation.

Relevant standards in relation to water supply, sewerage and drainage may, in the context of the Local Government Act 1993, arise in two main ways:

- in the context of the approvals system, in that certain activities (e.g. the carrying out of water supply works, sewerage works, stormwater drainage works, and the installation of human waste storage facilities) require prior council approval to be obtained; and
- in the context of the orders system, in that certain orders may be given where, for example, a water supply or sewerage system on premises fails to comply with relevant standards.



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In the context of the approvals system, standards may arise as criteria or matters for consideration in the decision-making process itself or may be imposed as conditions (including mandatory conditions) of approval. A council's local approvals policy may contain certain additional requirements.

In the context of the orders system, relevant standards may be imposed by Regulation. Additional requirements may be specified as criteria in a local orders policy.

**Part B of the Approvals Table** in the Act lists activities concerned with water supply, sewerage and stormwater drainage work that require council approval under Section 68 of the Act. These are:

- carry out water supply work
- draw water from a council water supply or a standpipe
- install, alter, disconnect or remove a meter connected to a service pipe
- carry out sewerage work
- carry out stormwater drainage work
- connect a private drain or sewer with a public drain or sewer under the control of a council or with a drain or sewer which connects with such a public drain or sewer.

**Part C - item 4** of the Table is also relevant to discharge of waste to a sewer.

The corresponding Table for orders (section 124 of the Act) lists the following relevant circumstances for giving orders:

- **Order 5** - to take such action as is necessary to bring into compliance with relevant standards or requirements set or made by or under this Act: a water meter, water supply or sewerage system on premises.
- **Order 22** - to store, treat, process, collect, remove, dispose of or destroy waste (other than waste that is dealt with under the Waste Disposal Act 1970) which is on land or premises in the manner specified in the order.
- **Order 23** - to connect premises to the council's water supply by a specified date.
- **Order 24** - to connect premises with a sewerage system by a specified date.
- **Order 25** - not to use or permit the use of a human waste storage facility on premises after a specified date.

Other more generalised orders may also have application in respect of water sewerage and drainage works.

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**5. CONTENT OF THE REGULATION**

Matters dealt with in the Regulation are summarised below.

**WATER SUPPLY**

**Division 1 - Council functions**

Joint water supply works

Apportionment of costs between councils

Fire hydrant in roads

Councils required to install and maintain fire hydrants

Councils required to maintain hydrants installed in the vicinity of buildings.

Councils to ensure all pipes kept charged with water.

Water supply through a standpipe

Councils required to provide a notice giving details of times and charges.

Inspection and measurement

Power for councils to inspect service pipes, install meters and measure supply.

**Division 2 - Conduct of water supply work**

Discretionary conditions for carrying out water supply works

Councils may state time limit and requirement for attendance of a qualified supervisor.

Tapping water mains

Requirement for a qualified supervisor directed by an inspector.

Council may carry out water supply work itself

Permission for councils to undertake and charge for work (tapping of water supply and water supply works)

Premises to be connected to the council's water supply by an independent service pipe

Requirements for house service pipes, stop-valve within premises and water meters.

Depth of pipe

Reference to Plumbing and Drainage Code of Practice.

Fertiliser dispensing units

Requirement for device or fittings to be approved by the Director-General.

**Division 3 - Water meters**

Installation of meters

Provision of power for council to order installation of a water meter.

Privately owned water meters

Requirement that these meet council standards and that they are tested and stamped on payment of a fee.

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**Division 4 - Water use**

Shortage of supply

Councils may restrict consumption of water.

Restrictions on the attachment of taps to hoses and hoses to pipes

Requirement for a water meter, contract or special fee.

**Division 5 - Disconnection of water supply services**

Cutting off supply

Conditions for cutting off water supply, e.g. unpaid charges.

**SEWERAGE AND DRAINAGE**

**Division 1 - Council functions**

Common effluent drainage districts

Requirement for conformity with the Plumbing and Drainage Code of Practice.

Plans of work

Council to provide plans showing connection.

Joint sewerage works

Provision for councils to charge other council.

New sewer or drain to be constructed if it is less costly than a connection to an existing sewer

Provision for councils to construct new sewers and apportion costs among owners or occupiers of each of the premises affected.

**Division 2 - Connection to council's sewerage system**

Joint sewerage services prohibited

Requirement for separate house drains unless council determines otherwise.

**Division 3 - Sewerage work generally**

Cutting into council sewer main

Requirement for a qualified supervisor directed by an inspector and provision for council doing the work and charging a fee.

**Division 4 - Discharge into councils sewerage system**

Substances prohibited from being discharged into sewers

Details of prohibited substances, including surface run-off.

Matter that must be discharged into sewers

Details conditions applying to an approval relating to the separation of rain water from the sewerage system and provision of silt traps and to the discharge of trade waste.

Approvals for discharge of pan contents or septic tank effluent.

Similar coverage for pans and septic tanks.

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## PROVISIONS APPLICABLE TO ALL WORKS

### Division 1 - Approvals and conditions of approvals

Activities for which approval is not required                      Not required if in accordance with Rule 2.1.3 of the Plumbing and Drainage Code of Practice or if approval given under Part 12 of the Local Government Act or if by the Crown.

### Division 2 - Inspection and tests

Inspection and testing    Requirement for inspection and testing in accordance with the Plumbing and Drainage Code of Practice.

### Division 3 - Provisions applicable to all water supply, sewerage and drainage works

Works for which approval of the Minister for Public Works required                      The Act details the work, with the Regulation detailing what steps must be taken in making an application and the documentation to be provided.

Materials for use in water supply, sewerage or drainage work                      Calls up Manual of Authorisation Procedures for Plumbing and Drainage Products (SAA MP 52-1988).

Council to prepare map of water supply, sewerage and drainage works                      Councils must prepare maps and make these available.

Damage to pipes    Provides for councils to repair and charge for damages by a contractor.

Destruction or removal of timber                                      Further approval required for removal of trees or shrubs.

## 6. APPROACH ADOPTED

There are 58 clauses in the Regulation. Rather than examine each clause in isolation, the approach adopted is to consider options for achieving the objective of the legislation considering the Regulation as a whole, and thereafter to identify the main issues and requirements.

It is also important to recognise that most contentious issues in the local government reform in this area flow directly from the principal legislation and not from the Regulation. The two areas of the new Act in relation to water, sewerage and drainage which have generated most comment are:

- application of Division 2 of Part 3 of the Water Supply Authorities Act 1987 to councils in the same way that it applies to a Water Supply Authority. Section 64 of the Local Government Act is concerned with contributions for construction of works for developers. This matter is covered wholly in the Local Government Act and not in the Regulation.

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- extension of the council works for which approval of the Minister for Public Works is required. Section 60 of the new Act includes water treatment works, in addition to dams and the like and sewage treatment works (for which approval was previously required), and a modification to the definition of work on flood retarding basins. Approval is required by the Act. The Regulation is only concerned with specifying the information to be provided in the application for approval; this information was included in the principal legislation prior to the new Local Government Act coming into force.

The prescribed technical standards in the Regulation, as distinct from procedural requirements, are called up from the following:

- New South Wales Code of Practice Plumbing and Drainage, 1992.
- AS3500 - 1990 National Plumbing and Drainage Code
- SAA MP 52 - 1988 Manual of Authorisation Procedures for Plumbing and Drainage Products.

The Code of Practice adopts AS3500 - 1990, with NSW variations and additional provisions. It provides the regulatory requirements in NSW for work carried out on water supply, sanitary plumbing and drainage, stormwater drainage and hot water supply when referenced in Acts and Regulations.

AS 3500 and SAA MP 52 documents have been prepared by Standards Australia with assistance from the water authorities and manufacturers. They represent the best advice of the standards and safeguards that should apply to the water, sewerage and drainage services across Australia. The New South Wales Code of Practice Plumbing and Drainage represents the advice of the water authorities and the NSW Health Department on how the national codes can best be applied within New South Wales.

The new Local Government Act, with its supporting Regulations, represents a fundamental change in the way that councils will operate. The 1919 Act contained many archaic procedures which have been abolished with the new Act. The supporting Ordinances also contained numerous prescriptive standards. In certain instances where they are obviously no longer relevant, they have not been recreated. There has also been some move from prescriptive standards to performance standards. However, the new Regulation largely re-creates existing standards because:

- (a) there needs to be time for councils to adapt to introduction of the new system of local government, including the new approvals and orders system. Simultaneous introduction of new standards would have created enormous administrative difficulties.

- 
- (b) review of standards and codes of practice must involve the Department but would of necessity be a joint exercise involving other Departments and outside bodies. It was not practicable to complete such an undertaking as part of this stage of the local government reform process.

The Regulatory Impact Statement is therefore concerned with assessing the procedures required by the Regulation rather than the technical standards incorporated or called up by the Regulation. It was not practicable, in the circumstances of the case, to undertake assessments of the costs and benefits of the technical standards involved.

## 7. OPTIONS TO ACHIEVE OBJECTIVES

Under the guidelines for Regulatory Impact Statements, alternatives considered should be capable of substantially achieving the objectives of the proposed legislation. This section considers a range of possible options.

### **Option 1 (Preferred) - Government statutory rule (Regulation)**

The Regulation is a single statutory rule containing the necessary technical specifications and administrative requirements to meet the objectives including maintaining health and safety standards in respect of water, sewerage and drainage. Local government and industry groups will be able to work from the Act and from a single regulation which draws on already recognised performance standards.

The Public Works Department supports the single regulation principle and has codified some of the former contents of Ordinances Nos. 45 and 46, drawing on the NSW Code of Practice for Plumbing and Drainage.

### **Option 2 - Do nothing**

The Regulation deals with the approvals and orders systems as they relate to water, sewerage and drainage as well as providing for certain other matters, such as the need for approval from the Public Works Department for certain works. It prescribes recognised standards and specifications. Without any type of action, whether regulation or one of the other possible options, there could be no guarantee of public health standards or of achieving the other objectives. 'Do nothing' is not, therefore, a realistic option.

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### **Option 3 - Maintain previous system**

Maintaining the use of previous Ordinances would be inappropriate as it would duplicate certain matters now covered in the Act. Standards and specifications are the same as in the previous Ordinances. However, the Regulation is more streamlined than the previous Ordinances with most of the purely administrative provisions included in the Act and only technical specifications and related administrative requirements retained. This option is not viable as the administrative and enforcement procedures relate to the previous Act which is no longer a force.

### **Option 4 - Government legislation (no regulation - amended Act)**

Councils' general, approval and directive powers and offences from the previous Ordinances have been incorporated into the Local Government Act 1993. Inclusion of technical specifications and related procedures would not be appropriate given the need for flexibility to reflect changes in technology and practices.

### **Option 5 - Self regulation**

Self regulation would involve individual councils setting standards and specifications at the local level and maintaining appropriate levels of expertise to set and enforce these standards. This would not achieve the objectives of uniformity and of councils meeting the standards set by the Government. A common State-wide series of specifications and standards is necessary to ensure uniformity of public health, safety and amenity across the State. There would also be costs to industry from the lack of uniform specifications and standards. Moves are, in fact, in train for adoption of national standards. Local Government is the appropriate body to administer but not to set specifications and standards for water, sewerage and drainage works over which they have control.

### **Option 6 - Administrative action**

Substituting guidelines for the standards and specifications in a regulation would not be appropriate. Guidelines have limited effectiveness and are therefore inappropriate where public health, safety and amenity are concerned. The new Act (Section 673) gives the Minister, the Director General and councils the power to enforce the Act by means of proceedings in a court. For the purposes of this provision, the Act includes the Regulations made under it. There is no equivalent enforcement power in respect of codes, guidelines or other similar administrative processes.

Public education campaigns are appropriate as an adjunct but not as an alternative to standards and specifications in this area.

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The previous technical specifications and standards have been imported directly into the new Regulation. There may be future capacity to further codify some of these specifications and standards. This has, in fact, been done with some by calling up the NSW Code of Practice for Plumbing and Drainage.

## 8. IMPACT ASSESSMENT OF THE REGULATION

Aspects of the Regulation which could result in costs and benefits to the community are discussed below.

**Fire hydrants:** This part of the Regulation requires councils in relevant areas to install and maintain fire hydrants. This is a standard set by Government to meet community expectations and it imposes a cost on councils with the benefit of ensuring provision of water in case of fire. This will only apply in country areas of NSW (urban areas being covered by other provisions) and will be provided only in towns. There will be financial costs with benefits in reduced damage to property and harm to the community from fire.

**Carrying out work by councils:** The Regulation provides for councils to carry out certain water supply and sewerage works and make a charge for this work. This is work which could be, and often is, carried out by the private sector. There could be a financial cost to individuals in the community, to the extent that charges made by councils exceed the price which would be charged by private contractors: if the public sector is as efficient, then the extra charge is, in effect, a tax on the party for whom the work is undertaken and is therefore a transfer from one section of the community to another; if the charge reflects higher costs because of lower efficiency, then there is an economic cost to the community from the inefficient allocation of resources.

However, councils provide a water supply as a community service which must be paid for by the community. A council may exercise this authority because:

- it considers it is best able to protect the community's assets (the pipe work or water supply) and undertakes the work to reduce the risks (health and financial) to the community;
- the council is required to provide maintenance services to operate the water supply and sewerage facilities and it is economical for council resources to be fully utilised, i.e. savings will be made on behalf of the consumer.

It is appropriate that the council elected by the community should make this decision.

**Requirements for individual connections:** The Regulation provides for individual house connections to mains water supply and sewerage. Were this not required, there could be scope for some initial cost savings in developing new homes. However, if shared pipes were permitted, there would be various problems including reduction in the level of water supply service from



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lower pressure; disputes over water use and responsibility for sewerage blockages; and resulting administrative problems in giving orders.

If councils were able to permit multiple services there is a risk that action by one consumer could affect another consumer. The council could be held liable for damages. This requirement reduces risks to both councils and consumers.

**Control over connection of fertiliser units to councils' water supply systems:** Costs are limited to that of fitting approved safety valves. There will be benefits from the costs avoided in dealing with contaminated water supplies for which a council may be held liable for any resulting damages.

**Inspection and tests:** The Regulation introduces self-certification (clause 49(d)) - an instance of a reduction in regulation. There are potential financial and economic costs to the community if this leads to bad practice and potential financial benefits from reduced inspection and testing costs (particularly in country areas where distances to be travelled by a council inspector could be substantial).

**Mapping of water supply, sewerage and drainage works:** Costs will be incurred by councils in doing this work, but it will need to be completed as part of the asset valuation and management requirements under the Act.

## 9. OVERALL ASSESSMENT

The Water, Sewerage and Drainage Regulation should not increase the cost of water, sewerage and drainage works for consumers, practitioners or local government administration, apart from costs relating to the time taken initially to become familiar with the new Regulation.

The standards and specifications themselves have not been altered and no new specifications or compliance requirements are included.

If there were no system of standards and controls, costs could be saved by practitioners carrying out substandard work using substandard materials, and local government would save initially on administration costs. However, the cost to the community would be the loss of its guarantee of health, safety and amenity and subsequent restoration costs.

Strict compliance standards and specifications for water, sewerage and drainage works are essential to ensure protection and maintenance of public health, safety and amenity. The principal legislation is not the appropriate place for these detailed technical requirements and neither is a series of guidelines unless these guidelines are applied by a Regulation.

OVERALL ASSESSMENT SUMMARY			
Option	Costs	Benefits	Net Effect
1. Regulation	Possible costs if standards in excess of those needed to safeguard public health.	Single Regulation for industry in this area based on industry-recognised standards, with public health and amenity benefits.	Positive
2. Do nothing	No guarantee of public health standards with prospect of substantial economic costs.	Direct financial savings from work undertaken at lower standard.	Negative
3. Maintain previous system	Base case	Base case	Base case
4. Government legislation	As for Option 1 with greater costs for subsequent amendments.	As for Option 1.	Positive but less than Option 1.
5. Self regulation	Costs to industry and community from absence of consistent specifications and standards and costs to councils in setting and enforcing standards.	Greater scope for councils to reflect local circumstances.	Negative
6. Administrative action	Enforcement difficult due to lack of legal basis, with possible public health costs.	None, given that Option 1 can call up codes of practice.	Negative

## 10. CONSULTATION

Consultation has generally been with councils, the Public Works Department and professional organisations. The public have been involved in consultation on the new Act throughout the drafting stages. Practitioners have not been consulted on the Regulation as standards and specifications are not being altered.

## 11. ORGANISATIONS TO BE CONSULTED ON THE REGULATION AND RIS

The RIS will be made available to local government through its general and engineering associations for comment. The following organisations will be sent a copy of the Regulation and RIS for comment:

- Public Works Department
- Local Government Engineers Association (IME)
- Local Government and Shires Associations
- Environmental Protection Authority
- Australian Institute of Environmental Health
- Waste Contractors and Recyclers Association of NSW
- Environmental Defenders Office
- Master Plumbers Association
- Building Services Corporation.

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## APPENDIX I

### PROPOSED AMENDMENTS TO THE REGULATION

#### Clause 8

The clause requires a council to install hydrants in its mains and pipe system where necessary for the purpose of extinguishing fires, and to maintain those hydrants in working order. Where a hydrant remains in a location where it may no longer be required for fire purposes, the council will still be obliged to maintain that hydrant. There is no specific provision concerning the removal of an unnecessary hydrant and it is therefore proposed to make two amendments to avoid unnecessary maintenance costs:

- subclause (3) to be deleted as it duplicates the provisions of subclause (1)(b).
- new subclause (3) to be included to authorise the removal of hydrants no longer necessary for the ready supply of water to extinguish fires.

#### Clause 17

The clause prohibits connection of these units to a public water supply system unless a device or fitting approved by the "Director General" is installed. Formerly that authority rested with the Principal Engineer, Sewerage Services and Operations, Public Works Department (or their equivalent).

It is proposed to restore the authority of the Principal Engineer, Sewerage Services and Operations, Public Works Department, to approve fittings and devices by amending subclauses (3) and (4).

#### Clause 40

Order 24 in the Table to section 124 of the Act allows a councils to give an order to connect premises with "a sewerage system by a specified date" in circumstances where "premises are situated within 75 metres of a sewer of the council". This order preserves the provisions of clause 4 of the former Ordinance No. 46 - Sewerage.

Section 281(1)(c) of the 1919 Act allowed a council to require premises to be connected with the "sewers of a statutory body representing the Crown...". This enabled councils in water board areas to require connection of premises for the purpose of "sanitation and the preservation of public health and decency".

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It is suggested that the interests of public health, the authority for councils to require connection to the sewers of a water board should be restored. There are two options to achieve this:-

- (a) amending section 124 - Order 24, column 2, to reflect the above circumstances; or
- (b) apply the provisions of section 127 to prescribe by Regulation the inclusion in Order 24, column 2, of circumstances warranting connection to a water board sewer.

Option (b) is the less involved process, and given that section 127 was included for this type of situation, this option is supported. However, clause 5 limits the application of the Water Sewerage and Drainage Regulation (i.e. excludes water board areas) and may also need to be amended.

Clause 40 already amends the Table to section 124 for other purposes.

#### Clause 42

Section 638 provides for the prescription of matters prohibited from discharge into:-

- (a) a public sewer
- (b) a fitting connected to such sewer
- (c) a public drain
- (d) a gutter.

It is proposed to amend the clause as follows:

- (a) at paragraph (e)(i) omit the words "mineral salt, acid" and insert in lieu the word "substance".
- (b) at paragraph (g) after the word "sewerage system" insert "the environment"
- (c) renumber paragraph (g) to (h) and insert new paragraph (g) as follows:-

"(g) trade waste, except where approval has been granted under section 68 of the Act."

Clause 42 requires additional amendment because, although the heading to clause 42 refers to a sewer only, the clause can be read to have application to all of the works in (a) to (d) above. This interpretation effectively prohibits rain, stormwater, and like being discharged into a public drain or gutter. Alternatively if the clause is interpreted as applying to sewers only, then there are no prescribed prohibited substances for drains and gutters and anything may be discharged into them.

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The situation needs to be clarified by providing that the existing clause 42 applies to sewers and fittings connected to sewers and introducing a new subclause to apply to drains and gutters. This new subclause would prohibit the discharge of all prescribed substances except roof, rain, surface, flood, seepage or subsoil water into those works.

The subclause concerning drains and gutters would need to apply in areas of water board operations. They are "drainage" issues and should be adequately covered by clause 5(3) of the Regulation.

**Clause 43(3)(c)**

The words "(subject to approval)" should be inserted in the subclause.

**Clause 43(6)**

The reference to "subsection 3(b)" should be amended to "subclause 3(c)".

**Clause 46**

The reference in the Note needs to be amended to section 82 of the Act.

**Clause 49**

The clause provides for inspection of works prior to their being put into use and allows for approved self-certification by licensed contractors. The clause appears to empower the Minister for Local Government to authorise self certification instead of the Minister for Public Works.

It is proposed to substitute for subclause (1):

"(1) A person must not:

- (a) put into use a soil, waste or drain pipe; or
- (b) cover up or conceal from view an underground or enclosed water supply, sewerage or drainage work; or
- (c) put into use such a work,

until the work has been tested, inspected and approved:

- (d) by an inspector; or
- (e) if the council concerned is authorised by the Minister for Public Works to give approvals for the purposes of this paragraph - by a licensed contractor approved by that council,

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and the inspector or contractor has certificated the work as having been constructed in accordance with the Act and this Regulation".

Subclause (5) would be deleted because it would be included in the new subclause (1).

Subclause (6)(b) would be amended to insert after the word "Minister" the words "for Public Works" to clarify that Minister's authority to permit self-certification of work.

#### **Clause 51**

The clause fixes standards for materials to be used in water sewerage and drainage works and includes materials approved by the "Director General". As with clause 17, this authority needs to be exercised by the Principal Engineer, Sewerage Services and Operations, Public Works Department as it did under the old Ordinance.

#### **Clause 52**

The clause requires a council to prepare a map of any water supply, sewerage or drainage scheme and requires certain details to be included.

It is appropriate that information which would affect building on any land which these works pass through should be included on these plans, e.g. whether pipes are concrete encased.

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**New clauses to be inserted**

Clauses 71 (1) and 79 of the Local Government (Approvals) Regulation 1993 should be repeated in the Water Sewerage and Drainage Regulation. The inclusion of these provisions in the Approvals Regulation is intended to deal with waste from the waste management perspective but reference should also be included in the Water Sewerage and Drainage Regulation to cover the sewer management perspective. The Water Sewerage and Drainage Regulation is intended to stand alone as criteria for water, sewerage and drainage approvals, orders and general specifications.

Clause 97 of the Local Government (Approvals) Regulation 1993 (providing for the concurrence of the Public Works Department to discharge trade waste into a sewer) should be included in the Water, Sewerage and Drainage Regulation.

It is proposed to insert a new clause in relation to dual flush cisterns, as follows:

All new toilet suites in Class 1 and 2 buildings must have a maximum flushing volume of 6 litre/3 litre dual flush cisterns or equivalent. For all other classes of buildings the maximum flushing volume is:

- (a) single flush cistern - 6 litre capacity
- (b) single flush cistern - 4.5 litre capacity discharging to stacks only
- (c) dual flush cisterns with a maximum flushing capacity of 6 litres or with provision for a partial flush.

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APPENDIX 3

TO REPORT NO. 25 OF THE REGULATION REVIEW COMMITTEE

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SUBMISSIONS CONTAINING COMMENTS ON THE

LOCAL GOVERNMENT (WATER, SEWERAGE AND DRAINAGE)  
REGULATION 1993

26 October 1993

## REGULATORY IMPACT STATEMENT

### LOCAL GOVERNMENT (WATER, SEWERAGE AND DRAINAGE) REGULATION 1993

SUB NO/ DATE REC'D	ORGANISATION/ PERSON	PROPOSAL/COMMENT/RESPONSE AMENDMENT SUGGESTED	DEPARTMENTAL RESPONSE
J1 28 September 1993	Guyra Council (R Robertson, General Manager)	<b>Clause 8</b> Omit the need for fire hydrants to be installed where a low volume constant flow water service reticulation system is provided. The polythene pipe used to supply water to residents outside the main built up area cannot support hydrants and provide suitable water flow.	This type of "main" would be used in less populated parts of an area to provide an economic supply. There may be sufficient discretion for council to determine that hydrants are unnecessary given the location of the "mains". This submission has been forwarded to the Public Works Department for comment.

SUB NO/ DATE REC'D	ORGANISATION/ PERSON	PROPOSAL/COMMENT/RESPONSE AMENDMENT SUGGESTED	DEPARTMENTAL RESPONSE
J2 28 September 1993	Environmental Management Pty Ltd (T Lustig, Director)	Clause 43 The clause should be amended to permit partial treatment/disposal of wastes on-site through approved on-site waste treatment systems which could reduce either the strength or volume of wastes, or both, entering a sewerage system.	The proposal has merit, and on-site treatment/disposal presently occurs where septic tank and like systems are in place and conditions are suitable for on-site disposal.  This proposal has been forwarded to the Health Department and Public Works Department.
J3 14 October 1993	Master Builders Association of NSW (J. R. Elder, Executive Director)	Sought extension of time to comment on Water Sewerage and Drainage and Tendering Regulation.	Formal receipt date is fixed at 18 October, but any submissions received after that date will be examined, in the context of future consideration of the Regulation.

SUB NO/ DATE REC'D	ORGANISATION/ PERSON	PROPOSAL/COMMENT/RESPONSE AMENDMENT SUGGESTED	DEPARTMENTAL RESPONSE
J4 18 October 1993	Holroyd City Council (D Trezise, General Manager)	<p><b>Clause 57</b> The clause prescribes those flood retarding basins for which the approval of the Minister for Public Works is required under section 60 of the Act. Of the two prescribed circumstances, one duplicates the requirement of the Dam Safety Act necessitating an additional approval; the other effectively requires submission of details of all retarding basins to that Minister because it relies on the opinion of the Minister as to what represents a danger to life, etc. Council sees no reason for this requirement.</p>	<p>The Public Works Department had advised that it did not want to consider all flood retarding basin proposals.</p> <p>This matter has been forwarded to the Public Works Department for comment.</p>
J5 18 October 1993	Wollongong City Council (R J Oxley, General Manager)	Agrees with the Preferred Option detailed in the Regulatory Impact Statement.	No action required.

SUB NO/ DATE REC'D	ORGANISATION/ PERSON	PROPOSAL/COMMENT/RESPONSE AMENDMENT SUGGESTED	DEPARTMENTAL RESPONSE
J6 18 October 1993	Shellharbour Council (B A Weir, General Manager)	Council authority to require premises to be connected to the sewers of a sewerage authority should be restored, via amendment of section 124 - Order 24 - of the Act rather than via the Regulation.	<p>It is intended to restore this authority the absence of which may cause administrative difficulties in essentially water board areas of operation. Although the authority would be more visible in the Act, reinstatement via the Regulation can be achieved with less difficulty.</p> <p><b>Amendment proposed.</b></p>
J7 18 October 1993	Sydney City Council (Kerry Nash, Assistant General Manager, Corporate & Business Services)	Preferred option in the Statement is generally supported. Council also supports amendment to clause 42 to prohibit certain discharges to gutters and drains but feels there must be some power to control volume and frequency/intensity of permitted discharges.	The intention of councils suggestion is appreciated but this proposal could result in every ratepayer requiring approval to discharge rainwater from house gutters into the council's drainage system.

SUB NO/ DATE REC'D	ORGANISATION/ PERSON	PROPOSAL/COMMENT/RESPONSE AMENDMENT SUGGESTED	DEPARTMENTAL RESPONSE
		<p>Suggested subclause:-</p> <p>"Roof, rain, surface, flood, seepage, subsoil or pumped waters may be discharged to gutters or public drains subject to the approval of the council".</p>	<p>Councils have various powers under s.124 of the Act to deal with the exceptional circumstances identified by the council (namely Orders 12, 15, 21, 22 (possibly), 28. Section 125 also provides a broad power.</p> <p><b>No amendment to be made.</b></p>
<p>J8 18 October 1993</p>	<p>Shoalhaven City Council (G A Napper, General Manager)</p>	<p><b>Clause 28(3)</b> Council considers that the concept that "a water rate must include a free allowance" is at variance with the user-pays concept where the water rate might be used as an availability charge and a separate user charge be made on a measure basis for all water consumed.</p>	<p>A water rate is, in fact, at variance with the user-pays philosophy and cannot be interchanged with an "availability charge" under that philosophy. An availability charge under "user-pays" should be uniform to all, or within each grouping, of users.</p> <p>The sub clause is appropriate where a rate based on land value is levied.</p> <p><b>No amendment to be made.</b></p>

SUB NO/ DATE REC'D	ORGANISATION/ PERSON	PROPOSAL/COMMENT/RESPONSE AMENDMENT SUGGESTED	DEPARTMENTAL RESPONSE
		Council supports the proposal to introduce a new clause requiring dual flush cisterns in all new class 1 and 2 buildings.	No action required.