

**Submission
No 35**

MANAGEMENT AND DISPOSAL OF WASTE ON PRIVATE LANDS

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Submission to the Inquiry into the Management and Disposal of Waste on Private Land

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Opening:

Local Government NSW (LGNSW) is the peak body for councils in NSW. LGNSW represents all the 152 NSW general-purpose councils, the special-purpose county councils and the NSW Aboriginal Land Council.

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

LGNSW welcomes the opportunity to make a submission to the Legislative Assembly's Inquiry into the Management and Disposal of Waste on Private Land. Local Government plays an important role in waste management, with its regulatory responsibilities in relation to waste on private land arise primarily from three avenues:

- The protection of public health and safety under the *Local Government Act 1993*;
- The protection of the environment under the *Protection of the Environment Operations Act 1997*;
- Land use planning and consent under the *Environmental Planning and Assessment Act 1979*.

Local Government operates waste facilities (mainly in rural and regional areas), and collects domestic waste and provides clean up services to residents. Local Government also undertakes a regulatory role in relation to non-scheduled waste activities, including investigating and cleaning up illegally dumped material, and is the consent authority for small landfills.

Response:

LGNSW offers the following advice in relation to the Inquiry's terms of reference.

(a) The health and safety risks posed by inadequate management and disposal of waste, overgrowth and excess vegetation, pests and odour

The health and safety risks of improperly managed waste can vary depending on the nature of the waste and the receiving environment. For example, chemical or hazardous waste can contaminate soil and leach into the water table or waterways creating a risk to human and environmental health both at the disposal location and off-site.

Often it is the more expensive or difficult to manage types of waste that are improperly or illegally disposed. For example, asbestos materials are regularly found dumped on public or vacant land, almost certainly due to the high cost of appropriately disposing of this material. However even household waste can pose risks to soil and water from leaching of chemicals if not appropriately managed. Organic/putrescible material can attract pests, and generate odour as it decomposes.

Illegal dump sites detract from the aesthetic amenity of an area. Weeds and other

All of the above risks are relevant to Local Government's job of providing for public health and safety and managing, protecting and restoring the local environment. The appropriate management of waste on both private and public land is therefore a significant issue for Local Government.

(b) The effectiveness of current regulatory arrangements and powers to compel clean ups on private land and manage derelict buildings

The *Local Government Act 1993* (LG Act) and the *Protection of the Environment Operations Act 1997* (POEO Act) are the main legislation used by Local Government to regulate waste on private land and compel clean ups. For example, councils can issue orders under section 124 of the LG Act to protect public health and safety and the environment on both private and public land. Provisions in the *Environmental Planning & Assessment Act 1979* can also be used to prohibit unauthorised use of a property as a landfill or waste facility.

In relation to the effectiveness or adequacy of existing regulatory arrangements there are three aspects to consider: whether the legal provisions are appropriately worded to deal with the relevant issue; whether the provisions can be applied and is there clarity around who has responsibility; and whether there are adequate resources, capacity and willingness to apply the provisions.

Feedback from councils indicates there are some circumstances where the regulatory arrangements are either not clear enough, or where achieving a satisfactory outcome is difficult due to challenges with applying the legislation or due to circumstances outside the control of councils. The first two issues outlined below highlight such circumstances where councils often bear the burden.

• **Managing hoarding – materials and odour**

Under the LG Act, councils can issue an order under Section 124 (22A) to “remove or dispose of waste that is on any residential premises or to refrain from keeping waste on those premises” where the waste is causing or is likely to cause a threat to public health or the health of any individual. However the definition of waste is not clear cut in this context – one man's waste is another man's treasure. This ambiguity can make it difficult for Councils to undertake appropriate actions to remedy issues regarding waste on private land.

Odour arising from residential premises (i.e. commonly associated with keeping of animals or hoarding of waste inside of the property) can also be difficult to address under the existing legislation. The POEO Act provisions relating to air pollution specifically exclude activities carried out on residential premises.

For both excess materials and odour, an order under Section 124 (21) could be used (i.e. “premises are maintained or kept in safe and healthy condition”), however its applicability is questionable if the hoarded material does not harbour pests or pose a threat to public safety or neighbouring properties. This Order also has a statutory limitation of 6 months, which is often too short a timeframe for hoarding cases to be resolved if there are complicating factors of mental health.

This last point is perhaps most critical – in many cases, hoarding can be a sign of mental health issues or distress. Modifying legislation so that councils can more readily require clean-up of premises where hoarding occurs will not in itself resolve the problem in the long term. A holistic approach involving NSW Health, Community Services, charities and Local Government that addresses both the reasons for the behaviour and the end result is needed.

- **Clandestine drug laboratories**

There are particular issues for Local Government when dealing with the cleaning of private property that has been used for the production of illicit drugs and the waste residue from such activity. Waste in this situation could include substances that have been absorbed into the walls, floors, ceilings or fittings of a property and could include the disposal of such substances into the yard or drains. These situations require specialists to remove the substances and a council may not have the expertise to undertake such tasks.

It is granted that councils have public health obligations and these extend to requiring that private premises are in a safe and healthy condition. (Section 124 Order 21 LG Act). At times councils can have great difficulty when trying to recover the costs associated with the cleaning of these properties. There may be a number of reasons for this including that the perpetrators may be in prison or that the owners may be unwilling to assist as they don't feel responsible for the situation. Another challenge in cost recovery is where the cost of the clean-up exceeds the value of the property itself.

There can even be confusion as to the role that councils play in the cleaning as there are no clear guidelines produced setting out the role and responsibilities of government agencies in this area. Unfortunately it can be left to the ratepayers to cover the costs which are a burden that they should not have to bear.

The setting up of an Innocent Owners Financial Assistance Program was discussed some time ago, however LGNSW is not aware of any progress that has been made in this regard. LGNSW would like to see further urgent action taken on this issue. Such a program could be funded from the NSW proceeds of crime fund.

- **Failure to comply with order—carrying out of work by the council**

Under Section 678 of the LG Act, where Council gives effect to an Order through the demolition of a building, the provisions are quite clear that a Council may sell materials to recoup costs where Council's costs for the demolition are not otherwise paid. However the Section is not as explicit in relation to the removal and sale of other potential 'waste' materials such as car bodies.

Lismore Council has had the recent experience whereby it served an Order for the removal of unsightly waste from a residential property consisting of numerous car bodies, other disused plant and equipment and general domestic waste. Council gave effect to the Order after a lengthy compliance period by removing the materials from the site and taking them to Council's waste facility for storage where appropriate. Legal advice to Council was that because the Act was silent in relation to the sale of materials other than demolition materials, a determination from the

but for a fraction of the overall compliance action costs. It would be beneficial for the LG Act to include enabling provisions for the sale of any materials removed in giving effect to an Order. Guidance on the sale process that should be adopted in these circumstances would also be helpful.

- **Notice of Intention – POEO Act**

The LG Act provides for notices of intention to be issued prior to issuing a formal direction (unless in the case of an emergency) so as to provide for procedural fairness. The POEO Act is silent in relation to the matter of issuing a 'Notice of Intention' however the NSW EPA appears to have adopted an equivalent procedure of providing a draft notice before issuing a formal notice. This procedure has established an accepted level of 'procedural fairness' within the legal system responding to compliance matters under Chapter 4 – Environment Protection Notices of the POEO Act.

If the above approach of issuing a draft notice is recognised as best practice for procedural fairness, it would be beneficial if the POEO Act was amended to reflect this. Increasing consistency of terminology and concepts between the LG and POEO Act would assist councils to undertake their regulatory responsibilities.

- (c) **The adequacy of inspection and enforcement procedures, including relevant sanctions and powers to recover costs**

The inspection and enforcement procedures provided under the LG and POEO Acts are generally considered adequate, noting the issues raised in (b) with respect to managing hoarding on private property and clandestine laboratories in particular.

In relation to the powers and sanctions available to councils to recover costs of clean ups, there are barriers affecting how often these powers are used. Councils have a wide range of regulatory responsibilities that stem from over a dozen different pieces of legislation, with the added challenge of limited time and resources. If certain powers or sanctions are only used every so often (e.g. cost recovery for clean-up of a clandestine drug lab on a residential premises), it can be very time consuming for staff to come up to speed on the steps required. There is also a risk in such circumstances that funds will not be recovered due to legal challenge or landholder inability to pay. The potential for councils to incur clean-up costs without certainty of recouping them can often be a barrier to undertaking action. Similarly, issuing and enforcing cost recovery orders may also not occur if long legal processes are likely.

There have been cases where the process for giving orders and their enforcement under the LG Act have proved difficult and costly for councils. This can be the result of poorly worded orders that may be challenged in Court as to their validity, resulting in undue delays in clean ups and considerable cost implications for residents and ratepayers. There is a strong argument that it would greatly assist councils if a standard form of orders were devised that could overcome the issues relating to the drafting of orders.

Developing 'templates' for Orders, as well as addressing the issues raised in (b), would afford councils with greater certainty and confidence to use the sanctions and powers available to them. Ongoing education and capacity building for council staff on those

LGNSW notes that the NSW Government recently introduced into Parliament the Protection of the Environment Operations (Illegal Dumping) Bill, which proposes to strengthen sanctions/measures for illegal dumping, particularly repeat offenders, and for providing false information. LGNSW is currently considering the proposed changes in detail but supports in-principle the strengthening of measures to prevent illegal dumping and further discourage repeat waste offenders.

(d) Possible measures to improve the management of waste on private land

See (b) and (c).

(e) The extent of illegal dumping and the impact on Local Government authorities of requirements to remove dumped waste

In 2004, the (then) NSW Department of Environment and Conservation (DEC) commissioned a report collating information from councils, government agencies and non-government organisations on the nature and extent of illegal dumping. The report estimated that NSW Local Governments spent \$10 million a year removing and properly disposing of illegally dumped materials and landfilling.

To our knowledge there have not been any significant and wide-ranging studies conducted on the extent of illegal dumping in NSW since 2004. However there is some regional information being collected:

- LGNSW understands that Riverina Eastern Regional Organisation of Councils (REROC) is currently undertaking mapping of illegal dumping sites in its area.
- In 2010-11 the Western Sydney RID Squad, with the participation of seven local councils - Bankstown, Fairfield, Holroyd, Liverpool, Penrith, Parramatta and The Hills - investigated close to 4645 illegal dumping incidents and took follow-up action by issuing 95 clean-up notices and 691 penalty notices.

Some specific examples of costs and challenges for specific councils include:

- Over the last 12 months, Mid-Western Regional Council has picked up 1695 tonnes of illegally dumped material from roadsides and bushland neighbouring remote waste facilities. Council costs of disposing the material at the Mudgee waste facility was \$190,000 not including vehicle/time, costs of collection (i.e., this was just the facility cost). These costs have generally not been recovered as most illegal dumpers in the rural areas are never caught. Council is currently trialling remote cameras at specific sites of concern and these are having limited success, with the first two sets of cameras at one location being stolen. Subsequent cameras have been hidden more appropriately, catching a number of offenders and enabled some cost recovery.
- In the last financial year, the collection and disposal of abandoned waste in Wagga Wagga Council has cost \$70,000, not including the staff time incurred to issue orders, coordinate clean ups etc.

If we extrapolate the DEC's 2004 estimate to account for population growth and inflation, the cost to Local Government of managing illegal dumping may now be close to \$14 million a year.

The NSW EPA is in the process of developing a Strategy to Combat Illegal Dumping, a draft of which was issued for consultation earlier this year. A number of the actions in the draft Strategy should assist in addressing the causes and symptoms of illegal dumping. Actions include the collection and analysis of data to better understand what motivates illegal dumping, funding to identify hot spots and clean up orphan waste, and joint compliance campaigns. LGNSW looks forward to the finalisation of the Strategy.

(f) Any other related matter.

The Aboriginal Lands Clean-Up Program (ALCUP), a grant program administered by the NSW Office of Environment and Heritage, provides an avenue for local Aboriginal land councils and local government councils to partner up to address the social and environmental issues of illegal dumping occurring on Aboriginal owned lands. The grants have not only enabled the clean-up of tonnes of illegally dumped materials, but have provided opportunities for capacity building and strengthening of relationships between Aboriginal communities and local government. LGNSW is very supportive of this program, which is now in its eighth year, and is an advocate for its continuation and extension to cover emerging or unmet demand.

Conclusion:

The inappropriate management and disposal of waste on private land can have significant implications for the environment, neighbours and the broader community, the latter through the passing on of clean up and remediation costs. While the existing regulatory framework for managing waste is adequate for the majority of circumstances, we have identified specific situations where improvements to the framework and/or a more holistic approach to the issues are needed. LGNSW would be pleased to work with the relevant agencies and stakeholders to discuss and agree on forward strategies to better manage these more complex issues.