

**Submission**

**No 30**

## **INQUIRY INTO MANAGEMENT OF DOMESTIC WASTEWATER**

**Organisation:** NSW Department of Premier and Cabinet

**Name:** Mr Chris Eccles

**Position:** Director General

**Telephone:** 9228 3498

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Chris Patterson MP  
Chair, Committee on Environment and Regulation  
Parliament of New South Wales  
Macquarie Street NSW 2000

Dear Mr Patterson

I am pleased to provide the NSW Government's submission to the Committee on Environment and Regulation inquiry into the Management of Domestic Wastewater.

Should you require any further information on this matter, please contact Mr Ian Hunter, A/Executive Director, Infrastructure, Environment and Economic Development Policy, NSW Department of Premier and Cabinet on (02) 9228 3498.

Yours sincerely



Chris Eccles  
Director General

# **NSW GOVERNMENT RESPONSE TO THE LEGISLATIVE ASSEMBLY COMMITTEE ON ENVIRONMENT AND REGULATION INQUIRY INTO THE MANAGEMENT OF DOMESTIC WASTEWATER**

**January 2012**

## **Terms of Reference:**

That the Committee inquire into the regulation of domestic wastewater with particular reference to:

- a) the adequacy of safeguards to ensure food safety, and to protect against the risk of localised contamination, in food production areas;
- b) the appropriateness of current regulatory arrangements in relation to the management of domestic wastewater;
- c) the adequacy of inspection procedures and requirements to report incidents; and
- d) any other related matter.

<b>Criterion a) – the adequacy of safeguards to ensure food safety, and to protect against the risk of localised contamination, in food production areas</b>
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## **Response**

In NSW, the potential impact of domestic wastewater on food production is most relevant to the NSW oyster industry as this industry is most at risk from contamination caused by inappropriate or poorly maintained on-site sewage management systems (OSMS) located near shellfish harvest areas.

Based on the sanitary surveys (identification of potential pollution sources) of oyster harvest estuaries conducted by the NSW Food Authority as part of its role in regulating the industry, it is estimated that 4225 OSMS (this includes systems on private homes, tourist parks and mobile home lodgings) and 41 sewage treatment plants are located near shellfish harvest areas.

In NSW, shellfish harvest areas are classified by the NSW Food Authority and the classification is based on an assessment of risks. Harvest areas are classified as either approved (shellfish can be directly harvested for sale), restricted (shellfish must undergo a 36 hour depuration process prior to sale) or prohibited (shellfish harvest is not permitted). The harvest area classification process determines the food safety controls that must be applied to each harvest area to ensure food safety standards. These controls, which include environmental indicators, are actively monitored by industry. Farmers and the NSW Food Authority are alerted when an area might be adversely affected by pollution. Risk mitigation strategies such as temporarily closing the area for commercial harvest of shellfish are implemented.

The actual number of serious food safety events in NSW is very low when compared to other oyster producing countries. When incidents do occur, such as the Wallis Lake Hepatitis A outbreak, they have resulted in positive changes to safety standards. The Wallis Lake

outbreak was linked to poor management of domestic OSMS, and resulted in a revision of regulatory arrangements for local government areas. These changes have seen improved on-site sewage management strategies, and now Wallis Lake is once again the State's largest producer of Sydney rock oysters.

OSMS are domestic waste management systems used by properties which are not connected to a reticulated sewage management system (such as that provided by Sydney Water) and usually (although not exclusively) refer to single household systems of less than 10 persons capacity including septic tanks, collection wells, septic closets, aerated wastewater treatment systems, greywater treatment systems and composting toilets.

Currently, contamination of shellfish harvest areas is managed by ensuring that farmers and the NSW Food Authority are alerted when an area is at risk of being affected by leakage from an OSMS. In the event of a contamination event, risk mitigation strategies such as temporarily closing the area for commercial harvest are implemented by the Food Authority.

Under the *Local Government Act 1993* local councils are responsible for monitoring and inspecting all OSMSs in its jurisdiction and are required to give notice to the Food Authority of any suspected or detected leaks near waterways or food production areas.

Under current arrangements, farmers and the Food Authority are dependent on the resources and ability of local councils to monitor OSMSs and detect potential risks in time to provide adequate warning of possible contamination. If properly implemented and provided with adequate resources, these monitoring and compliance measures are effective at mitigating risks OSMSs pose to food safety.

The *Local Government Act 1993* contains provisions for councils to raise revenue and levy fees in order to carry out sewage management. However, a 2005 review of councils conducted by the Division of Local Government found that, despite these provisions, many councils struggled to allocate adequate resources to compliance and inspection processes.

<b>Criterion b) – the appropriateness of current regulatory arrangements in relation to the management of domestic wastewater</b>
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**Response**

The management of domestic wastewater and on-site sewage management systems is almost entirely the responsibility of local councils, with the *Local Government Act 1993* (LG Act) and the *Local Government (General) Regulation 2005* (Regulation) providing the principal sources of local government's sewage management functions and powers.

The current system of regulation is adequate, but again relies on local councils levying sufficient fees and charges and committing adequate resources to use the available regulatory mechanisms to effectively manage the risk of sewage pollution. The performance of councils in completing this task varies, with some doing it very effectively, while others could be more active in inspecting and requiring landowners to upgrade their OSMS to reduce pollution, especially in areas adjoining coastal estuaries used for aquaculture.

Current arrangements

The current regulatory arrangements provide a framework which considers firstly, the initial approval of the installation or alteration of an OSMS and secondly, periodic approval to

operate a system of sewage management with the application of additional conditions. The framework includes:

- information to be contained in a detailed application to install;
- matters which must be considered prior to approval;
- standards set by the Division of Local Government which must be followed;
- performance standards of OSMSs;
- accreditation of particular OSMSs; and
- separate approval control of the land application area.

Other agencies are also involved in the regulation of domestic wastewater but play a more ancillary role. For instance, the Office of Environment and Heritage supports councils by providing policy advice and technical input on regulations and guidance materials used by councils, and the Ministry of Health ensures that third-party accreditations of OSMSs are conducted before they are approved for installation by councils.

### Guidelines

To help councils fulfil their responsibilities regarding the approval, installation and ongoing management of household OSMSs, the NSW Government developed the *Environment and Health Protection Guidelines – Onsite and Decentralised Sewage Management (1998)*. These guidelines help councils to meet their obligations under the LG Act and regulation by providing advice on matters including planning, site evaluation, system selection, system operation and maintenance as well as administrative and technical guidance on the steps that should be taken to ensure that an installed system remains compliant with regulations in the long-term.

### Register

Section 113 of the LG Act requires councils to maintain a register of all OSMS located in its local government area (LGA). The register is designed to allow councils to assess the health and environmental risks posed by individual systems as well as the potential cumulative impacts of systems.

### Sewage Management Strategies

As part of the LG Act management planning processes for council services and the *Environmental Planning and Assessment Act 1979* planning processes for land use controls, local councils are encouraged to develop strategies for domestic sewage management. Such strategies need to incorporate a management approach of continual improvement, addressing issues such as:

- incorporating sewage management considerations in the early stages of the environmental assessment and land use planning process;
- considering all sewage management options;
- the impact of on-site sewage management on a catchment or regional basis;
- the commitment, responsibilities and education of a range of stakeholders, including local government, service providers, land developers and householders;
- site-specific evaluation and assessment;
- appropriate selection, design and construction of on-site sewage management facilities based on circumstances and site constraints;
- ongoing maintenance and proper operation of installed systems; and

- initiation of a monitoring and review program.

An extensive list of the legislative responsibilities of local government in regard to OSMSs is attached at appendix A.

<b>Criterion c) – the adequacy of inspection procedures and requirements to report incidents</b>
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## **Response**

### Inspection procedures

Sewage spills from OSMSs are often attributable to a number of key factors including:

- inadequate maintenance of OSMS;
- incorrect installation; and
- installation of an OSMS which is either under-designed for its purpose or inappropriate to the site e.g. system not suitable for the soils in the area or proximity to water sources.

Currently local councils manage their responsibilities for ongoing OSMS inspections and monitoring through tools such as a register containing details of all OSMSs in the LGA and the administration of a Sewerage Management Strategy (see response to Criterion B). This strategy should provide details regarding inspection and monitoring regimes, including approval requirements that are dependent on risk factors such as the system's age, usage, and proximity to drinking water catchments, waterways and other environmentally sensitive areas.

### Issues with current inspection arrangements

Current inspection procedures focus on the operation of the installed system but fail to address the following:

- whether the system is fit for purpose, this is an issue for older systems which pre-date the recent introduction of regulatory and performance standard reforms;
- whether the system is suited to the specific features of the site including the types of soils in the effluent disposal area, the depth of the water table, and the proximity of rivers and watercourses; and
- whether the system is suitable for the intermittent use that many coastal holiday homes are subject to.

There is no standardised process for the inspection of OSMS or common knowledge on how to identify an OSMS failure. As such, inspection and maintenance of OSMS varies widely, and is not always effective. This issue is further compounded by a general lack of resources available to councils to be dedicated to OSMS management. A 2005 survey of local councils' on-site sewerage management programs conducted by the NSW Division of Local Government found that many councils struggled to find the resources to fund inspections and find it difficult to mediate outcomes for failed or failing systems in instances where the rate payers cannot afford to replace or repair a system. In such instances some councils have offered low rate or interest free loans to the residents in question to enable them to replace or repair a system. However, whether or not this is an appropriate approach is dependent on both the council's ability to secure a loan and the resident's ability to repay it.

To ensure consistency and effectiveness across all local government areas a more structured and detailed compliance process for the inspection and rectification of OSMS should be adopted.

The Sydney Catchment Authority (SCA) is currently developing a guide on the identification and assessment of failure of on-site wastewater systems, using a risk assessment process. It is envisaged that the guide will assist council personnel inspecting systems in the drinking water catchment. Once complete, it may also be suitable for use by councils outside of the drinking catchment area.

#### Reporting of incidents

The *Protection of the Environment Operations Act 1997* requires the notification of any pollution incidents be reported to the appropriate regulatory authority. Currently the NSW Food Authority is on the communication lists of all sewage treatment plant operators and is informed in a timely manner of any sewage pollution incidents that occur. This enables closure action to be taken if the spill is in the vicinity of a shellfish harvest area or other food producing area. However, few local councils provide notification of spills or critical failures from domestic OSMS due to concerns that this might breach privacy provisions and identify the private landowner.

### **Criterion d) – any other related matter**

#### **Focus of the Inquiry into the Management of Domestic Wastewater**

The media release and letter to the Premier state that the inquiry has been prompted by 'concerns about the adequacy of regulation for onsite sewage management, particularly in relation to food safety issues and the risk of localised contamination from effluent seepage and septic discharge'.

The term 'onsite sewage management system' (OSMS) generally refers to management of wastewater in properties that are not connected to a reticulated sewage network (such as that provided by Sydney Water or Hunter Water). While the Inquiry's Terms of Reference do not specifically refer to this definition, it appears that the inquiry is focussing on this aspect of domestic wastewater management. The review may benefit from a clearer definition of 'onsite sewage management system' or from the provision of a more nuanced definition of what facilities fall within the scope of the review.

#### **Sydney Water's Priority Sewerage Program**

Sometimes there can be interactions between onsite wastewater management systems and a public water utility's own operations. For example, in the case of Sydney Water's Priority Sewerage Program that progressively provides sewerage solutions to identified unsewered areas within its area of operation.

This can provide significant public health and environmental benefits, as Sydney Water is aware that onsite systems can sometimes perform poorly, creating issues such as seepage to waterways and odours. Construction of the scheme in each area allows eligible customers to connect to Sydney Water infrastructure and cease using their onsite system.

The Department of Finance and Services, in consultation with other relevant State agencies (including IPART, the Office of Environment and Heritage, the Ministry for Health, Local Government and Shires Association and Division of Local Government), is currently drafting

an issues paper to facilitate the reform of the recycled water regulatory framework in NSW. This includes provisions governing councils and private water recycling schemes under section 60 and 68 of the LG Act. In preparation of the issues paper a number of councils in Sydney's peri-urban area have raised the following issues that may be relevant to the inquiry:

- Assessing applications: The LG Act is ambiguous as to when an application should be assessed. As such councils, as regulators, do not consistently assess section 68 applications to construct and operate onsite sewerage management systems. For example, some councils will not accept a development application if it does not include a section 68 application, when applicable. This allows the development and the scheme to be assessed at the same time by the planner and environmental health officer. Other councils will only assess a section 68 application once planning consent is granted. This leaves little opportunity for the environmental health officer to change the design of the scheme, if necessary.
- Distinguishing between sewage disposal and recycling: Proponents and regulators have expressed confusion over the distinction between disposal – as part of a sewage treatment system – and recycling in the context for use by agriculture. For some domestic wastewater systems that have an irrigation component, it is difficult to categorise the disposal as being land-based disposal or effluent reuse or both. This has led to uncertainty as to the appropriate regulatory pathway, including the use of the correct guidelines.
- Technical capacity to assess applications and lack of resources: In urban and peri-urban metropolitan areas, some councils are ill-equipped to assess the technical detail of large private domestic and industrial wastewater schemes. Furthermore, compliance monitoring of onsite sewerage management systems is challenging for councils due to the numbers of systems involved, making any monitoring that does occur likely to be reactive rather than proactive.



**LEGISLATIVE ASSEMBLY COMMITTEE ON ENVIRONMENT AND REGULATION  
2011 INQUIRY INTO THE MANAGEMENT OF DOMESTIC WASTEWATER  
BACKGROUND INFORMATION**

## **LEGISLATIVE RESPONSIBILITIES**

In NSW the *Local Government Act 1993* (LG Act) and Local Government (General) Regulation 2005 (LG Reg) are the principal statutory source of local government sewage management duties, functions and powers. Guidelines required to be considered by councils when undertaking their functions under the LG Act in relation to on-site sewage management include the *Environment & Health Protection Guidelines - On-site and Decentralised Sewage Management* (1998). An overview of the legislative and policy framework follows.

It should also be noted that the *Environmental Planning and Assessment Act 1979*, *Protection of the Environment Operations Act 1997* (POEO Act), *Public Health Act 1991* and other special purpose legislation, also confer specific sewage management related functions and powers on councils.

### **1.1 Local Government Act 1993**

#### **1.1.1 Local government sewage management functions and powers**

Local councils have responsibility for the management of public land, the protection of public health and safety, the regulation and management of waste and the control of public nuisances in local areas. These responsibilities are reflected in the functions and powers granted to councils under the LG Act. Consequently councils are the sewage management authority for their areas.

The council's duties and functions as a sewage management authority are not limited to the regulation of particular cases. The council's responsibilities include a range of community leadership, strategic management, standard setting, revenue raising and service functions. The LG Reg specifies that the management of sewage is a principal activity of the council and consequently, one that must be strategically managed and fully documented in the council's strategic planning documents.

In settled areas, water supply, sewage management and stormwater drainage arrangements are crucial for maintaining public health and safety, and securing the health of rivers and natural ecosystems and the ecologically sustainable development of an area. Objectives, performance standards and strategies for water supply, drainage and sewage management should be specified in the council's strategic planning process.

Integrated planning is essential for the systematic management of sewage pollution risks. Consequently the guidelines recommend that, as the sewage management authority for the local area, all general purpose councils should prepare a long term sewage management strategy for their area. The strategy should underpin the principal activity statement on sewage management in the management plan and should inform related statutory processes for land use planning, development and enforcement action.

### 1.1.2 Duties of the council as a sewage management authority

#### **Protect public health and the environment**

The council's principal duty as a sewage management authority is to protect public health and the environment. Consequently the council is responsible for regulating the operation of all fixed systems of sewage management in use in its area (except those directly regulated by a pollution control licence issued by the Office of Environment and Heritage under the POEO Act) and where necessary the council is able to provide municipal sewage management services on behalf of the community.

#### **Maintain a register of approvals**

Every local council must maintain a register of systems of sewage management in use in its area. The register must contain details of the premises and sewage system including:

- ownership;
- location;
- system type;
- operating requirements; and
- conditions of sewage management approval.

The register must be publicly accessible, subject to appropriate privacy requirements. It must be available in a suitable digital format for risk assessment and impact analysis by public authorities, independent researchers and other councils.

### 1.1.3 Consultation, decision making and leadership

The consultation and leadership functions of councils are dealt with in Chapter 1 of the LG Act. Section 7 of the LG Act lists the purposes of the Act and (among others) they include:

- (c) to encourage and assist the effective participation of local communities in the affairs of local government
- (d) to give councils:
  - the ability to provide goods, services and facilities, and to carry out activities, appropriate to the current and future needs of local communities and of the wider public;
  - the responsibility for administering some regulatory systems under the Act; and,
  - a role in the management, improvement and development of the resources of their areas.
- (e) to require councils, councillors and council employees to have regard to the principles of ecologically sustainable development in carrying out their responsibilities.

Section 8 of the LG Act sets out the council's charter. These are the principles and purposes that each council is constituted to pursue. The council must keep these purposes and principles in mind when carrying out its functions as a local sewage management authority. They include:

- to provide directly or on behalf of other levels of government, after due consultation, adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively
- to exercise community leadership

- to properly manage, develop, protect, restore, enhance and conserve the environment of the area for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development
- to have regard to the long term and cumulative effects of its decisions
- to bear in mind that it is the custodian and trustee of public assets and to effectively account for and manage the assets for which it is responsible
- to facilitate the involvement of councillors, members of the public, users of facilities and services and council staff in the development, improvement and co-ordination of local government
- to raise funds for local purposes by the fair imposition of rates, charges and fees, by income earned from investments and, when appropriate, by borrowings and grants
- to keep the local community and the State government (and through it, the wider community) informed about its activities
- to ensure that, in the exercise of its regulatory functions, it acts consistently and without bias, particularly where an activity of the council is affected

The sewage management consultation and leadership functions of councils are also reflected in specific statutory provisions for public access to information and for public consultation and consideration of submissions prior to the adoption of management plans or regulatory policies.

#### **1.1.4 Local government sewage management standards**

One of the critical functions of a sewage management authority is the setting of local sewage management standards. Such standards may be reflected in community leadership actions, investment decisions, business undertakings, planning schemes and regulatory policies of the council. In particular, the council has wide discretion to set local orders policy standards for the management of waste (including sewage), and for the maintenance of public health and safety.

The council must develop performance standards for the operation of a system of sewage management in accordance with the generic standards prescribed in Clause 44 of the LG Reg, which specifies that:

- (1) A system of sewage management must be operated in a manner that achieves the following performance standards:
  - (a) the prevention of the spread of disease by micro-organisms,
  - (b) the prevention of the spread of foul odours,
  - (c) the prevention of contamination of water,
  - (d) the prevention of degradation of soil and vegetation,
  - (e) the discouragement of insects and vermin,
  - (f) ensuring that persons do not come into contact with untreated sewage or effluent (whether treated or not) in their ordinary activities on the premises concerned,
  - (g) the minimisation of any adverse impacts on the amenity of the premises and surrounding lands,
  - (h) if appropriate, provision for the re-use of resources (including nutrients, organic matter and water).
- (2) Failure to comply with subclause (1) is not a breach of that performance standard if the failure was due to circumstances beyond the control of the

person operating the system of sewage management (such as a fire, flood, storm, earthquake, explosion, accident, epidemic or warlike action).

- (3) A system of sewage management must be operated:
  - (a) in accordance with the relevant operating specifications and procedures (if any) for the sewage management facilities used for the purpose, and
  - (b) so as to allow the removal of any treated sewage (and any by-product of any sewage) in a safe and sanitary manner.

The council is required to interpret and apply these standards to their local environment.

### **1.1.5 Regulation of sewage management by councils**

The installation of a system of sewage management that is not licensed to operate under the POEO Act is regulated by council approval under Part C 5 & 6 of section 68 of the LG Act. Council approval is required for the installation, construction or alteration of "a human waste treatment device or storage facility" and for the ongoing operation of "a system of sewage management".

Failure to obtain approval or to comply with conditions is an offence punishable by fines of up to 20 penalty units (currently \$2,200). Part 2, Approvals of the LG Reg specifies general requirements for sewage management approvals, including matters for consideration, performance standards and circumstances where approval is not required.

#### **Approval to install and operate**

The requirement for approval to install, construct or alter a system of sewage management operates in a similar way to the requirement for development consent under planning legislation. A detailed application is required, including technical reports, and the proposal is then formally assessed against relevant standards and policies and a determination made, including conditions necessary in the public interest.

Where a sewage management system is proposed to be provided as part of a new development application this may be optionally dealt with by the council through an integrated development consent under the EP&A Act. In such cases a separate approval under local government legislation may not be required. Where the council is the assessor it is a simple matter for the council to ensure that similar assessment, inspection and record keeping procedures apply in both cases.

Integrated assessment is more complex when a private certifier is the assessor unless relevant performance standards, assessment procedures and regulatory requirements are fully specified in advance in a relevant planning instrument. Specifications should include a requirement to arrange a council inspection and obtain council approval to install and operate a system of sewage management prior to commissioning the new system.

The requirement for approval to operate a system of sewage management is different. It is more like a permit or licence. The main purpose of the approval to operate is to ensure that public health and environmental standards are clearly stated, that operators are accountable, and to enable the council to use its orders powers systematically.

The granting of approval to operate a system of sewage management has the effect of:

- notifying relevant sewage management performance standards to landowners;
- establishing accountability between landowners and the council; and

- requiring the council to identify, monitor and manage individual sewage pollution sources and their local and cumulative impacts on public health and the environment.

Approval to operate includes the sewage management performance standards set out in the regulation as mandatory conditions. The approved activity is the ongoing maintenance of the sewage management process by the operator (owner or occupier) rather than to the design and configuration of sewage management facilities and effluent facilities. Consequently, approval to operate a system of sewage management may be granted to owners/occupiers of existing premises without further site inspections, unless there are specific grounds for concern about sewage pollution. If real risks are identified and enforcement action is necessary, the council's orders powers provide a graded and straightforward process.

### **Accreditation of sewage management facilities**

The LG Reg also makes provision for NSW Health to operate a centralised accreditation service. This service is for sewage management facilities intended to treat sewage of a domestic nature from premises generating an average daily wastewater flow of less than 2000 litres (10 EP or less). NSW Health accredits standard designs, products and plans for devices used for human waste storage or treatment that are generally available for purchase by retail in NSW. Prior accreditation is mandatory for commercially distributed treatment and storage devices of the type specified in the regulations. The accreditation process provides a centralised performance assessment and avoids the need for testing by the council. A certificate of accreditation issued by NSW Health may include specific requirements for the installation, operation and maintenance of the tested facility. Such conditions become mandatory conditions of council approval.

Accreditation is not required when a human waste storage or treatment device is installed as a prototype for research and development or for testing purposes, when a storage or treatment system is specifically designed for a particular application, or developed and built by a resident or landowner for their own premises. In such cases the council is required to assess both the waste treatment and effluent management aspects of the design against specified criteria (including the public interest) and apply the prescribed performance standards (NSW Health Advisory Note 1 – May 2006 refers).

Whether or not a commercially distributed sewage management facility is used, the local council is required to assess the suitability of proposed sewage management arrangements for particular premises and to determine requirements for the safe operation and maintenance of such systems, and for effluent management.

### **Orders powers**

In addition to the strategic service management and approval responsibilities discussed above, section 124 of the LG Act gives the council power to issue orders requiring a person (or corporation):

- to comply with an approval (Order 30);
- to take action to maintain premises in a safe and healthy condition (Order 21);
- to store, treat or dispose of waste in a specified manner (Order 22);
- not to use or permit a human waste storage facility to be used (Order 25); and
- to connect premises to a public sewer (if located within 75 metres) when necessary to protect public health and safety (Order 24).

It is important that when councils are using their orders powers to require connection to a sewerage system they only be used for the protection of public health and the environment and not to increase council's revenue base. Many landowners have invested in sustainable private infrastructure and they should not be required to connect to a system that they do not desire or need.

Orders can be given to the owner or occupier of the premises or to the person responsible for the waste or the container in which the waste is stored. Failure to comply with such an order is an offence punishable by a fine of up to 20 penalty units (\$2,200).

### **Penalty notice powers**

Under section 68 of the LG Act a landowner must obtain council approval for the operation of a system of sewage management. This allows councils to develop systems to manage assets, assess risks and educate the community about sewage management. Failure to have an approval is an offence under section 626 of the LG Act and failure to comply with the conditions of an approval is an offence under section 627 of the LG Act.

Under section 679 of the LG Act councils are able to deal with certain prescribed offences by issuing a penalty notice, in lieu of a court process. These are prescribed in Schedule 12 to the LG Reg and include offences relating to operating a system of sewage management without an approval and otherwise than in accordance with an approval.

Information about the sewage management performance standards, potential circumstances that may give rise to an offence, any warning system used by the council, the administration of penalty notices and the consequences of receiving a penalty notice should be made easily accessible by the public.

### **Penalty notice procedures**

Councils should develop and implement an on-site sewage management offence enforcement procedure that details a course of action to be followed when an offence has been committed. The procedure should emphasise pursuing appropriate alternative remedies prior to the service of a penalty notice. It is intended that the penalty notice powers be used to streamline enforcement only in circumstances where enforcement action is absolutely necessary.

The *Fines Act 1996* (NSW) regulates the penalty notice system. This Act provides a uniform procedure for dealing with the enforcement of penalty notices and councils are advised to review the statutory provisions.

#### **1.1.6 Sewage management revenue policy**

Revenue policy and the allocation of funds for the council's sewage management activities is determined by council in line with the LG Act. The matters to be considered include:

- public interest in safe and ecologically sustainable sewage management services;
- the purpose of each particular service and its contribution to meeting the council's duty of care to ensure safe management of sewage management systems in the local area;
- affordability;
- equity; and
- National Competition Policy principles.

Application, renewal and inspection fees should be set in consultation with the community and the community should be informed about the services and benefits to be provided by the council with funds raised from such fees.

Effective sewage management by council is contributing to a better environment and reducing risks to public health. These benefits flow to the whole community as well as to affected landowners. In many council areas landowners who operate private sewage management systems live in rural and semi-rural areas and do not benefit directly from the many council services that are only provided in urban areas. These landowners pay the full cost of their sewage services without the benefit of pooled funding arrangements and subsidies that benefit residents with access to town sewerage services. Consequently, councils are encouraged to implement revenue policies that are transparent and cost-reflective and balance public benefit and user pays principles, using a mix of revenue sources.

Revenue policy for the council's sewage management functions, including sewage management planning, systematic asset management and risk assessment, community education, regulatory activity and services could include:

1. a component sourced from 'approval to operate' fees (i.e. application and renewal fees);
2. a component sourced from ordinary rates income; and
3. a component sourced from inspection fees, charges and penalties.

### **Levying and collecting periodic renewal fees**

The fee to accompany an application for renewal of approval to operate a system of sewage management is an approved fee levied under section 608(2) of the LG Act. In order to assist councils to minimise the cost of levying and collecting this fee periodically, section 107A provides that an application is deemed to have been made on payment of the due fee.

This fee can be collected by listing it as a separate item in the invoice section of the annual rates notice, provided that the fee item and the funds when collected are specified as service fees and accounted for separately from rates revenue. Failure to pay the fee when due may be dealt with by issuing a penalty notice if necessary, since operating a system of sewage management without approval is an offence under section 626.

The determination of renewal periods and the amount of any fees is a matter for the council. Renewal periods of a decade may be warranted in low risk situations and it is not necessary to require a renewal fee. The renewal period must be set out in the initial grant of approval (ss.103 and 107 refer). Renewal is only possible if the terms and conditions of the original approval are unchanged. However, since such approvals call up the standards in the LG Reg, renewal normally will be possible unless local requirements have changed.