

# Draft State Environment Protection Policy (Waters)

## Submission on behalf of: South-East Victoria Local Government Wastewater Initiative

### Introduction

The South-East Victoria Local Government Wastewater Initiative is a collaborative of representatives from 12 municipalities (Bass Coast, Baw Baw, Cardinia, Casey, East Gippsland, Frankston, Dandenong, Knox, Latrobe, Mornington, South Gippsland and Wellington) who meet bi-annually and progress projects with the aim of:

- Providing a platform for information sharing across the South-Eastern Region.
- Establishing a greater level of uniformity and consistency to Council processes and approach to wastewater management across the South-Eastern Region.
- Fostering an environment that promotes progress.

This document represents the submission by the South-East Victoria Local Government Wastewater Initiative on the issues related to the management of wastewater in the Draft State Environment Protection Policy (Waters). In addition, the group acknowledges and supports the submission of the Municipal Association of Victoria.

Our group recognises that once the SEPP (Waters) is adopted, significant work and collaboration with key stakeholders including local government, will be required during implementation to maximise environmental outcomes. Members of our local government group would welcome the opportunity to be actively engaged in the implementation of Actions 5.1, 5.3, 5.4, 5.5 and 5.6 outlined in Critical Action 5.

**Acknowledgements:** The South-East Victoria Local Government Wastewater Initiative would particularly like to acknowledge the Mornington Peninsula Shire Council, Baw Baw Shire Council, City of Casey and City of Cardinia in the preparation of this submission.

## Comment on Draft SEPP (Waters)

### General

The draft SEPP Waters imposes increased responsibilities for council in managing onsite wastewater. It is noted that the Implementation Plan has not addressed the funding and resources required for council to effectively provide this service.

### Clause 28 (1)

Allows for developers to propose wastewater management systems that are neither reticulated sewerage nor traditional onsite domestic wastewater systems (ODWS), that is, an “alternative system”.

**Comment:** It is understood that full traditional centralised sewerage schemes may not be cost effective, and that ODWS have potential impacts on ground and surface waters if poorly designed or managed. Re-framing the SEPP to encourage more community-based, decentralised systems may increase the cost-effective and safe management of domestic wastewater.

**Issue:** It is not clear whether council permitting would be required, or need to be adapted in response to the provision of an alternative system. It is expected that most would be greater than 5,000 L/d and not require council approval. However, for the Park Orchard example, individual onsite systems were provided, presumably each less than 5,000 L/d, which may suggest that these require council approval (although each ODWS is connected to a cluster, which would be greater than 5,000 L/d and therefore not require council approval.)

**Recommendation:** Clarity that any “alternative system” approved by either EPA or water authority not be a council responsibility for permitting and compliance. Alternatively, a model for the planning, construction, governance and maintenance for ‘alternative systems’ is developed in consultation with EPA, water authorities and Councils. This model could be built on the back of case studies, such as Park Orchards.

### Clause 28 (2)

Similar to the current 32(2)a, and specifies that councils must assess ODWS in accordance with the Victorian Land Capability Assessment Framework (VLCAF). Unlike the previous version, reference to EPA guidance is not included.

**Issue:** The VLCAF is not an EPA publication and the clause 28(2)a does not allow for EPA to provide additional guidance or constraints other than that included in the VLCAF. This may limit the future ability of the EPA to improve land capability assessments.

**Recommendation:** That 28(2)a be modified, similar to: *(a)wastewater can be sustainably managed and dispersed within the property boundaries over the system’s lifetime, in accordance with the Victorian Land Capability Assessment Framework and any other guidance provided by the Authority.* No further comment is made on the content of the VLCAF.

### Clause 29

**Issue:** Clause 29 does not sufficiently define the purpose of the DWMP. Clause 29(4)a refers to the need to manage ODWS that discharge “waste beyond allotment boundaries”. This does not necessarily make it clear that that the discharge from ODWS into groundwater also needs to be managed. The Potable Water Guidelines require that a DWMP “must comprise a strategy, including timelines and priorities, to:

- prevent discharge of wastewater beyond property boundaries; and
- prevent individual and cumulative impacts on groundwater and surface water beneficial uses.”

This statement makes clear the aim of the DWMP and is suitable encompassing of the issues expected to be addressed in a DWMP.

**Recommendation:** That Clause 29 be modified to include the aim of a DWMP, similar to that defined in the Potable Water Guidelines.

### Clause 29(1)

Under clause 29 councils are required to develop a domestic wastewater management plan (DWMP) if domestic wastewater management systems exist within the district.

**Issue:** Lack of definition of “Domestic Wastewater” and inconsistent use of terminology around wastewater and sewage. There is no clear definition under either the EP Act, Code of Practice, SEPP or Waters Act that defines “Domestic Wastewater”.

The Code of Practice refers to “Sewage” being blackwater (toilet waste) and greywater (wastewater from showers, washing machines or kitchens). This does not make any distinction between household wastewater and that generated from commercial kitchens and laundries.

The EP Act refers to “septic tank systems” as treating “Sewage” which is “any waste containing human excreta or domestic waste water”. This EP Act definition suggests that any commercial or industrial wastewater (trade waste) that contains human excreta, e.g. hand washing can be considered sewage or domestic wastewater and be required to be managed by council if there is an onsite treatment system.

The EP Act defines “Industrial Waste” as including “any waste arising from commercial, industrial or trade activities or from laboratories”. Under this definition, commercial kitchens and laundries generate industrial waste and may be considered scheduled premises and require a licence, if using onsite disposal.

The EP Act defines waste as including “any matter whether solid, liquid, gaseous or radio-active which is discharged, emitted or deposited in the environment in such volume, constituency or manner as to cause an alteration in the environment”

The SEPP (WoV) does not define “Sewage” or “Wastewater”, and refers to the EP Act definition of “Waste”.

The draft SEPP(Waters) defines “Wastewater” very broadly, as “waste principally consisting of water and includes:

- (a) human wastewater;
- (b) sewage;
- (c) water containing food or beverage waste;
- (d) wash down water or cooling water;
- (e) irrigation runoff or contaminated stormwater;
- (f) water containing any other trade or industrial waste;
- (g) any other water that has been used in any form of human activity;
- (h) a combination of any one or more of the above.”

The Waters Act defines “Sewage” as any human excreta or domestic waterborne waste, whether untreated or partially treated, but does not include trade waste. “Trade Waste” is comprehensively defined under the trade waste regulations.

This lack of consistent definitions has led to some difficulty for council managing wastewater from commercial kitchens, especially if the volume is less than 5,000 L/d.

**Recommendation:** That SEPP Waters and the future EP Act review clarify definitions around wastewater, and in particular domestic wastewater. It is suggested that the terms “Domestic Wastewater” or “Sewage” be specifically defined to exclude wastewater streams that include trade waste or industrial waste, as per the Water Act.

**Issue:** Lack of clarity of “domestic wastewater management system”. In addition to the above comments around lack of definition of “Domestic Wastewater”, there is a lack of clarity around what

is a domestic wastewater system. This is not defined under any legislation. The EP Act refers to a “septic tank system” being one that treats and disposes of sewage and is less than 5,000 L/d. It is assumed that this is equivalent to a domestic wastewater management system, however this is not stated.

This may lead to some confusion around smaller scale commercial systems or alternative systems. E.g. the system operated at Park Orchard, which involves individual “domestic” ODWS connected to a joint system to manage excess flows. Are these systems still “Domestic wastewater management systems” that require council permit or are they regarded as a ‘Sewerage’ system and are therefore managed by the sewerage authority?

It also needs to be clarified whether kitchen wastewater from commercial facilities such as restaurants less than 5,000 L/d is considered domestic wastewater.

**Recommendation:** That the terms “Domestic Wastewater” and “domestic wastewater management system” be clearly defined for the purposes of council responsibility.

#### Clause 29(2)

In stating the requirements of the DWMP, Clause 29(2) requires the DWMP to “prioritise risks and set out strategies for responding to risks”. It does not explicitly state the type of risks, nor that the risks should relate to domestic wastewater.

**Recommendation:** That 29(2) be expanded to state (or similar) “The DWMP must identify the *water related risks, including cumulative risks and public health risks associated with the operation of domestic wastewater treatment systems*, prioritise these risks and set out strategies for responding to these risks.”

#### Clause 29(3)

**Comment:** The group acknowledges and appreciates the stated importance of consulting “with water corporations, community and other stakeholders” when developing and implementing the DWMP.

**Issue:** C29(3) does not specifically identify the EPA as a stakeholder, even though EPA represent the lead agency in managing environmental and health impact of ODWS. In contrast, the potable water guidelines specifically require the consultation with EPA.

**Recommendation:** That clause 29(3) is reworded to require consultation, at some level, with the EPA.

#### Clause 29(4)

**Comment:** Clause 29(4)a refers to the cumulative risks of ODWS, rather than the risks of each ODWS. This is an important clarification from the current SEPP due to the large numbers of multiple pollution sources.

**Issue:** Clause 29(4)a refers to “*discharging waste beyond allotment boundaries*”. The explanatory note that uses the terminology “*failing septic systems*”. Understanding the difference between these terms is important. There are some systems that may be failing but not have an off-site discharge yet still be a significant health risk. Older systems may be designed (and permitted) for off-site discharge and cause an impact yet be operating as designed. Further, all systems have the potential to impact on groundwaters even if there is no off-site discharge of surface water.

**Recommendation:** Remove the phrase ““*discharging waste beyond allotment boundaries*”. So that 29(4)a reads (a)*identify, assess and manage cumulative risks of onsite domestic wastewater systems.*

**Issue:** Clause 29(4)c(i) requires councils to *(c) identify, cost, prioritise and evaluate options to— (i) provide solutions to prevent discharge of wastewater beyond allotment boundaries;*

It is considered that this is a large impost on councils to provide solutions to failing ODWS, especially as these are privately owned systems, that have been approved by the EPA and usually installed by competent contractors. Councils rarely have the resources to undertake thorough evaluation of options, and often not the legislative power to enforce them. e.g. If a system is discharging beyond the lot boundary but is operating as designed, the solutions available to council under the EP Act are limited. In these circumstances, council often rely on the 'nuisance' provisions of the Public Health and Wellbeing Act 2008

**Recommendation:** That this clause and the expectations on councils be re-considered. It is suggested that more responsibility for management of wastewater be assumed by EPA or even the water authorities where community sewerage programs for replacing septic tanks have been identified in their five-year Water Plans. It is also recommended that revision of the EP Act include provisions that enable Council to deal with older septic systems where no permits exist or the permit records are unreliable and cannot be enforced.

**Issue:** It is assumed that Clause 29 generally aims to require councils and water authorities together to create the DWMPs, and this would be an important component of a DWMP and appreciated by councils. However, this is not clear in the wording of Clause 29(4)c which does not specifically require councils to engage with the Authority or Water Corporations.

**Recommendation:** Better clarity would be achieved if Clause 29(4)c was expanded as *Engage with the Authority and relevant water corporations to identify, cost, prioritise and evaluate options to—* Or alternatively, Clause 29(4) was reworded to start: *When developing, revising or implementing a domestic wastewater management plan the council must engage with the Authority and relevant water corporations to...*

**Issue:** Clause 29(4)b(i) does not specifically refer to "Domestic Wastewater". Notwithstanding that domestic wastewater is not clearly defined (it is assumed in this instance to mean either wastewater from households or commercial facilities with flow less than 5,000 L/d), this clause suggests that council is responsible for the management of ALL wastewater, regardless of source.

**Recommendation:** That this clause refer to "Domestic Wastewater" and domestic wastewater be defined.

**Recommendation:** Clause 29(4)b and c would provide better clarity if worded more particularly to include water authorities in the process. i.e.

*(b) engage with the Authority and relevant water corporations to:  
identify existing unsewered allotments which do not retain wastewater on site or are not capable of preventing the discharge of wastewater beyond allotment boundaries, or preventing impacts on groundwater beneficial uses for inclusion in the domestic wastewater management plan; and  
(c) identify, cost, prioritise and evaluate options to—  
(i) provide solutions to prevent discharge of wastewater beyond allotment boundaries; and  
(ii) provide for the compliance assessment and enforcement of onsite domestic wastewater systems in accordance with the plan; and*

**Comment:** Clause 29(d) refers to DWMP being prepared in accordance with *any relevant guidelines authorised by the Authority*. Our group would appreciate guidelines from the Authority on the scope of a DWMP, methods to assess cumulative risks and options to manage.

**Issue:** Clause 29(4)d refers to the Guidelines for Planning Permit Applications in Open Potable Water Supply Catchment. The DELWP website refers to the document Planning Permit Applications in Open, Potable Water Supply Catchment Areas (published by DSE in November 2012). The reference to a different document in the draft SEPP is confusing.

#### Clause 29(5) and Clause 29(6)

**Comment:** The group supports the requirement to audit and update the DWMP regularly, and to make the results of the audit public on the website.

**Comment:** It is noted that Clause 29(6) requires that the DWMP be audited every 3 years, and audited at least every 5 years. It is noted that this is consistent with the DWMP guidelines under the DSE 2012 publication, Planning permit applications in open, potable water supply catchment areas, which is appreciated by councils in these catchment areas.

**Issue:** Clause 29(6) does not allow for the Authority to provide guidance on the process for undertaking an audit of the DWMP, and for that process to be consistent across council. Such guidance would be appreciated by councils.

**Recommendation:** That wording similar to that included in 29(4): e.g. *“(6) The council must conduct an audit to assess progress and report on progress of the domestic wastewater management plan implementation every three years and publish the report on its website. In conducting the audit, where applicable have regard to any relevant guidelines authorised by the Authority.”*

#### Clause 29 Explanatory Notes

**Issue:** The explanatory notes for Clause 29 refers to the DWMP as a management plan under section 32A of the Water Act. This implies that a DWMP is bound by the requirements of s 32A. S32A specifically refers to councils with potable water catchments.

**Recommendation:** Clarify in the explanatory notes that confirming to the requirements of s32A of the Water Act is not mandatory.

#### Clause 30

**Comment:** The group appreciates the added requirement in the draft SEPP Waters to require water authorities a copy of the sewerage plan and the requirements to be addressed in sewerage planning.

**Issue:** Clause 30 does not explicitly require the water corporation to consult with the council, Authority or the community in the preparation of the sewerage plan. It is considered that the community consultation undertaken by councils as part of the development of the DWMP should be continued through the water corporation sewerage planning. It is likely that the community are aware of the distinction between council managing onsite wastewater and water corporations managing sewerage, so may not consider raising their interests in sewerage to council during the DWMP consultation process.

**Recommendation:** That water corporations be required to consult with the community in their sewerage planning process to ensure servicing options, priorities and timelines are aligned with the Council's DWMP.

**Issue:** Clause 30 does not require the water corporation’s sewerage plan to be approved by the Authority, or Minister or require any other oversight of the plan. This leaves councils at risk of water corporations not necessarily undertaking a sufficiently rigorous or valuable assessment.

**Recommendation:** That sewerage plan under clause 30 be approved by the Authority

### Clause 31

**Comment:** It is noted that this clause clarifies the occasions when it is appropriate for the water corporations to enforce sewerage connection, as some have been reluctant to use the provisions of the Water Act for this purpose.

Sections 183 and 184 include provisions for Water Authorities to require septic systems owners to make repairs to their system and also allows Water Authorities to make a by-law requiring a system owner to undertake cleaning, maintenance and works.

Similar laws authorising Council to do the same under the EP Act would provide more flexibility to meet the SEPP objectives, rather than relying on the current EP Act provisions.

Water retailers have, in the most part, opted not to utilise these powers within the Water Act and have relied on Councils to impose the nuisance provisions of the Public Health and Wellbeing Act 2008. A high burden of proof required under the PHWB Act increases the cost and time for Councils to be effective in ensuring connection, repair and upgrade of septic systems. As a result, many areas serviced by a sewerage system have low connection rates.

**Recommendation:** Clarity is required on the preferred and most effective law to ensure sewerage connection. Without amendments to both the EP Act and the Water Act, a service or operating agreement between Councils and Water Authorities could be a viable option or the matter is referred to the Minister for resolution.

### Definitions / References

Code of Practice	Code of Practice -Onsite Wastewater Management EPA publication 891.4, 2016
DWMP	Domestic Wastewater Management Plan
EP Act	Environment Protection Act 1970
EPA	Environment Protection Authority
ODWS	Onsite Domestic Wastewater System
SEPP(WoV)	State Environment Protection Policy (Waters of Victoria)
SEPP(GoV)	State Environment Protection Policy (Groundwaters of Victoria)
SEPP(Waters)	Draft for consultation, State Environment Protection Policy (Waters)
Trade Waste Regulations	Water (Trade Waste) Regulations 2014
Water Act	Water Act 1989