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**Re: Dam Safety NSW Levy Review Draft Report – July 2024**

Local Government Regional Joint Organisations (JOs) were proclaimed in May 2018 under the NSW Local Government Act 1993. The Central NSW Joint Organisation (CNSWJO) represents over 177,000 people covering an area of more than 51,000sq kms comprising the Local Government Areas of Bathurst, Blayney, Cabonne, Cowra, Forbes, Lachlan, Lithgow, Oberon, Orange, Parkes, Weddin, Central Tablelands Water, and Upper Macquarie County Council.

Tasked with intergovernmental cooperation, leadership and prioritisation, JOs have consulted with their stakeholders to identify key strategic regional priorities. The CNSWJO Strategic Plan can be found on the CNSWJO website [www.centraljo.nsw.gov.au](http://www.centraljo.nsw.gov.au) or directly via this link: [www.centraljo.nsw.gov.au/content/uploads/051222\\_CNSWJO-Strategic-Plan-October-2023-Final.pdf](http://www.centraljo.nsw.gov.au/content/uploads/051222_CNSWJO-Strategic-Plan-October-2023-Final.pdf)

Further to our submission dated 12 April 2024, we thank you for the opportunity to provide response to the Dam Safety NSW Levy Review Draft Report. Where our member councils may provide separate submissions, this response is informed by policy developed in region and endorsed by the CNSWJO Board.

CNSWJO member councils all operate local water utilities (LWUs), so the security, availability and affordability of town water supplies for the communities in Central NSW is core business for the councils in this region. Our councils service 72,314 water connections and manage 14 water treatment plants. In addition, they own and operate a total of eighteen declared dams for the purpose of either town water supply or stormwater detention. Two councils are responsible for one dam each, four for two dams, while two have responsibility for four dams. Of these at least 12 are in the high-risk consequence category and one in the extreme category. Four are detention basins for stormwater capture.

It is understood that the NSW Government has authorised IPART under the IPART Act 1992 to design a dam safety levy, which the Government may then decide to implement. It is noted that IPART has not been asked to comment on whether a levy should be implemented.

While this is acknowledged, the design of such a levy cannot be examined in isolation from the funding issues that are challenging regional Local Water Utilities (LWUs). These are the subject of the recent report by the NSW Productivity Commission inquiry into alternate funding models for LWUs. With the need to reduce the cost burden on regional communities, the introduction of a dam safety

levy is yet another cost shifting exercise to those very same LWUs without regard to the ability of regional communities to pay.

It is noted that IPART have assessed the potential bill impact (page 24) for regional customers and *consider that the materiality of the levy would not warrant the administrative complexity of a rebate. The largest impact for ratepayers would be \$3.38 per annum, and in most cases significantly less than this.* This is based on the community of Orange that has a much larger rate base than, for example, Cowra which also has four dams.

As detailed in our previous submission, it is not just the potential cost of a dam safety levy on regional councils but that it is adding to a growing trend for cost shifting from the State Government of charges to councils already struggling with financial viability.

Where IPARTs view is that the regulated should fund their regulation, and given the extent to which local government is regulated, levies such as the dam safety levy will add up well beyond the rate cap. This is particularly the case for local government local water utilities where there is an ever-increasing regulatory regime. NSW Health are currently implementing drinking water management audits and DCCEE are reviewing their regulatory functions. Increased regulation comes at a cost to councils, (and their communities) and regulated funded regulation will compound an existing financial sustainability problem.

To expect councils to pay for the regulatory function of Dam Safety NSW (DSNSW) will add further costs to the operation of town water supplies. These costs will potentially need to be recovered by way of additional charges to town water supply customers who should not have to pay extra for their essential services as a result of this levy. This is not an issue of willingness to pay but more capacity to pay.

**1. Do you agree with the categories of costs we included in the levy (shown in Table 3.1)? Are there any costs you consider are not driven by declared dam owners?**

No. Where councils currently do not pay levies to other regulators for audits, for example NSW Health, it is counterintuitive that at the same time as examining how to alleviate the financial burden on regional communities, there is discussion of a levy for DSNSW to undertake their regulatory function.

The important role that DSNSW plays is acknowledged however, the CNSWJO Board considers that the service it provides is for the public good and that this service should continue to be funded from consolidated revenue. Introduction of the levy would be yet another cost shift from the State Government onto councils.

**2. Should overhead costs be shared equally by all dam owners, or should they be apportioned on the same basis as labour costs (i.e., based on consequence category)?**

No. Overhead costs should not be shared equally or based on labour or consequence categories. The costs of levies to dam owners, should the government decide to implement these, should be based on the dam's purpose and owner. The levy should not apply to local government owned and managed town water supply dams or stormwater detention systems, which are essential local community services.

The CNSWJO holds firm on its view that, at the least, smaller communities with lesser ability to pay should have the levy waived or capped. Also, there should be a greater discount for owners of multiple dams.

Again, we cite the example of Cowra Shire Council who have a small rate base but four dams with a potential levy of \$42,298 per annum. The costs to the community of Cowra are the same of those for two global mining companies, Glencore and Evolution Mining that generate hundreds of millions of dollars in profits annually.

The idea that dam owners include the cost of the levy in the prices they charge for these services and that the levy cost should be borne by those that are the root cause of the levy, misses the challenges for regional LWUs identified by the NSW Productivity Commission. An additional \$3.38 per rate payer may not sound like much but when added to the growing costs that councils need to pass on to their communities in a rate capped environment, this is just the tip of the iceberg.

In the case of Cowra, Council has incurred the following costs due to the recent changes in the Dam Safety legislation:

- the studies involved in calculating the consequence category of failure of the 4 detention basins \$19,6473 ex GST
- the preparation of Dam Safety Management Plans \$69,600 ex gst to meet the amended legislative requirements
- the annual dam safety inspections and routine maintenance required \$35,198 ex gst

The proposed additional recurrent costs to be imposed on Council as a declared dam owner are not justified by the minimal role of DSNSW in regulating Cowra's detention basins. There is a total of only 28ML of temporary storage in stormwater detention basins as flood mitigation; the detention basins are not permanent storage for irrigation or nonessential purposes.

### **3. Do you expect that the regulatory support you require from DSNSW will reduce as dam owners become more familiar with the new regulatory framework?**

Local Water Utilities are staffed by much smaller teams, and yet they must operate in much the same complex web of governing legislation with the same responsibilities as Sydney Water or Hunter Water:

- Public Health Act 2010 – regarding maintaining a Drinking Water Management System for safe drinking water
- Protection of the Environment Operations Act 1997 – regarding holding Environmental Protection Licences Pollution Incident Response Plans (PIRMP's)
- Environmental Planning and Assessment Act 1979 – regarding determining approvals to construct water and sewerage infrastructure and ensure appropriate servicing plans for land.
- Dams Safety Act 2015 – to ensure that any risks from dams owned by councils are managed to an acceptable level
- Work Health and Safety Act 2011 – to ensure the safety of water and sewerage workers
- Water Act 2007 (Commonwealth) – with regard to national performance reporting requirements for water utilities.

In addition, councils have their own regulatory framework Integrated Planning and Reporting (IP&R) under the Local Government Act. In the IP&R framework asset management takes an ISO 55000 approach. It includes the need for asset management strategy that identifies the assets that are

critical to council's operations and includes risk management strategies for those assets. Assessment and mitigation of risk is part of council's planning processes.

As dam owners, each of our councils takes their regulatory responsibility for the safety of their dam(s) very seriously. All participate in a regional Dam Surveillance and Inspection Program procured 5-yearly through the CNSWJO and are working to undertake dam safety risk reviews as required under the dam safety legislation. Meeting these regulatory requirements all come at a cost to councils and their communities.

Rather than charging council dam owners a levy for DSNSW to regulate them, this money would be better spent enabling councils to implement recommendations from their dam safety risk reviews. The greater risk is that councils do not have the funds to complete these repairs.

Where council's LWUs are highly regulated, yes, it is anticipated that as councils become more familiar with the new regulatory framework the regulatory support required by DSNSW will reduce.

#### **4. Is a levy based on consequence category a fair way of allocating costs between dam owners?**

No. See response to Q2. The costs of levies to dam owners, should the government decide to implement these, should not be based on consequence category but rather on:

- dam purpose (water supply, flood mitigation)
- dam owner (Local Government)
- number of dams

The levy should not apply to local government owned and managed town water supply dams or stormwater detention systems, which are essential local community services. Alternatively smaller communities with lesser ability to pay should have the levy waived or capped.

Also, Dams Safety NSW should consider introducing a greater discount for owners of multiple dams. Effectively where there is one dam safety management system (DSMS) the discount currently proposed does not appear to reflect the reduced regulatory workload.

Applying the levy to stormwater detention systems reduces the incentive for councils to implement and maintain flood mitigation structures. Councils such as Cowra should not be impacted by additional cost to maintain these.

A dam safety levy may not be unreasonable for non-Local Government dam owners such as Hunter Water or WaterNSW where the costs can be spread across a larger customer base or mining companies.

#### **5. What factors should a future review of the Levy consider? Are there any measures of dam owners' regulatory performance that should be captured at a future review**

See responses to questions 2 and 4. It is counterintuitive to charge council dam owners large sums of money to regulate them when this money would be better invested in helping councils to reduce risks identified through Dam Safety reviews. Ultimately this is what will improve the regulatory performance of dam-owners.

**6. Are there any additional challenges around cost recovery that we have not identified and considered in the draft report?**

As detailed in response to question 2, the introduction of the levy appears to contradict the recognition in the NSW government that there are serious burdens on council owned local water utilities and local government more generally that threaten the financial sustainability of councils. This is evidenced in the recently released NSW Productivity and Equality Commission's Review of funding models for Local Water Utilities (July 2024). Regional communities already require significant financial assistance to support safe and affordable water supplies.

Again, it is not so much around willingness to pay but capacity to pay. Where communities have been, and will continue to be, impacted by successive natural disasters, councils and their communities carry the costs of these to local infrastructure. Town water supply dams and council owned dams that serve flood mitigation purposes must be exempt from any dam safety levy.

**7. How frequently should the levy be reviewed? What factors should be considered at these reviews?**

Further to the responses to questions above, if implemented the levy should be independently reviewed in 3 years to ensure that it is not having a detrimental impact on Council dam owners' costs for the operation of town water supplies. It should also consider the cost for rate payers and their capacity to pay especially in the case of communities with small rate bases.

**8. If a future review of the levy implements a performance adjustment how would this influence your activities as a dam owner?**

The CNSWJO is not a dam-owner but again makes the point that where each of our councils takes their regulatory responsibility for the safety of their dam(s) very seriously, a levy for regulation is not going to improve performance- it is simply going to take much needed funds away from investment in dam safety improvements and the provision of essential town water supply services.

The idea of financial incentives that drive better regulatory compliance, and lower regulatory costs in the future fails to recognise the extent of the existing financial burden on inland regional councils and their communities of implementing safety improvement from dam safety audits.

**9. What performance metrics should DSNSW publicly report on?**

Dam Safety NSW should produce an Annual Report and be independently audited irrespective of the implementation of a dam safety levy. This should include staff levels and all costs associated with the efficient management of their regulatory regime.

**10. What information would give you confidence that DSNSW is using its funds efficiently?**

Before any type of levy is considered for adoption, DSNSW needs better data including a more accurate risk profile for each of the declared dams to enable a more accurate cost allocation.

The proposed additional recurrent costs to be imposed on, for example Cowra Shire Council, as a declared dam owner are not justified by the minimal role of DSNSW in regulating Cowra's detention basins.

## Summary

Aligned with responses from LGNSW and the NSW Water Directorate to the CEO Dams Safety NSW (November 2020) when this levy was first proposed and to IPART in April 2024, the CNSWJO Board strongly objects to the introduction of a dam safety levy.

Where IPARTs view is that the regulated should fund their regulation, and given the extent to which local government is regulated, levies such as this will add up well beyond the rate cap. This is particularly the case for local government local water utilities where an ever-increasing regulatory regime comes at a cost to councils, (and their communities). Levies for regulation cannot be looked at in isolation from the growing costs to regional councils that will need to be passed on to rate payers. It will only serve to compound an existing financial sustainability problem.

Where a dam safety levy may not be unreasonable for non-Local Government dam owners such as Hunter Water or WaterNSW where the costs can be spread across a larger customer base or mining companies, the CNSWJO Board asks that if this levy is introduced that:

- 1) The levy does not apply to town water supply dams or stormwater detention systems, which are essential local community services, or alternatively
- 2) Smaller communities with lesser ability to pay have the levy waived or capped; and
- 3) That there should be a greater discount for owners of multiple dams.

Further, applying the levy to stormwater detention systems reduces the incentive for councils to implement and maintain flood mitigation structures. Cowra Shire Council, a middling size regional council has four detention basins and should not be impacted by additional cost to maintain these.

We would welcome the opportunity to discuss these alternative approaches at an appropriate time. Please contact [REDACTED] if you would like to discuss any of the above.

Yours sincerely,

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Central NSW Joint Organisation