

OFFICIAL



Australian Government

Department of Infrastructure, Transport,
Regional Development, Communications and the Arts

9 December 2024

Independent Pricing and Regulatory Tribunal
PO Box K35
HAYMARKET Post Shop NSW 1240

SUBMISSION ON IPART (NSW) SYDNEY WATER PRICE PROPOSAL 2025 – 2030

Thank you for the opportunity to comment on New South Wales Independent Pricing and Regulatory Tribunal (IPART's) Sydney Water Price Proposal 2025 - 2030. I write to indicate how approval of the Sydney Water Price Proposal 2025-2023 potentially determines whether Sydney Water Corporation will, over the longer-term be able to meet the terms of its authorisation to pollute as issued by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the department).

Sydney Water Corporation owns and operates eight Emergency relief structures (ERS) on the South Western Suburbs Ocean Outfall Sewer (SWSOOS) that discharge wastewater to the Mill Stream during wet weather. The Mill Stream ERS is located on the eastern side of Sydney Airport at Mascot, which is Commonwealth property, leased to Sydney Airport Corporation. The SWSOOS consists of the original sewer (SWSOOS1), constructed in 1916 and later amplified (SWSOOS 2) in 1941. Because the ERS is located on federally owned land at Sydney Airport and has potential impacts on the local environment, Sydney Water Corporation must apply for an authorisation to pollute under the Airports (Environment Protection) Regulations 1997 (AEPR) from the department in order to operate the ERS. In my role as Sydney Airport Environment Officer, I granted an authorisation with conditions to Sydney Water Corporation under Part 5 of the AEPR on 7 June 2024. This authorisation allows Sydney Water Corporation to periodically discharge sewerage from the overflow point at Discharge Bay at Sydney Airport until 31 March 2027 subject to meeting certain conditions detailed in the authorisation document. Sydney Water Corporation authorisation is presented as an Attachment to this letter and is published on the department website.

Regulation 5.07(3) of the AEPR requires an authorisation to be supported by an Environmental Management Plan (EMP). Under regulation 7.06 of the AEPR, an AEO may direct the Applicant by way of an environment protection order (EPO) to comply with a condition of the authorisation. Under section 132(2) of the Airports Act, failure to comply with an EPO is an offence punishable by 250 penalty units (1250 penalty units for a corporation, in accordance with section 4B of the *Crimes Act 1914*) and, under section 8.01 of the AEPR, failure to comply with an authorisation is punishable on a daily basis in accordance with Section 4K of the *Crimes Act 1914*.

To implement its EMP and comply with the conditions of the authorisation, Sydney Water Corporation requires substantial additional funding through the IPART process. I have recognised this requirement in paragraph 19 of the authorisation. This specifies that:

“by 30 September 2024, Sydney Water Corporation must have submitted its pricing proposals to the IPART, including funding allocation and milestones for: (a) the 2025-2030 Wet Weather Overflow Abatement (WWOA) program (source control works); and (b) the planning and commencement of works for the preferred network augmentation option identified in the Malabar SBC; and (c) provide evidence including funding allocation and milestones of the submission to the AEO within 21 days of the submission of the proposal to IPART.”

I am pleased that Sydney Water Corporation met this condition, as it is a gateway condition that determines whether Sydney Water Corporation may possibly receive the investment it needs to implement additional measures to incrementally decrease its pollution of the Mill Stream over the longer term. Future investment in WWOA and the Malabar SBC will be instrumental in determining whether Sydney Water Corporation can meet the requirements of its EMP and its authorisation and, in that manner, continue to be authorised to periodically discharge sewerage from the overflow points on federally owned land over the longer-term. The following responses address the key topics presented in the IPART Issues Paper that relate to the Sydney Water authorisation.

Issues Paper Question 2. What do you think about the key outcomes and performance measures Sydney Water is aiming to deliver for its customers?

The Issues Paper indicates that Sydney Water Corporation has consulted with its customers to develop three outcomes to guide its service delivery for the next five years. The three outcomes refer to customer experience, water quality and reliability and environmental protection. In terms of pollution, as presented in Table 1 of the Issues Paper, Sydney Water Corporation aims to achieve either the same or a lower number of pollution incidents that could cause environmental harm (the baseline is 1053 and the target is ≤ 1053).

Under Regulation 5.07(3) of the AEPR, an authorisation is to be supported by an EMP that details the actions that will ensure that the overall pollution emissions are not more environmentally damaging than if the AEPR were complied with. Alternatively, if that outcome **can only be achieved by incremental improvements over time** the EMP must detail the actions that Sydney Water Corporation will take to make satisfactory progress towards achieving that outcome. Accordingly, the department supports actions to reduce pollution incidents, which we understand involves IPART’s approval for investment in sewage infrastructure growth and renewal. Such investment will enable Sydney Water Corporation to meet its targets under the current authorisation and demonstrate its commitment to incremental improvement over the longer term which will be important for obtaining any future authorisations.

Issues Paper Question 8. Tell us what you think about Sydney Water’s service standards for water and wastewater. What does good quality service mean to you?

I work closely with Sydney Water Corporation to monitor its compliance with the department authorisation. Some of the actions in the authorisation include:

- Implementing the Malabar Strategic Business Case. Sydney Water’s investigations showed that releasing highly treated water to the Georges River (system disconnection) or building a new SWSOOS pipeline from Arncliffe to Malabar (system augmentation) would cater for demand through to 2046.
- Implementing source control for the Malabar system to reduce wet weather inflows into the SWSOOS 2025-2030 Wet Weather Overflow Abatement (WWOA) work program.

- Desilting SWOOS 2.
- Monitoring Water Quality at Mill Stream.
- By January 2027 the total number of wet weather overflow events must not exceed a modelled performance of 12 overflow events per year.

The Issues Paper indicates that over the next five years Sydney Water plans to remove decades of silt build-up as well as completing structural repairs and installing new internal lining. Sydney Water considers this investment will assist it to meet compliance outcomes around dry and wet weather overflows. Sydney Water Pricing Proposal 2025 - 2030 Chapter 6, page 126, discusses the proposed capital expenditure for the 2025–30 and 2030–35 regulatory periods. The report mentions that these two periods are inextricably linked, as Sydney Water delivers a large program of growth projects and a sustained capital investment program of renewal works across the two periods. Appendix 6.1, Page 393 mentions that the Malabar mid-term program will address trunk capacity constraints in the Malabar Wastewater Network beyond 2031, either through duplication of the SWOOS and major amplification of Malabar WRRF, or disconnection and river release. Crucially, Sydney Water Corporation may find itself in breach of the authorisation if funding is not allocated to undertake the above projects that will achieve a reduction in wet weather overflows to meet authorisation targets in coming years.

Mill Stream has offered an economic environmental service to Sydney Water for years due to savings in the requirements for the construction of infrastructure and on operation and maintenance costs of sewage overflows that are being received by this waterway and drained into Botany Bay. However this practice is detrimental to human health and the environment. Mill Stream enters Botany Bay within proximity of Foreshore Beach, monitored under the NSW Government's Beachwatch program. The environmental ratings of this program at Foreshores Beach range from poor to very poor and these results are influenced by the Mill Stream ERSs.

Public submissions received as part of the process for Sydney Water Corporation Application raised concerns from community and government stakeholders regarding the implications from overflows on the environment, human health and safety and recreational opportunities. The value of water is being recognised in other countries with stronger regulation and investment in infrastructure projects for the reduction of wastewater overflows. Some examples include the UK Water (Special Measures) Bill and the New Zealand Central Interceptor project.

The department supports actions for the advancement of solutions to eliminate the discharge of raw sewage overflows to natural waterways and recognises the importance of maintenance operations. However, we believe that investment in infrastructure growth and renewal is required to achieve incremental improvement. A good quality service will achieve effective reduction pollution targets and compliance with regulatory requirements.

Accordingly, the department strongly encourages IPART to support the Sydney Water Price Proposal 2025-2023, both in the interests of ensuring Sydney Water Corporation continues to comply with its authorisation at Mill Stream and for the purposes of ensuring incremental improvement of environmental outcomes over the longer term.

Yours sincerely



Environment Regulation Section



Australian Government

**Department of Infrastructure,
Transport, Regional Development,
Communications and the Arts**

***AIRPORTS (ENVIRONMENT PROTECTION) REGULATIONS 1997
REGULATION 5.09***

AUTHORISATION

An Authorisation is hereby granted, subject to conditions, under regulation 5.09 of the Airports (Environment Protection) Regulations 1997 (Cwth) (Regulations).

NAME OF APPLICANT: Sydney Water Corporation

OF: 1 Smith Street
PARRAMATTA NSW 2150

Act, class of acts or sequence of acts, for which the authorisation is granted:

The periodic discharge of untreated wastewater from the South Western Suburbs Ocean Outfall Sewer (**SWSOOS**) Emergency Relief Structure overflow point located at Discharge Bay, Mill Stream, Sydney (Kingsford-Smith) Airport (being the airport concerned) in accordance with the Environmental Management Plan dated 7 May 2024 submitted in support of the Applicant's application accepted on 8 January 2024, subject to the conditions set out in Appendix A.

Authorisation Period: from date of issue **7 June 2024** to **31 March 2027**.

Reasons for Decision, being the reasons why the Authorisation is needed: As set out in Appendix B.

[REDACTED]
AIRPORT ENVIRONMENT OFFICER
Sydney Kingsford Smith Airport

Authorisation Number: 01/2024

Date of Issue: **7 June 2024**

Note: A person affected by the decision of the Airport Environment Officer (AEO) to grant, refuse or grant conditionally an Authorisation under regulation 5.09(1) of the Regulations can apply for a review of the decision by the Secretary of the Department of Infrastructure, Transport, Regional Development Communications and the Arts under regulation 9.01 of the Regulations. The Secretary must either affirm the decision or substitutes his/her decision for the decision reviewed, and give written notice of their decision.

Note: Under regulation 7.06 of the Regulations, an AEO may direct the Applicant by way of an environment protection order, to comply with a condition of this Authorisation that the AEO considers that the Applicant is not complying with, including by directing a particular action to be taken, and directing a period for compliance with the direction. Failure to comply with such direction is an offence under the *Airports Act 1996* (Cwth) and results in the Authorisation ceasing to have effect.

APPENDIX A

Operating Conditions

EMP compliance

- 1) Sydney Water must comply with and implement the Environmental Management Plan dated 7 May 2024 (**EMP**) submitted in support of the Applicant's application, and is to implement the measures identified in the letter submitted to the AEO in compliance with condition (18).

Annual EMP compliance reporting

- 2) Sydney Water must submit to the AEO a comprehensive report on its compliance with the EMP (**EMP Compliance Report**) in accordance with the requirements of clauses 5.17(a) to (c) of the Regulations by the following dates, for the following time periods:
 - (a) by 31 January 2025, covering the period from which the authorisation period begins to 17 January 2025;
 - (b) by 31 January 2026, covering the period from 17 January 2025 to 17 January 2026;
 - (c) by 31 January 2027, covering the period from 17 January 2026 to 17 January 2027;
 - (d) by 31 March 2027, covering the period from 17 January 2027 to 17 March 2027.
- 3) In addition to the requirements for an annual report set out in regulation 5.17 of the Regulation, each EMP Compliance Report must:
 - (a) Provide a report on the monthly frequency, duration and volume of all overflow events into Mill Stream.
 - (b) Provide a graph that includes monthly rainfall plots onto the Emergency Relief Structures (ERSs) gauge level to show baseline and overflow conditions and provide a written explanation of the conditions that led to each overflow event.
 - (c) Provide a graph with the total volume of overflows in ML per year since at least 2020.
 - (d) Provide a summary of all environmental complaints received during the reporting period and provide evidence as to how each of the complaints has been addressed and resolved.
 - (e) Detail the progress made in the reporting period towards the desilting of SWSOOS 2 referred to as Objective 1, Action 1.1 of the EMP.
 - (f) Detail the progress made in the reporting period to source control implementation referred to as Objective 1, Action 1.2 of the EMP.

- (g) Report the dates of the eight grit pit maintenance cycles undertaken and provide tonnage removed per cycle, referred to as Objective 1, Action 1.3 of the EMP.
 - (h) Detail the progress made in the reporting period to the Malabar Strategic Business Case (SBC) referred to as Objective 1, Action 1.4 of the EMP.
 - (i) Detail the progress made in the reporting period to the Botany Low Level Carrier Rehabilitation referred to as Objective 1, Action 1.5 of the EMP.
 - (j) Detail the progress made in the reporting period to the feasibility assessment and relocation of the SWSOOS Grit Pits referred to as Objective 2, Action 2.1 of the EMP.
 - (k) Detail the progress made in the reporting period to the Hydraulic Improvement Plan referred to as Objective 3 of the EMP.
 - (l) Detail the progress made in the reporting period to wastewater screening implementation referred to as Objective 4, Action 4.2 of the EMP.
 - (m) Detail the progress made in the reporting period to further reduce the concentration of discharge and improve compliance with the Regulations, including the water pollution limits in Schedule 2 of the Regulations.
 - (n) Describe, and provide evidence, of Sydney Water's compliance with condition L7.1 (Hydraulic Sewer System Model) of the Malabar Wastewater System Environmental Protection Licence (No. 372, issued by the NSW EPA).
 - (o) Detail Sydney Water's progress on the implementation of bird strike mitigation measures implemented in accordance with condition (18) and provide justification for any delay in implementation of such measures.
 - (p) Detail the volume of gross pollutants removed, syringe presence, photos, general observations, and water quality sampling results for overflow events and incidents of material harm.
 - (q) Detail evidence of improvement in the receiving environment in consideration of affected ecosystems and the health and wellbeing of the community (water quality, community expectations, beach suitability grade, odour, First Nations community values).
- 4) In the period between the commencement of the Authorisation and 17 January 2026, the total number of wet weather overflow events into Mill Stream must not exceed a modelled performance of:
- (a) 13 overflow events per year; and
 - (b) an overflow volume of 1,238 ML per year
- as measured by the hydraulic sewer system model. Compliance with this condition is to be reported in the 31 January 2025 and 31 January 2026 EMP compliance reports.
- 5) By the period commencing 17 January 2026 and ending 17 January 2027, the total number of wet weather overflow events at Mill Stream must not exceed a modelled performance of:
- (a) 12 overflow events per year; and
 - (b) an overflow volume of 1,115 ML/year

as measured by the hydraulic sewer system model. Compliance with this condition must be reported in the 31 January 2027 EMP compliance report.

- 6) In each annual EMP Compliance Report Sydney Water is to present any shortcomings in the achievement of proposed EMP targets and set out any corrective actions required to reduce modelled discharges to no more than the above limits by the required dates.

Quarterly reporting

- 7) Sydney Water must submit Quarterly Reports to the AEO within 21 days of the end of each quarter, commencing with a report on the first quarter concluding on 30 September 2024.
- 8) Quarterly Reports must:
 - (a) demonstrate compliance with delivery timeframes set out in the EMP as applicable for each quarter and performance indicators for actions on Objective 1 to Objective 6 referred to in Part 6 of the EMP; and
 - (b) include details of the volume of gross pollutants removed, syringe presence, photos, general observations, and water quality sampling results for overflow events and incidents of material harm.

Communication of compliance and compliance reporting

- 9) By 1 February 2025, 1 February 2026 and 1 February 2027 Sydney Water must provide an annual update on the progress of the implementation of the EMP at a community meeting to be held locally (e.g. Botany Town Hall).
- 10) By 28 February 2025, 28 February 2026 and 28 February 2027 finalised copies of the Annual EMP Compliance Report must be provided to Bayside Council and published on the Sydney Water website.

Performance and other conditions

- 11) Sydney Water must achieve eight grit pit maintenance cycles in each 12-month period for the duration of the authorisation period.
- 12) Sydney Water must notify Sydney Airport Corporation Limited (Sydney Airport), Bayside Council and the AEO of any overflow event within 24 hours of Sydney Water becoming aware of the event.
- 13) Sydney Water must notify Sydney Airport, Bayside Council and the AEO of any incident of material harm within 24 hours of Sydney Water becoming aware of the event.
- 14) Annual EMP Compliance Reports, Quarterly Reports, the bird strike risk assessment letter required under condition (18), the Water Quality Monitoring Report required under condition (21), and any other investigations undertaken for the duration of this Authorisation must be provided to Sydney Airport within 21 days of their finalisation.
- 15) Sydney Water must chair the Mill Stream Hydraulic Improvement Leadership Group (HILG) with representatives from Bayside Council, Sydney Airport, Department of Infrastructure, Transport, Regional Development, Communications and the Arts and the NSW Environment Protection Authority.
- 16) In addition to Stakeholder Reference Group (SRG) meetings, Sydney Water must attend meetings with Bayside Council, all Sydney Airport Community Forum meetings, and Planning and Coordination Forum meetings to which it is invited, and

provide an update to those forums on the progress of the implementation of the EMP.

- 17) By 30 July 2024 Sydney Water must complete a feasibility assessment for the relocation of the SWSOOS grit pits and by March 2027 implement the preferred feasible option.
- 18) By 31 August 2024, Sydney Water must submit a letter to the AEO that:
 - (a) summarises the bird strike risk assessments and monitoring results undertaken by Sydney Water and any assessments or results that Sydney Water has received from Sydney Airport; and
 - (b) provides details of the bird strike risk characterisation and short term mitigation measures identified by Sydney Water and suggested by Sydney Airport to be implemented by Sydney Water within the authorisation term ending on 31 March 2027 to address identified issues.
- 19) By 30 September 2024, Sydney Water must submit its pricing proposals to the New South Wales Independent Pricing and Regulatory Tribunal (IPART), including funding allocation and milestones for:
 - (a) the 2025-2030 Wet Weather Overflow Abatement (WWOA) program (source control works); and
 - (b) the planning and commencement of works for the preferred network augmentation option identified in the Malabar SBC; and
 - (c) provide evidence including funding allocation and milestones of the submission to the AEO within 21 days of the submission of the proposal to IPART.
- 20) By 31 December 2024 Sydney Water must complete all operational works for the Botany Low Level Carrier Rehabilitation project.
- 21) Sydney Water must:
 - (a) by 31 July 2025, submit a Water Quality Monitoring Report to the AEO that reports comprehensively on Sydney Water's monitoring in Mill Stream and that sets out recommended actions for the improvement of water quality at Mill Stream and surrounding Botany Bay area; and
 - (b) must undertake any recommendations in the Water Quality Monitoring Report by 31 March 2027 to the satisfaction of the AEO.
- 22) By 31 December 2025, Sydney Water must provide a report describing the quality management system (QMS), methods and calibration for the hydraulic sewer system modelling of Mill Stream overflows prepared:
 - (a) with reference to the independent Criteria Review Committee audit and report as required by the Environment Protection Licence under direction from the NSW EPA; and
 - (b) to the satisfaction of the AEO.
- 23) By 31 December 2026 Sydney Water must complete the construction and implementation of wastewater screening at Pump Station SP0038.
- 24) By 31 March 2027, Sydney Water must have completed at least 40% of the SWSOOS 2 desilting program.

- 25) By 31 March 2027 Sydney Water must demonstrate to the AEO's satisfaction that it has significantly progressed the concept design and environmental assessments and approvals for the implementation of the preferred network option of the Malabar SBC.

APPENDIX B

Reasons for the decision

Background and relevant statutory provisions

1. The Mill Stream Emergency Relief Structure (ERS) is located on federally-owned land at Sydney Airport and has water impacts. The Mill Stream ERS is expected to cause periodic discharge of untreated and diluted wastewater into the Mill Stream waterway.
2. This requires Sydney Water to obtain an authorisation under the Airports (Environment Protection) Regulations 1997 (Cth) (Regulations) from the Department of Infrastructure, Transport, Regional Development, Communications and the Arts to operate this Mill Stream ERS.
3. The Applicant had an authorisation valid until 31 March 2024. The Applicant has applied for an authorisation for the following three years (2024 - 2027). The Applicant made an application in writing under regulation 5.07 of the Regulations to the Sydney Airport Environment Officer (AEO) to that effect (Application).

Evidence upon which the decision is based

4. The decision to grant the authorisation subject to conditions (under regulation 5.09) is based upon the following information and considerations.
5. I have considered the following documents:
 - (a) Authorisation Application 2024 to 2027 Mill Stream Wastewater Emergency Relief Structures, dated 8 January 2024.
 - (b) Mill Stream Environment Management Plan 2024-2027, dated 7 May 2024 (EMP).
 - (c) Mill Stream Water Quality Report Revision 2, dated March 2024.
6. I have considered the Applicant's responses to requests for further information.
7. I have also considered the written submissions that were made in response to the advertisement of the Application under regulation 5.08, and the responses provided by the Applicant to the submissions made.

Findings and reasons for the decision

8. I have taken the following matters into account:
 - (a) I am satisfied that there are no reasonable alternative actions available to the Applicant to achieve the object of the proposed action, including the possibility that the undertaking concerned could be carried out in a different place due to the risk to the levels of service and to public health.
 - (b) I am satisfied that the Applicant has taken all reasonably available measures to avoid, or minimise, the need for an authorisation in the facts and circumstances of the Application.
 - (c) I have taken into account all reasonably likely consequences of the proposed action, as required by the Regulations:
 - (i) the health and safety of any person; and
 - (ii) any aspect of the environment; and
 - (iii) compliance with the ambient objectives mentioned in Part 2 of Schedule 1.

- (d) I am satisfied that additional environment and health and safety assessments will be undertaken during the Authorisation period.
 - (e) I am satisfied that the period of time for the authorisation is reasonable in the facts and circumstances of the Application in consideration of the timelines provided for each action in the EMP.
 - (f) I am satisfied as to the adequacy of the EMP which details the actions that the Applicant proposes to take during the period for which the authorisation has effect, that the Applicant believes will result in incremental improvements over a greater period of time to make satisfactory progress toward ensuring that pollution emissions overall are not more environmentally damaging than would be the case if exact compliance with the accepted limits mentioned in the Schedules to the Regulations were achieved.
 - (g) I am satisfied as to the likelihood of the EMP being realised with the conditional grant of the authorisation.
 - (h) I am satisfied that the objectives in the EMP and the conditions in the authorisation would be consistent with the objectives and proposed measures set out in the Sydney Airport Environment Strategy 2019-2024.
 - (i) I have considered whether the grant of the authorisation would have an impact upon the interests of another person and I am satisfied that given the measures towards incremental improvement, the Authorisation would allow for monitoring, compliance reports, and a pathway towards greater compliance of the schedules.
 - (j) I am satisfied that the submissions made under regulation 5.08, and the matters raised in the submissions are addressed by the EMP and conditions in the authorisation.
 - (k) I have had regard to the importance of the SWSOOS to public health in Sydney and am satisfied of the need, in the public interest, for Mill Stream ERS to operate properly.
9. When considering whether to grant a conditional authorisation, I have taken into account the commitments that the Applicant has given to prevent or minimise the pollution and impacts resulting from the actions subject of the Application.
10. I have also had regard to the need to prefer, if practicable, a decision that will promote improved compliance by the applicant with these Regulations after the authorisation, if granted, ceases to have effect.
11. When considering to grant the Authorisation I have taken into account the requirement for an Annual Report to demonstrate compliance with the Authorisation conditions and have regard to regulation 7.06 if a condition of the Authorisation is not met.
12. I have imposed conditions I consider appropriate in the authorisation having regard to those matters that I am required to take into account and consideration under the Regulations.