



15 August 2024

Dams Safety NSW Levy Review
Independent Pricing and Regulatory Tribunal
PO Box K35
Haymarket Post Shop NSW 1240

Submitted via online portal

Subject: Submission - Draft Report - Dams Safety NSW levy review

Lake Macquarie City Council (Council) writes in response to your invitation to stakeholders to provide a submission to IPART's *Draft Report* for the Dams Safety NSW (DSNSW) levy review.

Council has two declared dams that are subject to the proposed levy:

- **Floraville Road Detention Basin** (Dams Safety NSW Dam ID 111)
 - Flood Consequence Category Significant
 - Sunny Day Consequence Category Low

- **Garden Suburb Detention Basin No. 2** (Dams Safety NSW Dam ID 507)
 - Flood Consequence Category Significant
 - Sunny Day Consequence Category Low

The primary purpose of both dams is to provide flood mitigation to downstream communities and support flood mitigation strategy within the Lake Macquarie catchment.

Council provided a submission to IPART in April 2024 to the specific questions raised in the *Issues Paper – Designing a levy for regulating dam safety in NSW*. Council also provided feedback regarding:

- Recoupment of levy costs by local government, and
- Further financial support for local government

Council staff have reviewed the *Draft Report* and provide the following responses to the specific questions raised.

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

Council agrees that DSNSW's costs be divided into three types:

- Direct costs – costs directly related to the regulation of each dam.
- Indirect costs – costs related for the indirect activities to support the regulation of declared dams.
- Excluded costs – costs incurred on activities unrelated to the regulation of declared dams.

Council considers the Board remuneration and corporate support (to undertake annual financial reporting activities and supporting the Board) are excluded costs that relate to the legislative governance of the agency and not for the regulation of declared dams.

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)?

Council concurs that with the absence of any activity-based costing data of DSNSW's efforts, the indirect costs (overhead costs) should be apportioned based on consequence category effort ratios rather than on a per dam basis. This approach balances the need for fairness, while allocating costs to those who are the most likely drivers of them.

Council suggests that the indirect costs should be funded by both the dam owners and by DSNSW. This would:

- Encourage economic efficiency when DSNSW considers the cost of operating the regulatory framework when making decisions,
- Instil cost consciousness in DSNSW by improving transparency and making them more accountable to users of the regulatory system, and
- Improve equity by having DSNSW pay for part of the costs, rather than wholly from the dam owners who do not provide direction or management of these costs.

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

Council does not anticipate a reduction in DSNSW's regulatory support to Council as the Dams Safety regulatory framework matures and is fully implemented.

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

Council concurs that with the absence of any activity-based costing data of DSNSW's efforts, apportioning the direct costs and part of the indirect costs based on consequence category effort ratios balances the need for fairness, while allocating costs to those who are the most likely drivers of them.

What factors should a future review of the levy consider? Are there any measures of dam owner’s regulatory performance that should be captured at a future review?

Council suggests that the declared dams’ risk rating should be a factor in a future review of the levy.

Council acknowledges that DSNSW is currently operating in a ‘transitional phase’ as it rolls out this new regulatory regime. This change will mark a shift from its current practice of profiling dams based on consequence only (i.e. the potential impacts from dam failure) to instead also profiling dams on their likelihood of failure. The product of these consequence and likelihood assessments will yield a risk rating for each dam, which will underpin DSNSW’s new risk-based regulatory framework and inform its regulatory strategy and audit/compliance priorities.

Regarding the dam owner’s regulatory performance, the levy should reflect the level of regulatory support provided by DSNSW to dam owners. If a dam owner is effectively undertaking dam safety requirements and does not require the additional regulatory support from DSNSW, this should be reflected in a lower levy for that dam owner.

Are there any additional challenges around cost recovery that we have not identified and considered in the *Draft Report*?

IPART’s Terms of Reference does not specifically require them to look at cost recovery options, however it noted this is something that the Government will need to work through should it decide to implement the levy. Recognising that cost recovery is an important issue for stakeholders, IPART have explored options for dam owners. It considers dam owners should be able to pass the cost of the levy on to those that generated the need for the costs. That is, the parties that generate the need for the safety regulation – if it were not for them, the dam owner would not incur these costs.

Council’s two declared dams supply services to customers or ratepayers, the *Draft Report* states it is appropriate that dam owners include the cost of the levy in the prices they charge for these services (i.e. all ratepayers in the City).

IPART’s *Draft Report* states there are ongoing government reviews that are looking into local councils’ ability to pay these types of costs. For local councils specifically, IPART has recently reviewed its rate peg methodology and is establishing a Council Reference Group to advise on issues relating to rate peg impacts.

The *Draft Report* states that should the Government decide to implement this levy, IPART will ensure that the levy is put on the agenda for the Council Reference Group to consider, and if the group considers the issue material, it could be considered as a special adjustment factor for affected councils in a future rate peg.

Council recommends that IPART facilitate recommendation to either:

- Allow councils to administer cost recoupment through the rating system, or
- Direct government funding to councils that manage dams providing a broad public benefit, to offset the additional costs incurred through the levy.

Council considers that actual activities that DSNSW undertakes for administering a declared dam that is only being designed (not constructed or operational) should not be burdened on all current dam owners in the levy. All current dam owners do not drive or benefit from this service. This service by DSNSW should be considered as a fee for service on relevant dam owners.

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

Council concurs with that the levy should be reviewed in 2027 as DSNSW is expected to transition from operating in its 'transitory phase' into a more 'steady state' once it has completed the initial risk assessments by end 2026.

The *Draft Report* acknowledges that IPART has not undertaken detailed performance review of DSNSW's costs and resources. Council expects DSNSW to produce data to justify their costs for direct and indirect activities to support the regulation of declared dams.

The levy should be periodically reviewed, either as part of the annual financial audit by the NSW Audit Office or by an independent authority such as IPART. The review should consider:

- IPART's four key recommendations for information that DSNSW should collect to inform future assessments. This includes:
 - Specific data on how it delivers on its obligations.
 - Timesheet data from staff which captures how each staff member spends their time. This data could then be used to calculate costs from the bottom up, showing how resources are used to deliver safe dams in NSW. This could also be used to evaluate whether a performance adjustment is warranted.
 - Assessment of its own efficiency by reviewing resourcing and identifying any areas it could deliver on its obligations more efficiently.
 - Performance reporting on their transparency, feedback management, and measures of success.
- Changes to the number of declared dams and their characteristics.
- Changes to the legislative environment, including if the upcoming statutory review considers the introduction of a 'fee for service' model or if DSNSW is to retain a portion of any revenue it receives through penalty notices and fines from non-complying dam owners.

If a future review of the levy implements a performance adjustment (i.e. an adjustment to the levy based on a dam owner's regulatory compliance), how would this influence your activities as a dam owner?

Council advise that the levy should reflect the level of regulatory support provided by DSNSW to dam owners. If a dam owner is effectively undertaking dam safety requirements and does not require the additional regulatory support from DSNSW, this should be reflected in a lower levy for that dam owner.

Council acknowledges the merits in creating financial incentives that drive better regulatory compliance and would ensure that additional regulatory effort spent on non-performers is paid for by those non-performers instead of the full declared dam owner base.

However, IPART's *Draft Report* states DSNSW has indicated that there is currently no data being collected on dam owner's regulatory compliance, and there are no performance benchmarks.

Council is concerned that smaller dam owners are still in the process of adapting to DSNSW's new regulatory regime. Implementing a forward-looking performance adjustment may unfairly penalise under-resourced smaller dam owners who are still in the process of adjusting to the new regime.

Council advises that without transparent and rigid guides in place to determine when a fine is issued, the implementation of a compliance-based levy may have unintended consequences to incentivise DSNSW to issue more penalty notices to increase revenue by providing poor performance ratings of dam owners.

What performance metrics should DSNSW publicly report on?

Council concurs with IPART's four key recommendations for information that DSNSW should collect to inform future assessments.

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

Council considers that the performance of DSNSW's costs and resources must be independently reviewed periodically, either as part of the annual financial audit by the NSW Audit Office or by an independent authority such as IPART. This review needs to assess if DSNSW is transparently reporting its data to justify their costs of direct and indirect activities to support the regulation of declared dams.

Other information – Inconsistency with the reported total levy in the *Draft Report*

There is an inconsistency with the reported total levy. The *Draft Report* recommends that \$4.34 million (95 per cent of DSNSW's costs) are included in a levy (p 2), this is supported by the details in Table B.1 in Appendix B for \$4,336,577 (p 34).

However, the table of recommended levy rates for all dam owners in Table C.1 in Appendix C (pp 36–40) totals to \$4,492,687, this is \$156,110 more than the recommended total.

The levy for \$4,492,687 in Table C.1 is similar to the costs calculated from the FTI Consulting report (cf. Table 3.2 p 13).

- Specifically, it appears that Table C.1 is calculated based on a levy for \$4,492,687, for 381 dams using the weighted average efforts for consequence categories 1.00, 1.38, 1.65, 2.00 (cf. Table B.2 p 35). This would produce the proposed levy for each consequence category of \$7649, \$10,556, \$12,621, and \$15,298 which were very similar to the published levies (p 2). Results are shown in Table 1 below.

Table 1: Comparison of levy calculations for a \$4,492,687 levy

	Published levies \$4.34 million levy from page 2	Calculated based on \$4,492,687 levy from Table C.1
Low consequence dam	\$7,639	\$7,649
Significant consequence dam	\$10,574	\$10,556
High consequence dam	\$12,613	\$12,621
Extreme consequence dam	\$15,264	\$15,298

If the annual levy is \$4,336,577, using 381 dams using the weighted average efforts for consequence categories 1.00, 1.38, 1.65, 2.00 (cf. Table B.2 p 35), this calculates the proposed levy for each consequence category being \$7,383, \$10,189, \$12,182, and \$14,767. Results are shown in Table 2 below.

Table 2: Comparison of levy calculations for a \$4,336,577 levy

	Published levies \$4.34 million levy from page 2	Calculated based on \$4,336,577 levy
Low consequence dam	\$7,639	\$7,383
Significant consequence dam	\$10,574	\$10,189
High consequence dam	\$12,613	\$12,182
Extreme consequence dam	\$15,264	\$14,767

Council advises that the published levy needs to be recalculated and the values updated throughout the report prior to the IPARTs publication of the final report.

Other information – Error with the reported number of dams in the *Draft Report*

There is an error with the reported number of declared dams owned by Council. The *Draft Report* states that Council has three declared dams. On 12 April 2023 DSNSW completed the review of the documentation and advised there would be no need to declare Declared Dam ID 747 - Edgeworth Detention Basin. This will reduce the number of declared dams to 380.

This error will result in an increase (compared to the levy calculated for 381 dams) of the proposed levy for each consequence category to \$7,667, \$10,581, \$12,651, and \$15,334. Results are shown in Table 3 below.

Table 3: Comparison of levy calculations for 380 dams

	Published levies \$4.34 million levy from page 2	Calculated based 2 Council dams [total 380 dams]
Low consequence dam	\$7,639	\$7,667
Significant consequence dam	\$10,574	\$10,581
High consequence dam	\$12,613	\$12,651
Extreme consequence dam	\$15,264	\$15,334

Council has reviewed the data in Table C.1 and compared this to the most recent published Annual Dams Safety Standards Reports from dam owners. Council has identified that there are numerous differences in both the number of dams and the consequence categories between the published reports from dam owners and the data used to calculate the levy in IPARTs *Draft Report*.

Council advises that IPART needs to review and update the number of dams and the consequence categories. The published levy needs to be recalculated and the values updated prior to publication of IPARTs final report.

Irrespective of the error regarding Council's dams, consideration should be given to the actual activities that DSNSW undertakes for administering a declared dam that is only being designed (not constructed or operational). The *Draft Report* states that the costs for declaring new dams and revoking existing declarations are not driven by the entirety of the current pool of declared dams, and IPARTs view is that current dam owners should not have to bear costs that they do not drive or benefit from.

Council considers a more appropriate means of recovering these costs could be via a fee for service on relevant dam owners.

Acknowledgement

Council appreciates the opportunity to provide this feedback. Should you require further information about the matters addressed in this submission, please contact me directly on [REDACTED].

Yours faithfully,

[REDACTED]

[REDACTED]