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Response to 'Dam Safety NSW levy review – Draft Report

Dear Xanthe,

Thank you for the opportunity to provide a response to IPART's 'Dam Safety NSW level review – Draft Report.

Background

Sydney Water manages 16 'declared dams' in our area of operations, including Manly Dam, ten drinking water storage reservoirs and five stormwater detention and retarding basins.[1] Our drinking water storages enhance our ability to maintain the supply of drinking water under a range of operating scenarios. Our stormwater basins capture and retain run-off to help mitigate downstream flooding and can also contribute to improved water quality outcomes downstream of the dam. Some of our dams can also provide other community benefits, such as contributing to recreational open space.

We also purchase bulk water that was originally captured and stored in several large dams owned and managed by WaterNSW.

Current dam safety legislation, which includes the *Dams Safety Act 2015* (NSW) and the *Dams Safety Regulation 2019* (NSW), provides a framework to minimise the risks associated with dams. Under the Act, Dams Safety NSW (DSNSW) is the regulator responsible for ensuring dam owners manage the safety of 'declared dams' in NSW.

DSNSW is currently funded directly by the NSW Government. IPART has been requested to consider an alternative model where costs are funded by the owners of regulated dams via an annual levy. Following an earlier Issues Paper and public hearing, IPART has considered stakeholder submissions on the design of a levy and published a Draft Report for comment.

IPART's recommended levy design

IPART's preferred design seeks to recover an estimate of the efficient cost of running DSNSW, with dam owners charged different amounts depending on the consequences of

[1] We note that a range of structures, such as weirs, off-river storages, retarding basins, reservoirs and tailings dams, are classified as dams in accordance with the *Dams Safety Act 2015* (NSW) and the *Dams Safety Regulation 2019* (NSW).

dam failure. Under the current dam safety legislation, each declared dam has a consequence category, ranging from 'Low' to 'Extreme'. Based on a review of DSNSW costs, IPART recommends that owners of low consequence dams would pay a levy of around $7,600 for each dam, while owners of 'extreme' consequence dams would pay a levy of around $15,200 for each dam.

The levy would not change if the number of declared dams in NSW changes, which provides certainty for dam owners but may lead to under- or over-recovery of DSNSW costs. However, given at least two-thirds of DSNSW costs do not appear to vary with the number of dams, a fixed levy approach is reasonable and is simpler for dam owners.

Arrangements to review the levy over time

We consider there is value in specifying the levy will be subject to periodic independent review at regular intervals, as this will provide an incentive for DSNSW to ensure its costs remain efficient. We also support IPART's suggestion that efficiency savings should benefit dam owners, with savings 'banked' via a mechanism such as the Special Deposits Account and applied to reduce the levy over time.

We consider the frequency of reviews should remain flexible over time. Given DSNSW is still in a transition phase for the new legislative framework, we would support another review prior to 1 July 2027 should the NSW Government decide to implement a levy-based funding model for DSNSW.

Stakeholders ability to influence underlying costs

While the compliance approach adopted by dam owners is likely to have some influence over the level of resources needed by DSNSW, the ability of individual owners to directly affect the level of DSNSW costs appears very limited.

For example, as IPART's efficiency reviewer has found, corporate overheads represent just under 30 percent ($1.35m) of DSNSW costs, while a further 33 percent ($1.49m) in direct costs only vary based on the total number of declared dams. In other words, nearly two-thirds of costs are primarily within the control of DSNSW management and their judgement about the level of resources needed to apply the regulatory framework.

We therefore consider the onus is on DSNSW to ensure it continually improves over time, adopts practices and procedures that minimise compliance costs for dam owners, and will advocate for legislative reform if the costs of compliance exceed the benefits.

Should compliance outcomes influence how much a dam owner pays?

As a general principle, it is reasonable that a dam owner with a poor compliance record should bear the consequences. However, we do not support the automatic application of a monetary penalty.

For example, IPART's Compliance and Enforcement Policy acknowledges that remedies for non-compliance can consist of monetary and non-monetary measures (or both), and discusses how a regulatory response can be tailored to the severity of the breach. We recommend DSNSW consider developing and publishing a similar compliance and enforcement policy.

In the case of dam safety, the reputational damage that would follow from a finding of non-compliance is likely to provide sufficient incentive for dam owners to comply with their obligations, and a direction to achieve compliance within a specified timeframe may be an appropriate remedy should a breach occur in many situations.

Does consequence vary depending on the core function of a dam?

During IPART's public hearing on 5 August 2024, some stakeholders questioned whether the consequence rating of a dam should depend on its underlying function or purpose.

For example, it was noted that flood mitigation dams are intended to be largely empty most of the time to maximise their ability to collect and store run-off during high rainfall events. This contrasts with drinking water dams, which are intended to always have a significant amount of water stored. Some stakeholders suggested these differences may warrant differential consequence ratings between the two types of dams.

In Sydney Water's view, these functional differences between drinking water and flood mitigation dams do not warrant a different consequence rating. The goal of DSNSW is to ensure each dam is safe given its context and operational requirements. The consequence assessment therefore needs to consider all modes of dam operation and potential failure, and the downstream impacts of failure. We also note that DSNSW acknowledged that there were multiple ways to undertake the assessment and consistent with normal risk management practice, the final or overall rating would ordinarily be based on the mode with the highest level of consequence.

As both drinking water and flood mitigation dams are specifically designed to be full of water at some point during their operating life, Sydney Water does not see a strong justification for applying a differential approach to consequence rating.

This discussion is also relevant to a future levy design that factors in the probability of dam failure. For example, a flood mitigation basin that transitions from empty to full in a few hours during intense rainfall may be subject to additional loads and stresses that are not as severe as those experienced by a drinking water storage in the same region that was already 95% full. As noted above, a rigorous risk assessment needs to consider all potential operating and once in their economic life.

We look forward to reading the views of other stakeholders in their submissions to IPART's review. If you would like to discuss these matters further, please contact Michael English, Competition & Licensing Manager at [redacted]

Yours sincerely,

[redacted]

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