

INDEPENDENT PRICING AND REGULATORY TRIBUNAL

REVIEW OF WATERNSW OPERATING LICENCES AND REPORTING MANUALS

PUBLIC WORKSHOP

Tribunal Members

Dr Peter Boxall AO, Chairman
Mr Ed Willett and Ms Deborah Cope, Members

Members of the Secretariat

Hugo Harmstorf, CEO, Mr Rob O'Neill, Mr Brian Gardoll,
Ms Jessica Hanna and Ms Mamata Titus

Tuesday, 21 March 2017 at 10.00am

1 OPENING REMARKS

2
3 THE CHAIRMAN: Good morning, everyone, and welcome to this
4 public workshop on IPART's review of WaterNSW's operating
5 licences.

6
7 I would like to begin by acknowledging that this
8 hearing is being held on the traditional land of the
9 Gadigal people of the Eora Nation. We pay our respects to
10 their elders past and present.

11
12 My name is Peter Boxall and I am chair of IPART. I am
13 joined today by my fellow tribunal members, Ed Willett and
14 Deborah Cope. Assisting the tribunal today are members
15 of the IPART secretariat, Hugo Harmstorf, our CEO.
16 Rob O'Neill, Brian Gardoll, Jessica Hanna and Mamata Titus.

17
18 The purpose of this review of WaterNSW's operating
19 licences is to recommend a new licence to the Minister for
20 Regional Water that will commence on 1 July this year.
21 WaterNSW currently operates under the provisions of two
22 operating licences previously issued to the former State
23 Water and the former Sydney Catchment Authority - SCA.

24
25 The SCA licence is due to expire on 30 June 2017. A
26 new operating licence will allow WaterNSW to continue its
27 operations in the Sydney catchment area beyond 1 July. The
28 State Water licence is due to expire in 2018 but we have
29 taken this opportunity to also review this licence and
30 bring together the two licences into a single operating
31 licence for WaterNSW.

32
33 In this review, we have considered a range of issues
34 including:

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36 an appropriate structure for the operating licence;
37 whether to authorise WaterNSW to undertake all of its
38 listed functions under the Act;

39 whether to define certain terms in the operating
40 licence to more easily differentiate between some of the
41 listed functions; and

42 the inclusion of appropriate performance standards.

43
44 The purpose of today's workshop is to provide an
45 opportunity for stakeholders to discuss the proposed draft
46 operating licence package which includes the licence,
47 reporting manual, a report and a cost benefit analysis.

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Our draft recommendations aim to create a licence that is transparent and auditable, considers the interests of stakeholders and imposes the minimum regulatory burden on WaterNSW.

I would like to thank those who provided written submissions to our issues paper in September last year. Your comments have been valuable in the preparation of the draft licence package which was released last month.

This workshop is an important part of our consultation process for this review. We will consider views that you provide today in making our recommendations on the final licence package to the minister. We would also encourage you to make written submissions on the draft licence. Written submissions are due on 7 April.

Today we will discuss particular topics relevant to the operating licence. Before we start the discussion on each topic, we will present an overview to provide some context for the discussion. I will then invite participants at the table to provide comment on those topics. Following discussion by those around the table, I will then invite comments from those in the general audience.

Before we commence the workshop, I will just ask Brian Gardoll to make some introductory comments and then I plan to invite David Harris, CEO of WaterNSW, to make a short presentation. Thank you.

MR GARDOLL: Thank you, Peter, and I would like to thank everyone for your attendance here today. We understand and appreciate the significant effort that some people go to to attend and we do appreciate that.

Before we actually commence the workshop, there are a few housekeeping issues that we should deal with. For those who have not been able to locate the toilets just as yet, they are out the door around to the right, then follow the signs around to the left - there are toilets in that direction.

If, for any unforeseen circumstances, we need to exit the building today, obviously you can go out the doors here on the right and then out the main door as we came in.

1 There is also an emergency exit here on the left. Thank
2 you for that.

3
4 The workshop today is actually divided into three
5 sessions. In the first session, we will deal with the
6 provisions of the WaterNSW Act in relation to the operating
7 licence, the proposed licence structure and authorisation
8 of WaterNSW's listed functions, and our proposed
9 definitions for some key terms used in the operating
10 licence. We will also, during this first session, discuss
11 water quality management and the economic level of water
12 conservation.

13
14 Once we conclude these discussions, we will have a
15 15-minute break and, of course, there is tea and coffee
16 provided over here at the side of the meeting room. After
17 the break, we will commence the second session, in which we
18 will discuss flood mitigation and management. We will go
19 on to look at performance standards, organisational
20 management systems, and customer and stakeholder relations.

21
22 We then propose to move straight into a third session,
23 where we will discuss research and community education
24 programs. Following that session or that discussion, we
25 will take an opportunity to raise any questions and discuss
26 any other topics relating to the operating licence or the
27 reporting manual. At the end of that third session, there
28 will be an opportunity to raise anything that we have not
29 dealt with in the prior components.

30
31 I would also like to remind everyone of the review
32 timetable. We did release the issues paper back in June
33 last year, and to that issues paper we received a number of
34 submissions which were much appreciated. Those submissions
35 helped us to produce and release the draft licence package
36 earlier this month. Hopefully, everyone has had an
37 opportunity to review the contents of the draft licence
38 package by now. However, we have provided additional
39 copies here in the room should anyone not have been able to
40 get access to the licence package.

41
42 The draft operating licence has been released for
43 public review and comment. These comments will assist us
44 to take our final recommendations on the licence and its
45 terms and conditions to the portfolio minister that
46 operates under the WaterNSW Act. The draft represents our
47 preliminary recommendations.

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The public workshop today is intended to help us reach all the key stakeholders involved in the WaterNSW operations. We are looking for submissions on the licence package and we need and request those to be provided to us by 7 April. This will allow us then to finalise our recommendations on the operating licence which we intend to present to the minister in May this year.

Each topic today will commence with a brief presentation from the IPART secretariat followed by some roundtable discussions. The chair will then invite comments from the floor.

I remind you that the workshop today will be recorded by our transcribers, and the copy of the transcript will be available on IPART's website shortly after the workshop. To that end, when you are making your presentations, could you please identify yourself and the organisation at the beginning of your presentation and, please, for everyone's benefit, speak loudly and clearly.

We will shortly head into the first session, but first of all, I think Peter would like to invite David Harris to make some opening comments. Thank you.

THE CHAIRMAN: Thank you very much, Brian. David?

PRESENTATION BY WATERNSW

MR HARRIS: Thanks very much, Peter, for this opportunity and thank you very much to our customers and stakeholders who have come along today to participate in this process. We appreciate your input and effort.

We have a few slides here that we want to present at the start. In terms of our approach today - and we have those few slides that I will talk to at the moment - we will address specific issues as we go through today's agenda, but we are very conscious that today is more about hearing from customers and stakeholders than from us, so we will put our detailed responses in our written response to the tribunal.

I think it is important from WaterNSW's perspective, but may I also say from IPART's perspective, that collectively we are on a journey here. Our organisation is

1 changing. We were formed in 2015 from the merger of the
2 former Sydney Catchment Authority and the former State
3 Water Corporation. At the moment, we are endeavouring to
4 embed several WAMC functions that were transferred or
5 conferred on us last year. We are also at the moment
6 trying to develop some truly great KPIs or performance
7 measures based on accepted industry definitions of the
8 market functions that we perform. So that is what is
9 changing within our organisation.

10
11 We are also an organisation that is within a changing
12 market. Stage 1 and stage 2 of the bulk water reforms have
13 now been implemented by the government, but, as I have just
14 mentioned, stage 2 of that we are still embedding within
15 our organisation. There are further reforms to the New
16 South Wales water market that are coming. I note, in that
17 regard, that the portfolio minister will, in fact, be
18 launching a study into the New South Wales water market
19 next week.

20
21 Our operating licence too is changing as a reflection
22 both of how we are changing and how the market around us
23 changing. This draft operating licence brings together the
24 two former separate operating licences of the Sydney
25 Catchment Authority and the State Water Corporation. As
26 our organisation evolves and as the market evolves around
27 us, so too this operating licence will need to evolve.

28
29 Peter, on behalf of WaterNSW, I would like to
30 compliment IPART on a number of improvements that have come
31 through this draft operating licence. First and foremost -
32 and obviously - this provides a single operating licence
33 for WaterNSW, which allows for common authorisations,
34 common corporate systems and processes, but separate
35 conditioning of our activities around drinking water, water
36 supply and water delivery.

37
38 This combined operating licence also starts the
39 journey of structuring the operating licence and our
40 business according to market-recognised functions. In
41 WaterNSW, we carry out five such functions:

- 42
43 Source water protection;
44 Bulk water supply and transmission assets;
45 System operation;
46 Distribution, sometimes called reticulation; and
47 Retail, which is about customer transactions.

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This draft operating licence prepared by IPART also delivers greater uniformity with respect to the provisions across the major three water utilities in New South Wales, being Sydney Water, Hunter Water and WaterNSW, where comparable functions are carried out. In particular, I note in relation to the retail function that all three of us, under this draft operating licence, have exactly the same provisions, and we think that is a good step forward.

In the draft operating licence as well, IPART have indicated an intention not to audit WaterNSW where we have an ISO certified system in place. Again, from our perspective, this gives us flexibility to manage our compliance costs and obligations.

Last but not least, we thank IPART for the revised composition, or proposed composition, to what will become known as customer advisory groups, currently customer service committees. IPART recommended far broader representation of the various types of customers that we serve, and IPART also limited composition of those groups to our customers where currently there are non-customers who attend those CSE meetings. On behalf of WaterNSW, they are the major benefits that we see out of this draft operating licence.

We would like to flag here a number of opportunities for improvement as well. Instead of being output based, many provisions in the draft operating licence are input based and comprise non-value adding duplication. For example, there is a requirement that WaterNSW provides all reports that it provides to NSW Health also to IPART.

There is, in our view, an overly prescriptive approach seeking to impose terms and conditions on each and every aspect of our authorised functions where no regulatory mischief has been identified. We would ask IPART in that regard to consider two things: what aspects of our operations have we not managed well ourselves to date; and, of those things, where is there not a more appropriate regulatory instrument or approach?

I note in particular in that regard that the New South Wales government has imposed a new KPI mechanism on all SOCs, under which the shareholder minister on a yearly basis imposes a suite of financial and non-financial key

1 performance indicators across ten prescribed categories.
2 We think it is important to note that, because that is an
3 important element of the performance regime or the
4 regulatory regime under which we operate, and we would ask
5 IPART to have regard to those alternative and, in our view,
6 often more appropriate methods of regulation of a
7 state-owned corporation such as WaterNSW.

8
9 We do want to note that not every relationship can be
10 effectively governed by an operating licence. There is
11 provision in the draft operating licence for us to enter
12 into a suite of MoUs. Just to pick one example, it has
13 been recommended that we be required to have an MoU with
14 Local Land Services. We just simply point out that in
15 regard to that, of course, WaterNSW would be a customer of
16 LLS, not a service provider. In light of that, we find it
17 somewhat strange that we be required to enter into an MoU
18 with a service provider.

19
20 As I noted on the previous slide, some provisions
21 have been copied from the Sydney Water and Hunter Water
22 operating licences. Unfortunately, where our situation is
23 fundamentally different from theirs, the classic case in
24 point there is the economic level of water conservation
25 which, for them, is around their piped reticulation
26 network. We operate unpiped rivers, yet equally comparable
27 functions are not provided for in their draft operating
28 licence.

29
30 For example, WaterNSW and Hunter Water are the two
31 SOCs in this State with source water protection functions,
32 and those particular provisions have not been included in
33 the draft operating licence for Hunter Water. There are
34 many instances in the draft operating licence of double
35 jeopardy, i.e., simply that we must comply with our Act.
36 We make these comments having regard to the New South Wales
37 government's better regulation principles.

38
39 Before concluding, I thought it might be helpful and
40 fair for us to set out very briefly our vision for a
41 customer-centric water market. Where are we trying to go
42 with all of this? We want to highlight here today a couple
43 of principles that we hold dear. First of all, we would
44 like to see a water market that puts customers at the
45 centre of service quality and design - again, an
46 output-based regulation that provides flexibility for
47 innovation in service design and delivery.

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Our second principle would be to improve transparency and comparability across industry for the benefit of customers, so introducing a transparent set of minimum standard for all of our market functions, which I have detailed already, which could be applied consistently across all the water utilities.

Thirdly, as a principle, encourage commercial arrangements with customers. We don't have standard form contracts with our customers at the moment - a major omission in our regulatory arrangements. We would like to see a requirement on us - and I use those words deliberately - to see a requirement on us to enter into standard form contracts with all of our retail customers that comply with an industry-wide retail code. We would like to create a more level playing field to encourage new entrants to serve customers, introducing consistent corporate licensing for all entities delivering services along the value chain.

Finally, we just want to note that compliance costs are borne by customers and, in our view, should be minimised. We believe that it is important not to duplicate existing legislative and regulatory arrangements because, in the end, the customer pays for those.

We would like to recommend a way forward, and this recommendation is based and what I said right at the beginning. We are continuing our transformation journey in WaterNSW. There are fundamental changes still within our organisation. There are likely to be fundamental changes and reforms ongoing to the WaterNSW market, the landscape around which we operate, and we encourage continuing changes to our operating licence to move us more towards the water market that I have just described on the previous slide.

We do appreciate, and this is very heart-felt from us, that operating licence reviews are a big resource commitment from IPART, they are a big resource commitment from the licensee and also from customers and stakeholders, some of whom are here today. Despite that, Mr Chairman, we would like to recommend to IPART that this draft operating licence be given a two-year timeframe in return. We recommend that on two separate bases. First, we think it is very important to stagger or program, if you like,

1 operating licences ahead of pricing determinations so that
2 any savings that we are able to generate as a business can
3 be reflected in that pricing determination but, also, of
4 course, the cost of any additional regulatory burden
5 imposed under the operating licence can also be taken into
6 account in those pricing determinations.

7
8 We currently operate under four pricing
9 determinations, and our next two - for Greater Sydney and
10 our WAMC pricing determination - are due in just three
11 years. From that perspective, a two-year timeframe for
12 this operating licence would seem a good idea.

13
14 We put that recommendation to the tribunal on another
15 basis as well, again reflecting the amount of change
16 occurring within our organisation, within our market and,
17 therefore, the need for the operating licence to keep up
18 with those changes. We had hoped to have developed and be
19 able to recommend to IPART by this time a minimum set of
20 performance standards for each of our market functions,
21 including the transferred WAMC functions. Time has not
22 allowed us, unfortunately, to conclude that work. We are
23 keen to get that work to IPART and have previously
24 indicated to IPART that we would be able to do that within
25 the next year.

26
27 We also need a little bit more time to develop and
28 recommend to IPART a suite of outcomes-based measures that
29 will offer WaterNSW flexibility in how it executes its
30 authorised functions. So, for those two very separate
31 reasons, Mr Chairman, we would ask IPART to consider that
32 this operating licence have a two-year term.

33
34 That concludes my opening comments. We look forward
35 to talking about the specific matters listed on the agenda
36 as they come up.

37
38 THE CHAIRMAN: Thank you very much, David. That was a very
39 interesting presentation.

40
41 If we were to have a two-year term now, would you
42 anticipate afterwards that it would be four years?

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44 MR HARRIS: Yes, that would get us back in the normal
45 cycle.

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47 THE CHAIRMAN: Thank you.

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First on the agenda is the WaterNSW Act 2014, and the licence structure: one licence authorising all functions. I ask Jess to open the proceedings.

Session 1 - Water NSW Act 2014

MS HANNA: Thanks, Peter.

This session will start with an overview of the provisions of the WaterNSW Act as they relate to the operating licence. We have given careful consideration to the requirements of the Act when deciding how to set up and structure the provisions of the new operating licence.

This licence will be the first one written specifically for WaterNSW since the organisation was created on 1 January 2015. We have implemented the licensing framework, a best practice approach to designing and reviewing licensing schemes, and determined that an operating licence is necessary for WaterNSW to be able to undertake its listed functions under the Act. This is because the Act specifies that WaterNSW can only undertake the listed functions under the authority of and consistent with an operating licence.

For your information, we have presented WaterNSW's 11 listed functions on the slides. They relate to capturing, storing and releasing water, and separately to supplying water. They also relate to constructing, maintaining and operating water management works; protecting and managing declared catchments; undertaking flood mitigation and management; and undertaking research and community education.

The listed functions under the Act reflect a combination of the principal functions from the repealed State Water Act, and the specific functions from the repealed Sydney Water Catchment Management Act. The Act contains transitional provisions which allow WaterNSW to continue to operate under its existing licences. For the purposes of the existing operating licences only, the transitional provisions divide the listed functions into Sydney catchment functions and non-Sydney catchment functions. This means that the terms and conditions of the existing licences only apply to the respective functions.

1 We understand that this is a transitional arrangement
2 only, reflecting the way that the two previous
3 organisations, State Water and SCA, previously operated.
4 Once the existing operating licences are replaced, the Act
5 will no longer differentiate between the Sydney catchment
6 functions and the non-Sydney catchment functions in the new
7 licence.

8
9 This will mean that WaterNSW could undertake its
10 functions in different areas or circumstances than what
11 historically may have been the case. We have adopted a
12 first principles approach to developing the licence. This
13 means that we have considered WaterNSW regulatory framework
14 and examined the requirements of relevant Acts with respect
15 to the operating licence, to determine which functions
16 should be authorised and to which of these we would also
17 prescribe terms and conditions.

18
19 The Act provides some prescriptivity about the content
20 of the operating licence. The Act requires some mandatory
21 terms and conditions in addition to other provisions which
22 the licence may include.

23
24 We have aimed for flexibility in the licence to
25 accommodate potential future scenarios allowed for under
26 the Act, and by doing this we aim to avoid mid-term
27 amendments to the licence. These concepts underpin many of
28 the provisions within the operating licence.

29
30 Licence structure: one licence authorising all listed
31 functions

32
33 We have proposed one operating licence covering the
34 breadth of WaterNSW's operations. The Act allows for more
35 than one operating licence, but we consider that one
36 licence best reflects and enables the merged organisation.
37 We have structured the licence by grouping terms and
38 conditions according to the water supply chain structure
39 and functional areas of WaterNSW.

40
41 We have proposed to authorise all of WaterNSW's 11
42 listed functions in the operating licence. In some
43 instances these authorisations may duplicate parts of
44 authorisations in other regulatory instruments, and this is
45 because we consider that the operating licence should be
46 clear on what it authorises, particularly where we have
47 proposed terms and conditions on these functions.

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The licence not only authorises the listed functions, but also authorises other functions under section 7(2) of the Act, in particular, it authorises WaterNSW to provide facilities or services that are necessary, ancillary or incidental to its listed functions and to conduct any business or activity that it considers will further its objectives as allowed for under the Act.

The licence also confers functions on WaterNSW from the Water Management Act and the Water Act as outlined in schedule A of the draft operating licence. It also authorises WaterNSW to undertake other activities such as metering.

The draft operating licence would authorise WaterNSW to undertake all of these activities throughout all of its areas of operations, i.e., the State of New South Wales.

The authorisations alone do not oblige WaterNSW to undertake any of its authorised functions throughout the area of operations. Any obligations will be dependant on the relevant terms and conditions that are applied. Where we have proposed terms and conditions that are non-prescriptive, WaterNSW can determine how to best undertake this listed function.

To avoid ambiguity, we have clarified within the operating licence that the licence does authorise WaterNSW to operate the Fish River water supply scheme to the maximum extent permissible by law.

In general, when developing the proposed terms and conditions we considered what the minimum level of regulation is that should be applied to how WaterNSW undertakes each listed function. We have attempted not to increase WaterNSW's regulatory burden unless there is a corresponding net benefit.

I will hand back to Peter at this point to take you through some discussion points for the proposed licence structure and authorisations.

THE CHAIRMAN: Thank you very much, Jess.

WaterNSW, would you like to make any comments?

1 MR HARRIS: No, we don't.
2
3 MS CHORA: Yolanda Chora, WaterNSW. My comment is just we
4 accept the scope of the authorisations. Our only concern
5 was that the authorisations contain defined terms, and we
6 would like the authorisations just to have their natural
7 meaning to mirror the authorisations or our functions as
8 set out in the Water NSW Act, where those terms have their
9 natural meaning and are not defined.
10
11 We understand that terms and conditions may need to
12 have defined terms, but the actual authorisation we would
13 like to be as broad as possible and not have defined terms,
14 and mirror the Act itself.
15
16 THE CHAIRMAN: Thanks, Yolanda. Would you like to make
17 any comment on that, Jess?
18
19 MS HANNA: No.
20
21 THE CHAIRMAN: Any other comments or questions from the
22 floor?
23
24 MS SCHULTE: Stefanie Schulte from the NSW Irrigators'
25 Council.
26
27 I have a question for WaterNSW. In light of the
28 proposed authorisation for the draft operating licence,
29 there was discussion around the unimplemented policy
30 measure, or the prerequisite policy measures. We were just
31 wondering whether WaterNSW has had any thoughts on the
32 draft operating licence's ability to potentially enable
33 those prerequisite policy measures to be implemented or
34 whether or not the draft licence would conflict with those
35 measures to be acted upon. I guess, it is a measure that's
36 not implemented; we were just wondering whether or not any
37 thoughts on any conflicts have been had internally.
38
39 THE CHAIRMAN: Thanks, Stefanie.
40
41 MR HARRIS: Mr Chairman, I think we'd have to take that
42 question on notice. No, we have not turned our mind to
43 that question specifically, but I think we should, given
44 that PPM measures are legislated elsewhere. You raise a
45 good point that we should check. I am sorry, I can't
46 answer that off the top of my head.
47

1 THE CHAIRMAN: Thanks very much, David. Any other
2 comments or questions? No.

3
4 Let's move on to definition for key terms, Mamata.

5
6 Definitions for key terms

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8 MS TITUS: Thank you, Peter.

9
10 As Peter has suggested, I will discuss with you today
11 why we consider that it is both appropriate and necessary
12 to define particular terms in the operating licence.
13 I will also take you through our proposed definitions.

14
15 An issue that we have identified is that the Act
16 doesn't define the terms within the listed functions,
17 particularly the capture and store water and release water
18 function, and the supply water functions.

19
20 A common understanding of these terms creates
21 ambiguity about the difference between them. We consider
22 that the operating licence should define these terms to
23 clearly identify when and where these functions are
24 occurring for auditability of the licence and clarity and
25 certainty regarding which terms and conditions apply to
26 which function.

27
28 For the purpose of this operating licence, we have
29 proposed to define the terms as "supply" to mean the supply
30 by WaterNSW of water extracted under its water access
31 licences to a downstream customer in accordance with the
32 relevant water supply agreement, by means of water
33 management works owned and/or controlled by WaterNSW; and
34 "capture and store water and release water" to mean the
35 capture, store and release, but not supply, of water by
36 WaterNSW to persons entitled to take water and for any
37 lawful purpose, including the release of environmental
38 water, by means of water management works owned and/or
39 controlled by WaterNSW.

40
41 We have based these definitions on how we understand
42 WaterNSW as currently implementing these functions.
43 Under our proposed definitions, supply customers would
44 include Sydney Water, licensees under the Water Industry
45 Competition Act and some water supply authorities, local
46 councils and county councils prescribed by the regulations.

47

1 Under our proposed definitions, capture, store and
2 release customers would include irrigators, irrigation
3 corporations, regional towns, environmental water holders
4 and environmental releases.
5

6 If the terms are not defined, we see a potential issue
7 with having only one operating licence which authorises all
8 of the listed functions throughout the area of operations,
9 where the transitional arrangements making geographical
10 distinctions will no longer apply. It will not be clear
11 which terms and conditions in the licence apply to which of
12 these listed functions. This creates difficulties for
13 WaterNSW to implement the licence, and for us to audit
14 compliance with it.
15

16 For example, in the draft operating licence we have
17 proposed requirements for water quality management systems
18 for any water that is supplied as we have defined it. We
19 will discuss this particular requirement in more detail
20 later, but we intend for the water quality management
21 system requirements to be largely similar to those imposed
22 by the existing SCA operating licence. We do not intend to
23 require a water quality management system for water that is
24 captured, stored and released. Without the definitional
25 difference there would be ambiguity as to whom the
26 requirement for a water quality management system applies.
27 We will discuss this in more detail a bit later.
28

29 For now, we are interested in your feedback on the
30 proposed definitions to ensure that they are appropriate.
31 I will now hand over to Peter to take you through some
32 discussion points for the proposed terms. Thank you.
33

34 THE CHAIRMAN: Thank you, Mamata.
35

36 Any comments from WaterNSW on this topic?
37

38 MR HARRIS: Thank you, Peter.
39

40 We would like to make two comments. The first one was
41 made by Yolanda previously. There are two parts to this
42 licensing structure and, can I say, too, this is a
43 difficult area where we have been having discussions with
44 the IPART secretariat, and we would like to acknowledge
45 that it is a difficult area.
46

47 In terms of the architecture of the licence, at the

1 highest level we are required to be authorised to carry out
2 our legislative functions by creating definitions different
3 to the key terms in our legislation. This creates the risk
4 of limiting or constraining WaterNSW's authorisation under
5 the licence to the defined terms, not our listed functions
6 set out in the Act. For that reason, as Yolanda has
7 already indicated, our very strong preference would be that
8 we simply are authorised to carry out the functions listed
9 in our Act.

10
11 We do acknowledge and agree, though, below that level
12 in a conditioning sense, the conditions of our licence then
13 need some definition below that.

14
15 We think that a number of the definitions in the draft
16 licence are incorrect. Whilst we agree with the view that
17 there's a need for greater distinction or clarity of our
18 legislative functions for the purpose of conditioning our
19 activities, we believe there is a better approach to
20 defining our functions for this purpose and we'd like to
21 see those definitions or conditions based on the purpose or
22 outcome, rather than the inputs or the functional
23 processes. For example, defining water by its purpose
24 rather than whether it relates to a declared or a
25 non-declared catchment.

26
27 We will some more detail suggested revised definitions
28 in our response but, in broad terms, we think that there
29 are three key outcomes - water supplied for drinking; raw
30 water released primarily for consumption, the Sydney
31 Water-type example; and raw water released primarily for
32 non-consumption.

33
34 Just to note, as well, Mr Chairman, there are
35 important differences in our operations between the term
36 "release and deliver" and the term "deliver and supply".
37 Those things need to be accurately reflected in the
38 definitions. We will put forward some suggestions in our
39 submission.

40
41 THE CHAIRMAN: Thank you very much, David.

42
43 Are there any questions or comments on this section?
44 No.

45
46 Let's move on to water quality management, Mamata?
47

1 Water quality management

2
3 MS TITUS: Thank you, Peter.

4
5 I will now take you through our proposed terms and
6 conditions in the operating licence that regulate how
7 WaterNSW is to undertake water quality management for water
8 that is supplied, versus water that is captured, stored and
9 released, as we have currently proposed to define these
10 terms.

11
12 I touched on this topic as an example previously, but
13 we will now discuss it in more detail. In the draft
14 operating licence, we have proposed that WaterNSW must
15 maintain a water quality management system for all water
16 that is supplied anywhere in its area of operations.
17 Currently, WaterNSW is only required to maintain a WQMS for
18 bulk water that it supplies customers in the Sydney
19 catchment area under its SCA licence. WaterNSW supplies
20 this water to customers, some of which in turn use it to
21 supply drinking water.

22
23 WaterNSW is, therefore, required to manage the system
24 consistent with the Australian Drinking Water Guidelines,
25 taking into consideration the downstream drinking water
26 supply systems. We have proposed to maintain similar
27 requirements in the licence for any bulk water supplied in
28 declared catchment areas. Currently, the Sydney catchment
29 area is the only declared catchment area, so our proposed
30 terms and conditions will result in no immediate change in
31 WaterNSW's requirements, unless another catchment area
32 becomes declared.

33
34 We wish to take this approach of linking the WQMS
35 requirements with declared catchment areas in general,
36 rather than just the current Sydney catchment area to
37 enable longevity of the licence. We wish to design a
38 licence that is flexible enough to anticipate changes in
39 WaterNSW's operations where possible, and does not only
40 reflect its current operations.

41
42 While the non-declared catchment area obligation is
43 new, we do not anticipate any immediate change. It is
44 designed for potential future scenarios.

45
46 We have proposed some flexibility in the licence for
47 WaterNSW to manage its WQMS and non-declared catchment

1 areas to an appropriate standard or consistent with an
2 appropriate guideline, depending on the source and ultimate
3 end purpose of water supply. If the water supply is not
4 used for drinking water purposes, the water does not have
5 to be managed to the standard set by the Australian
6 Drinking Water Guidelines, but it could also be consistent
7 with the Australian guidelines for water recycling, a
8 relevant quality assurance program under the Public Health
9 Act, or any other as approved by NSW Health and IPART.

10
11 I have now explained all of our proposed terms and
12 conditions in relation to the supply of water. WaterNSW
13 will not be required under the licence to have a WQMS for
14 any water that it captures, stores and releases, as we have
15 currently proposed to define it. However, we have proposed
16 new obligations to review the water quality monitoring
17 information available to local water utilities in relation
18 to water captured, stored and released to them.

19
20 The existing State Water licence requires WaterNSW to
21 have a procedure for providing information on the quality
22 of water released to local water utilities. These
23 utilities typically extract the water for the purposes of
24 supplying town water. The local water utilities have water
25 quality management responsibilities which rely on water
26 quality information that they receive or have obtained
27 about the water that they extract. We have proposed
28 reviewing the effectiveness of the existing water quality
29 information request in consultation with NSW Health and
30 customers.

31
32 WaterNSW must update its information request procedure
33 to reflect the outcomes of the review. We have included
34 these requirements with the intention of facilitating the
35 entities working together to be informed about fluctuations
36 in the quality of bulk water released to the local water
37 utilities with the aim of improving the efficiency of the
38 local water utilities' downstream water quality management.

39
40 I will now hand over to Peter to take you through some
41 discussion points for water quality management. Thank you.

42
43 THE CHAIRMAN: Thank you very much, Mamata, WaterNSW,
44 Yolanda?

45
46 MS CHORA: Thank you, Peter. We, generally agree with the
47 approach, but, as David mentioned, we have a different

1 approach to the definitions and we will be proposing some
2 changes to the clauses and just some general drafting
3 changes, but the overall approach we agree with.
4

5 With regard to the last topic that you just mentioned,
6 namely, the additional clauses in relation to the local
7 water utilities and the review of NSW Health, we have
8 concerns that, really, that is an iterative process. We
9 need to work through with NSW Health that review process
10 and we are not quite sure that the operating licence is the
11 appropriate vehicle for that process and that review, so we
12 do have some concerns about the inclusion of those two
13 additional clauses. It is in our MoU with Health, so we
14 are seeing a bit of duplication and potential conflict
15 there. We see that as something that we would work with
16 with NSW Health rather than through the operating licence.
17

18 THE CHAIRMAN: Paul, from NSW Health?
19

20 MR BYLEVELD: Thank you. Paul Byleveld, NSW Health.
21 First of all. NSW Health is generally satisfied that the
22 draft operating licence provides for adequate protection of
23 water quality and public health. Catchment management and
24 source water protection provide the first barriers for the
25 protection of drinking water quality. There is an added
26 complexity from a regulatory perspective where catchment
27 management is beyond the responsibility of the drinking
28 water utility, so the licence provides the approach to
29 manage raw water quality, as it is supplied for drinking.
30

31 NSW Health supports the requirements that are set out
32 for the supply and the protection of water quality for
33 water supplied, as "supply" is defined in the draft
34 licence. These requirements are similar to those that were
35 in place for the former Sydney Catchment Authority.
36

37 The requirement to implement a water quality
38 management system to the satisfaction of NSW Health is an
39 important consideration for our organisation. For this
40 reason, it may be possible to simplify the draft licence by
41 removing the requirement that WaterNSW seek NSW Health's
42 concurrence or endorsement for any significant changes.
43

44 At the moment, the draft - I think it is in clause
45 2.1.5 - states that any significant changes should be to
46 the satisfaction of NSW Health. Given that the overall
47 implementation of the water quality management system would

1 be to the satisfaction of Health, any change can be taken
2 up in the implementation. I raise that only for
3 consideration.
4

5 On the points relating to a water quality management
6 system for supply more broadly if, in the future, the
7 supply functions go beyond the declared Sydney catchment,
8 NSW Health supports the inclusion of this requirement where
9 water is supplied as defined in the draft licence.
10

11 NSW Health supports the requirements set out for
12 WaterNSW in consultation with NSW Health to review its
13 monitoring of water quality. The draft licence defines the
14 monitoring of water quality as health related.
15

16 NSW Health proposes that this review consider all
17 monitoring data, not only that data that is considered
18 health related. There may be monitoring undertaken by
19 WaterNSW, for example, monitoring of temperature or of
20 nutrients, that may be relevant to downstream local water
21 utilities. Therefore, NSW Health would propose that it
22 simply refer to monitoring of water quality generally and
23 not specifically health related.
24

25 In terms of the current memorandum of understanding,
26 the draft licence does not specifically include a clause
27 calling on the review of data. It certainly does
28 acknowledge the functions that WaterNSW perform in
29 monitoring water quality.
30

31 The understanding of NSW Health is that the Department
32 of Premier and Cabinet will lead a whole of New South Wales
33 government submission on the draft licence and NSW Health
34 separately will provide a submission to that, which IPART
35 could expect before the close of the review period. Thank
36 you.
37

38 THE CHAIRMAN: Thank you very much, Paul. Deborah?
39

40 MS COPE: Yolanda, I have a question on what you are
41 saying about the review of the health-related monitoring
42 for local water released to local water utilities.
43 You said that it was appropriate to work through that with
44 NSW Health. Is that process happening or envisaged or are
45 you just saying it is appropriate to consider that in that
46 context?
47

1 THE CHAIRMAN: Yolanda or David?

2

3 MR HARRIS: Thank you. We went through the process of
4 developing that MoU last year with Health, and that
5 involved a series of meetings with Paul and his colleagues
6 and WaterNSW. That MoU was then, as required, exhibited
7 for public exhibition and then signed by both organisations
8 in accordance with the process set out in the Act.

9

10 From our perspective, the issue around these draft
11 provisions is this: this is an evolving area. Between
12 ourselves and Health, we carefully came up with a set of
13 words which, in our view, captured the aspirations, if
14 I may call them that - of NSW Health, balanced with the
15 resources of WaterNSW, and, indeed, in the absence of any
16 other arrangements around catchment management and water
17 quality outside of the Greater Sydney drinking water
18 catchment.

19

20 Our concern with these particular clauses is that they
21 go further than the MoU. They go to potentially locking
22 WaterNSW in to a cost.

23

24 We did discuss those potential costs with NSW Health
25 when negotiating that MoU, and the wording of the MoU was
26 very carefully designed to reflect the fact that possibly
27 NSW Health may have some funds to fund some of this work
28 going forward or, indeed, we may come forward at our next
29 pricing determination to seek funding as this whole aspect
30 of water quality in the non-declared catchments progresses.

31

32 If I can summarise, we see these clauses as going a
33 step too far, right at the moment, given the current
34 arrangements, given how that may play out and given that
35 our customers have to fund our activity and that may not
36 actually be, in the end, where the government decides the
37 funding for some of this work will come from.

38

39 THE CHAIRMAN: Thank you very much, David.

40

41 Any further questions or comments on this topic, water
42 quality management? No? Thank you.

43

44 Let us move on to the next topic in this session,
45 which is the economic level of water conservation. I call
46 on Jess.

47

1 Economic level of water conservation

2
3 MS HANNA: Thank you, Peter.

4
5 I will now take you through the proposed terms and
6 conditions in the operating licence relating to an economic
7 level of water conservation.

8
9 We propose to replace the existing obligation in the
10 State Water operating licence, currently clause 3.1.4,
11 requiring WaterNSW to "take all reasonable steps to
12 conserve water and minimise water losses" with an
13 obligation to develop a methodology for an economic level
14 of water conservation.

15
16 This is our preferred approach as it is an opportunity
17 to shift to a requirement which demonstrates that water
18 conservation measures are those where benefits are at least
19 equal to and potentially exceed costs rather than the less
20 auditable and the less quantifiable approach of all
21 reasonable steps. This provides more certainty for
22 WaterNSW about what the requirements are and it makes the
23 requirements easier and more transparent to assess
24 compliance.

25
26 The obligation will require a staged approach to the
27 development of the methodology over 18 months - that is,
28 the proposed approach and principles and then the final
29 methodology will require approval by IPART followed by an
30 annual reporting obligation of the water conservation
31 program.

32
33 This is conceptually consistent with an approach we
34 are taking for Sydney Water and are proposing to take for
35 Hunter Water. However, we propose to tailor the
36 requirement to be more appropriate for WaterNSW. The
37 methodology will only require WaterNSW to consider water
38 conservation as it relates to the "water storage and
39 transmission" component of the water supply chain.

40
41 I will hand back over to Peter to take you through
42 some discussion points.

43
44 THE CHAIRMAN: Thank you very much, Jess.

45
46 WaterNSW, any comments on this one? David?

1 MR HARRIS: Thanks, Peter. WaterNSW is of the view that
2 it is not appropriate to include an ELWC obligation in our
3 operating licence. The inclusion of the clause does not
4 reflect what we are capable of controlling at all. Unlike
5 Sydney Water or Hunter Water, WaterNSW does not operate a
6 closed system, with the majority of our water supplied
7 through a network comprising rivers and channels in a
8 natural system.

9
10 Indeed, can I make this point: part of the reason why
11 a number of WAMC functions were transferred to WaterNSW is
12 that, from a water resource perspective, it makes absolute
13 sense to have a single manager of both the surface water
14 and groundwater because they are one interconnected system.
15 That is not the case with Sydney Water or Hunter Water in
16 terms of their reticulation function.

17
18 Our infrastructure and storages are embedded in and
19 comprise natural areas and, as such, natural water losses
20 occur through natural mechanisms, such as evaporation and
21 seepage into the soil. It is not possible, even if it was
22 desired, to apply an ELWC, as contemplated in the Sydney
23 Water and Hunter Water operating licences.

24
25 A review of the Sydney Water and Hunter Water licences
26 shows that ELWC is not related to any natural system, but
27 instead refers to water leakage, leakages from their
28 pipeline network, water recycling and water efficiency,
29 including demand management. It is clear that Sydney Water
30 and Hunter Water have an exact measurable and controllable
31 water leakage target and water usage target. This is
32 because they are within controllable infrastructure,
33 therefore, they will be able to implement an economic level
34 of water conservation in a straightforward manner and
35 conduct the relevant cost benefit analysis. This simply is
36 not the case with WaterNSW.

37
38 There is a pre-existing licence condition under the
39 former State Water operating licence that requires us "to
40 take all reasonable steps to conserve water and minimise
41 water losses", the operative words being "that result from
42 undertaking" our operations under the licence. That
43 obligation applies with respect to losses that result from
44 us undertaking our operations, and the obligation is only
45 in respect of the actions of WaterNSW and not with respect
46 to the natural system as a whole. We do not object at all
47 to the continuation of that condition in the new licence.

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THE CHAIRMAN: Thank you very much, David.

Are there any other questions or comments on this topic? Ed?

MR WILLETT: David, I wonder if I could just get you to expand a bit further on your comments, but, first off, a comment from me. We do not see an economic standard as being specific to any particular infrastructure. The way you apply it would naturally be different to different types of infrastructure.

The question that is in my mind is: if there was a net benefit associated with any water saving, why would you not want to take advantage of that saving and reap the benefits of that? Presumably that would be in the consumers' interests.

I take it from your comments that you see the current test as a lower hurdle or lower standard than an economic standard. Different people might take a different view of what is reasonable. An economist might take one approach. A conservationist might take another approach. You, as a service provider, might take a different approach. That was our concern, that it is not necessarily clear what is reasonable in all circumstances, but a test of economic net benefit is a test that can be applied quantitatively.

THE CHAIRMAN: Thanks, Ed. David?

MR HARRIS: So, Ed, a couple of comments about that. It boils down a little bit to what are we expected to do? Sydney Water and Hunter Water can have pipe replacement and pipe repair processes. They can have data around how much water they are losing, how much it costs for them to repair those pipes in what time frame, or whatever. We do not have any of that data around a natural system. That is point number one.

Point number two, as I said earlier, in the rural valleys, there is one integrated water system - service water and groundwater - they are one and the same. Again, I am not quite sure what we would do, for example, if by artificially reducing loss to the groundwater network, we are actually, in a pretty simplistic way, moving a resource between two customer groups. I am not sure that that is

1 anyone's intent.

2
3 I think, thirdly - there are others in the room who
4 can talk about this; in fact, Stefanie or Karen are better
5 placed to talk to this than me - we do have to recognise as
6 well that in the rural context or the Murray-Darling Basin
7 valleys context, there are other regulatory arrangements
8 around water loss.

9
10 As a specific example, all of the governments under
11 the Murray-Darling Basin Plan have signed up to sustainable
12 diversion limit projects. In essence, what those projects
13 are about is exactly what you are talking about -
14 identifying where, through infrastructure or operational
15 changes, the system can be made more effective. Under
16 these separate arrangements, that water can be returned to
17 the Commonwealth, effectively, in return for work, or
18 whatever.

19
20 I would suggest, but I will let our customers speak
21 for themselves on this, that I think the tribunal would
22 need to think very carefully about whether it is wanting to
23 take - these are very loose words if you will appreciate
24 this - some of that SDL or other efficiency resource out of
25 the pool where our customers may be able to get
26 Commonwealth government funding in return for achieving
27 those efficiencies and put it in a New South Wales pool.
28 That would deprive our customers of that opportunity to
29 achieve the water savings targets under the Murray-Darling
30 Basin Plan through - Stefanie raised PPMs before - SDL and
31 other measures.

32
33 It is important to recognise that there is that other
34 area of regulation and what is proposed here would actually
35 have the effect of pulling that water out, and I do not
36 think that is probably what is intended either. Again,
37 there are others in the room better placed to speak to that
38 than I am.

39
40 THE CHAIRMAN: Thank you very much, David.

41
42 Any other comments? Stefanie? Karen?

43
44 MS HUTCHINSON: Karen Hutchinson, from Murrumbidgee
45 Irrigation.

46
47 I guess this is a tricky one because, as irrigators,

1 we have always been very, very focused on efficiency. We
2 have seen the changes in efficiency that relate to natural
3 systems across different climatic scenarios, and it is
4 exactly what David is pointing out. It is not as simple as
5 actually just plugging a leak. We have rivers that are
6 sometimes gaining and sometimes losing. It is a complex
7 system.

8
9 In addition to that, irrigators, the state government,
10 and now the Commonwealth government, have funded over a
11 period of time measures to improve efficiency. Certainly
12 in the Murrumbidgee valley, where I am from, with this has
13 been on the agenda for many, many years. As David has
14 alluded, we have actually wrapped up now the adjustment
15 mechanism process.

16
17 We are very interested in efficiency. We recognise
18 the vested interests that we have in the efficiency of the
19 system. We raise this regularly in our customers forums
20 with our providers, as well as doing that within our own
21 networks.

22
23 Our concern is that something like this may actually
24 increase the regulatory burden and the cost for something
25 we are doing anyway, and it potentially has a benefit for
26 us through other programs, like the adjustment mechanism
27 program, where we have benefit across the state and
28 potentially across the basin.

29
30 THE CHAIRMAN: Thank you very much, Karen. Anybody else?
31 Deborah?

32
33 MS COPE: Yes, I have a question. If this is not the
34 right clause, what sort of thing, if anything, would you be
35 looking for in the licence? .

36
37 MS SCHULTE: One of the things in that probably directly
38 relates to the pricing side of things. What we have pushed
39 for, for quite some time, is a better outline around some
40 of the environmental functions that WaterNSW has undertaken
41 and that those be properly costed, because we do have some
42 concerns that some of the costs that escalate back to water
43 licence holders might incorporate functions that WaterNSW
44 does undertake on behalf of the environment, if it is
45 licensed, or if it is also the planned environmental water,
46 which is different in each catchment.

1 We would rather see something like that being
2 incorporated to accurately measure and ensure there is no
3 cross-subsidisation between licence holders.

4
5 THE CHAIRMAN: Thank you, Stefanie.

6
7 WaterNSW, do you want to say anything on this?

8
9 MR HARRIS: Yes, thanks, Peter.

10
11 So, first of all, this came up for a number of us here
12 in our price determination, namely, the transparency of
13 cost codes and so on throughout. Again, we acknowledge
14 that that situation is not ideal from a customer point of
15 view. We are working on that and we acknowledge that a
16 greater transparency needs to be provided from cost codes
17 through to who is paying what - government share, user
18 share charges.

19
20 Coming back to the question of what would we like to
21 see, in really simple terms, I said in my presentation that
22 we perform a number of market functions. One of them is
23 system operation, which is about getting, quite simply, a
24 bucket of water from a supply point to a demand point in
25 the most efficient way. That is the essence of the current
26 State Water licence provision. I have already indicated we
27 are more than happy to have that continue.

28
29 We would be more than happy, for example, if, in
30 addition to that current provision, IPART were to require
31 us to have to document our system operation arrangements
32 and any rationale or methodology in that. We do want to
33 demonstrate strong performance in operating the system and
34 delivering water from one point to another as efficiently
35 as possible. That is what we are actually after as opposed
36 to the ELWC.

37
38 THE CHAIRMAN: Thank you David. Rob?

39
40 MR O'NEILL: David, I wanted to seek a clarification. You
41 mentioned that data was one of your concerns with the
42 economic level of water conservation. As you know, ELWC
43 would probably be underpinned or expected to be underpinned
44 by a cost benefit analysis. Is that one of your concerns,
45 that the data you have available in your natural systems
46 could not actually build a rigorous CBA? Is that what you
47 are implying?

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MR HARRIS: Yes, Rob, that is one of our concerns. We do not know how much we have to spend to get the proper data to enable us to do that in the same way that Sydney Water and Hunter Water do it. As I said, we are dealing with a natural system here. We are not dealing with a human-made set of pipes for which there is great technology to work out where there are leakages and all sorts of stuff. That technology doesn't exist, sadly, in relation to natural systems.

MR LATHWELL: Ben Lathwell, from WaterNSW.

I also think an issue would be understanding what that economic cost is because a loss to the surface water system is a gain to the groundwater system, so what do you use as a cost in looking at that cost benefit analysis? It might not be a true resource loss.

THE CHAIRMAN: Thank you, Ben.

Anybody else? Any further comments on this topic at this stage? No.

We are about 15 minutes ahead of schedule, so we could break for morning tea now and resume at 11.30, if that's okay with everybody. Thank you.

SHORT ADJOURNMENT

THE CHAIRMAN: Thank you very much for coming back. The next item on the agenda is flood mitigation and management.

Session 2 - Flood Mitigation and Management

MS TITUS: Thank you, Peter. I welcome everyone to session 2. To begin the session, I will explain our proposed approach to authorising and regulating flood mitigation and management in the draft operating licence.

To undertake flood mitigation and management is one of WaterNSW's listed functions under the Act. Currently, WaterNSW undertakes this function outside the Sydney catchment area under the authority of its State Water licence and, in most cases, its works approvals under the Water Management Act.

1 In the new licence we propose to authorise WaterNSW to
2 undertake this function throughout WaterNSW's area of
3 operations, including the Sydney catchment area, as we
4 propose to do for all of WaterNSW's listed functions. This
5 would allow WaterNSW to undertake this function at any of
6 its storage assets. Other regulatory instruments, such as
7 water supply works approvals under the Water Management
8 Act, currently authorise WaterNSW to undertake flood
9 mitigation and all management activities at most storage
10 assets. We wish to authorise this function widely in the
11 operating licence, even if this duplicates authorisation at
12 some storage assets, to fill any regulatory gaps where
13 WaterNSW is currently not authorised to undertake this
14 function.

15
16 We consider that authorisation alone does not oblige
17 WaterNSW to undertake this function. However, we
18 acknowledge that WaterNSW has expressed a concern in its
19 submission to the issues paper that authorisation may
20 create a social obligation for it, and this may be
21 inappropriate, particularly at storage assets which do not
22 currently have a flood mitigation capacity or requirement.

23
24 To address this concern we have proposed terms and
25 conditions that only require WaterNSW to undertake this
26 function on direction by the portfolio minister, and where
27 it is not already required under another instrument.

28
29 We are interested in stakeholders' views on the
30 proposed terms and conditions.

31
32 I will now hand back to Peter to take you through some
33 discussion points for flood mitigation and management.
34 Thank you.

35
36 THE CHAIRMAN: Thank you, Mamata. WaterNSW?

37
38 MR HARRIS: Thanks, Peter.

39
40 I might flag that we have had discussions with the
41 secretariat about this prior to today, and they know and
42 understand, I think and I hope, our concerns in this regard
43 and we are very concerned about this particular clause.
44 The introductory words about duplication, we are very
45 worried about.

46
47 As set out in our response to IPART's issue paper,

1 authorisation for flood mitigation could very well lead to
2 unintended liability issues where WaterNSW's role is not
3 clearly articulated, so we have concern here.

4
5 I might just say that the water sharing plans and
6 works approvals that we operate under provide for flood
7 management through setting out principles and rules for the
8 operation of our dams during floods and spills. Similarly,
9 with regard to flood mitigation, which is a very different
10 issue from flood management, we only operate two dams,
11 Burrendong and Glenbawn, that have a prescribed flood
12 mitigation role - that is, the dams are operated to
13 maintain an air space for the purpose of flood mitigation.
14

15 We accept that we should be authorised for flood
16 mitigation and management, but we think that the operative
17 words should be "in accordance with a WaterNSW works
18 approvals", or words to that effect.
19

20 THE CHAIRMAN: Thanks very much, David.

21
22 Other questions or comments on this topic?
23

24 MR O'NEILL: You mentioned a distinction between flood
25 mitigation and flood management, and the authorised
26 functions list that says "flood mitigation and management".
27 To our knowledge, the distinction is not defined anywhere.
28 It's not in the Act and not in the current operating
29 licence. Do you see a benefit in actually defining that
30 somewhere to make that distinction?
31

32 MR HARRIS: Rob, I have no objection to that. It may
33 assist. Yes, that separation would possibly make it
34 clearer.
35

36 There are lots of views around flood mitigation
37 because a physical storage only has a limited capacity and
38 a limited capability. If part of that capability is taken
39 for flood mitigation, and it is not available for supply,
40 they are decisions that the minister should be making on
41 behalf of the community. As I said, in the case of two of
42 our dams, the minister has made that decision. There are
43 other dams. Flood mitigation is often talked about in
44 relation to our Murrumbidgee dams, and potentially in
45 greater Sydney as well, so separating those two out may be
46 worthwhile.
47

1 Flood management - of course, we manage floods at
2 every one of our dams, particularly obviously our gated
3 storages where we have some optionality, if you like, in
4 releases and how we manage those floods in real time.
5 There are, in all of the water-sharing plans, rules in
6 relation to how we manage floods. Why I use the word
7 "agreed" is because rules differ from water-sharing plan to
8 water-sharing plan, and in large part that is because
9 downstream communities and customers and stakeholders in
10 different valleys have taken a different view as to what
11 sort of risk profile they want.
12

13 To give you an example, in the Lachlan Valley, the
14 water-sharing plan there is a lot further along the risk
15 curve than other valleys because they have very low
16 reliability in their valley. The community, the water
17 users in that valley, has chosen a high risk point there
18 and we operate to that particular rule in that valley, but
19 the rules are all different across those valleys. We want
20 to be very clear, we manage according to those
21 water-sharing plans and works approval provisions. We will
22 mitigate if the minister decides to create that capacity
23 sharing, for want of a better phrase, and we will do that
24 in accordance with whatever the requirements are around
25 that flood mitigation on those particular assets.
26

27 THE CHAIRMAN: Ed?
28

29 MR WILLETT: Just to clarify that in my mind, you see
30 flood mitigation as only where the minister requires you to
31 maintain spare capacity in a particular infrastructure to
32 reduce the risk of flood, and everything you do to manage
33 water flows and reduce the risk of flood is flood
34 management?
35

36 MR HARRIS: Ed, I think that's right. The minister, on
37 behalf of the community, has to make a decision that
38 capacity of our storages is allocated to either supply or
39 flood mitigation. I think the minister is the appropriate
40 person to make that decision. Then what would flow from
41 that, obviously, is a set of rules in our works approvals
42 about how we would manage that flood mitigation. That is a
43 very separate issue from how we manage a flood, ie, whether
44 there's a flood mitigation zone or not, and when we are at
45 100 per cent capacity, then how we manage that, obviously
46 particularly with our gated storages. Have I answered your
47 question?

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MR WILLET: Yes, thank you.

MR O'NEILL: You have mentioned the works approvals a couple of times. Can you comment on the process by which a minister might amend the works approval that would require you to do the flood mitigation and/or management in the Warragamba area at some point in the future, if you chose to do so?

MR HARRIS: In general, not speaking specifically to the Warragamba dam, but in general - again, off the top my head - the minister has the ability, through the Water Management Act, to amend our licences and include those types of flood mitigation functions. I'm sorry, I don't know the detail of that process off the top of my head.

In relation to Warragamba, the previous premier announced a project to raise the dam wall of Warragamba. There is a much broader piece of work being done by the government of which our dam and the operation of our dam is but one part. I think in relation to that particular asset, there would be a lot broader process involving a lot more agencies, and so on, before a recommendation were made to the minister in relation to our particular works, i.e. the government would want to make sure that the various parts of that flood strategy all hang together so that if that function were given to us in Warragamba, that would be exercised and carried out consistent with other emergency-type works and notifications, and so on. That's quite a complex area.

THE CHAIRMAN: Thank you very much, David.

Any other questions or comments on this section? Yes, Karen?

MS HUTCHINSON: I just wanted to comment that we support the definition between flood management and flood mitigation, the idea being where you have mitigation you actually have a ministerial or a state level intervention to protect communities. Otherwise, it really should be left to water-sharing plan discussions so that water users can decide the level of appropriate risk. The risk that we would see is that WaterNSW would be subject to community voices every time there was a cloud.

1 THE CHAIRMAN: Thank you, Karen. David?

2

3 MR HARRIS: I would just like to say the notion that the
4 minister or, indeed, anyone else in real time would be
5 giving us operational directions, I'm not aware of anywhere
6 elsewhere that occurs.

7

8 The benchmark for this, as you probably well know, is
9 Queensland, following the Wivenhoe flooding. There is a
10 regime. The minister does sign off on the operational
11 arrangements, but that is done well in advance and in real
12 time Seqwater gets on and operates that structure. To
13 suggest that a minister would be doing anything in real
14 time I think is probably not helpful, frankly, to the
15 minister.

16

17 THE CHAIRMAN: Thank you very much. We will move on to
18 the next section, performance standards.

19

20 Performance Standards

21

22 MS HANNA: Thanks, Peter.

23

24 This session will take us through the proposed
25 approach to specifying performance standards in the
26 operating licence. The Act requires that an operating
27 licence which authorises WaterNSW to capture, store release
28 or supply water must include terms and conditions under
29 which WaterNSW is required to ensure that its systems and
30 services meet the performance standards specified in the
31 operating licence in relation to water delivery, water
32 quality, service interruptions or any other matters set out
33 in the operating licence.

34

35 Since we propose to authorise WaterNSW to undertake
36 the capture, store, release and supply of water functions,
37 we have also proposed performance standards relating to
38 water delivery, water quality and service interruptions.
39 These performance standards specify the performance levels
40 that customers will be able to expect for these services,
41 with the intention of providing customers some certainty
42 about the service that they will be provided.

43

44 We consider that water delivery and service
45 interruptions could apply to WaterNSW's capture, store and
46 release function, whereas water quality and service
47 interruptions are also applicable to its supply functions.

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We consider that a water quality standard for capture, store and release may not be implementable, as it is not always practicable to control the quality of water released. This is also consistent with not requiring the water quality management system for this function. However, we seek feedback on whether this is appropriate. The performance standards that we have proposed for WaterNSW's capture, store and release functions have been converted from performance indicators currently required by the State Water reporting manual.

We have, therefore, not included these performance indicators in the new WaterNSW reporting manual. We based the proposed performance standards on WaterNSW's historic performance in relation to these performance indicators. The performance standards that we have proposed for WaterNSW supply functions have been based on the suggested feedback to the issues paper. However, we consider that as they currently stand they would be difficult to implement and audit compliance with them. Therefore, we are seeking feedback on the terms listed on the slide behind me used in clause 4.2 of the draft licence - that is, definitions for the terms bulk water quality standards; health standards; on time; and agreed quantities.

If we cannot appropriately define the supply performance standards, an alternative option may be to rely on system standards as the existing operating licence does. The SCA licence does not prescribe performance standards, but instead relies on the AMS and the water quality management system and water supply agreements to manage the services provided to customers.

System-based standards provide a less prescriptive approach to specifying performance standards. They are standards that identify a particular framework or series of steps to be followed in pursuit of a goal. However, they provide minimal transparency and certainty for customers about the level of service and they are difficult to audit.

David, you mentioned earlier on developing KPIs, that they are not quite ready at the moment. We are looking for more feedback on whether the performance standards as they stand are satisfactory or if they can be further refined.

THE CHAIRMAN: Thank you very much, Jess. WaterNSW?

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MR HARRIS: Just five quick comments, much of which I have said before. We welcome the notion of performance standards. We believe that performance standards should be set by market function. I have covered that already. We believe they should be output-based standards. I have covered that already.

Why do we think these are important? We think performance standards are very important to allow our customers and, indeed, which extends to our community, transparency performance and comparability across markets. We can't forget here that we are a water utility. Whether it's ourselves, Sydney Water, Hunter Water, we are monopolies. People only get their water from one utility, in Sydney or in regional areas.

By definition, what that means is that customers compare our performance against their energy utility, which may also be a monopoly - their gas utility, their postal utility, and so on. There needs to be comparability in the measures, and there is within the market, that are used in each of those industries so that we can be classified as a good or a poor performing utility, as the case may be, against each of those other utilities on the same basis.

We, as an organisation, absolutely want good, clear transparent KPIs, because hopefully they will demonstrate that we are doing a very good job and exceeding our customers' expectations. But, equally, we want it to be clear to our customers where we fall below par, and clear to our organisation, so that we address that and get ourselves back up to par. This is a very important matter for us, and I have expressed that view in other IPART forums.

Just one particular comment: there are some performance clauses here - I'm not going to go into the detail - that relate to the raw water supply agreement that we have with Sydney Water. There is a representative from Sydney Water here, but the feedback that has been given to us from Sydney Water is that they would prefer that those matters be addressed as a matter of agreement between the two utilities in their contract. It is actually a legally binding contract between the two entities, and not predetermined, as it were, in the operating licence.

1 We support that view. We think that at least in the
2 case of Sydney Water, who are bigger than we are, there is
3 no need for minimum standards or anything else to be
4 prescribed in the operating licence. We would rather be
5 sitting down with our customer and coming to those water
6 supply and other standards by agreement. That may be
7 something that the Sydney Water rep here wants to speak to.
8

9 THE CHAIRMAN: Thank you very much, David. Other
10 comments?
11

12 MR BYLEVELD: Firstly, NSW Health notes the requirement of
13 the WaterNSW Act to establish standards, including for
14 water quality.
15

16 In considering what should be an appropriate standard,
17 NSW Health asks that IPART take into account the framework
18 for the management of drinking water quality in the
19 Australian Drinking Water Guidelines. NSW Health considers
20 the Australian Drinking Water Guidelines to provide the
21 most comprehensive guidance on water quality management in
22 relation to raw water supplied for treatment. Most
23 importantly, the guidelines framework must be implemented.
24 This is already a requirement of clause 2.1 of the draft
25 licence.
26

27 The framework requires consideration and control of
28 risks to water quality. In relation to raw water, this
29 should include monitoring quality and managing the supply
30 to provide the best quality water for treatment. The
31 framework also requires consideration of incident
32 management. For example, where incidents or events lead to
33 poorer water quality being supplied for treatment, the
34 downstream utility must be notified.
35

36 I note that proposed numeric targets in the draft
37 licence for bulk water and for health standards, NSW Health
38 is willing to work with the secretariat, WaterNSW and
39 Sydney Water Corporation to consider what would be most
40 appropriate in this regard. The Australian Drinking Water
41 Guidelines give some consideration to those characteristics
42 that are unlikely to be changed through a treatment process
43 and, therefore, could be proposed as health standards.
44

45 This may also be a complex matter to define in a way
46 that is easily understood and easily audited. In
47 conclusion on this point, NSW Health would be willing to

1 work with the secretariat, WaterNSW and Sydney Water to
2 explore further the practicality of adopting this.

3
4 THE CHAIRMAN: Thank you very much, Paul. Estelle, would
5 you like to make a comment at this stage?

6
7 MS AVERY: No.

8
9 THE CHAIRMAN: Thank you.

10
11 Other comments or questions?

12
13 MR ENGLISH: Michael English from Sydney Water. Apologies
14 that the A team couldn't be here today. There were a few
15 family illnesses and things of that sort.

16
17 I haven't been involved in detail in this review, but
18 I echo the comments that we would have a preference for
19 dealing directly with WaterNSW on the performance standards
20 that they need to meet in their supply of water to us.
21 I can't speak for how that might work outside of Sydney,
22 but it certainly works well for us at the moment.

23
24 THE CHAIRMAN: Thank you very much, Michael.

25
26 Any other comments or questions?

27
28 MR LATHWELL: I think it is important to provide
29 flexibility for the parties, being WaterNSW and
30 Sydney Water, to negotiate their least cost arrangements to
31 deliver safe drinking water, and not necessarily impose
32 obligations on WaterNSW to do the operating licence that
33 might not be reflective of a least cost supply chain
34 process.

35
36 THE CHAIRMAN: Thank you, Ben.

37
38 Any other questions or comments at this stage? Jess?

39
40 MS HANNA: I would just note that there are other supply
41 customers apart from Sydney Water. There are the councils
42 prescribed in the regulations, other parties and
43 potentially WICA licensees as well. What would be your
44 thoughts on whether the supply performance standards that
45 apply to Sydney Water would also apply to them or if they
46 should be differentiated by customer?

47

1 THE CHAIRMAN: WaterNSW?

2

3 MS CHORA: I think our position is as with Sydney Water.
4 If we enter into a contract with a customer, the contract
5 and the standards in the contract, to the extent they have
6 standards in the contract, should apply. The operating
7 licence can apply as a fallback for where there is no
8 contract. So if we do enter into contracts with other
9 customers in addition to Sydney Water, then those contracts
10 would apply, but if not - if we can't agree or whatever -
11 there would be the safeguard in the fallback of the
12 operating licence.

13

14 THE CHAIRMAN: Thank you Yolanda. Ben?

15

16 MR LATHWELL: There might be a role in the operating
17 licence to set minimum standards with regards to that,
18 reflecting Paul's comments that there are certain
19 characteristics about water which might possibly to be
20 treated through a treatment or filtration plant downstream.
21 We do use one sort to supply different counterparties, so
22 perhaps an appropriate level of minimum standards in the
23 operating licence could be set, but allowing for levels of
24 service above that to be negotiated between the parties.

25

26 THE CHAIRMAN: Thank you, Ben. Ed?

27

28 MR WILLETT: Could I follow up on that and you might want
29 to take it on notice. It seems to be there is the question
30 of whether you would support the standards reflected in
31 your Sydney Water contract as a reference standard for
32 other customers, particularly in the Sydney Water catchment
33 area.

34

35 MR HARRIS: I will hand over to Yolanda in a minute, but
36 I want to make a general point. Where we are coming from
37 with this is we believe that there should be minimum
38 standards enshrined in a contract one-on-one with us as the
39 service provider and our customers. Whether that is set
40 out in the operating licence or whether indeed IPART would
41 approve a standard form contract, or whatever, that is a
42 second-order issue.

43

44 The point is we think that that set of minimum
45 standards then provides a marker around which individual
46 customers can seek to renegotiate their particular deal.
47 Now, in the case of Sydney Water, their raw water supply

1 agreement will look very different from any other customer
2 that we provide. But in the absence of that default
3 minimum standard customer contract, we have no basis in a
4 sense. There is a bit of a vacuum. There is no ground for
5 us to have that conversation. As per my opening
6 presentation, we would really like to get to that place
7 which, by the way, Sydney Water and Hunter Water are in now
8 but unfortunately WaterNSW is not yet there.

9
10 MS CHORA: Just in relation to your specific question
11 around would we use the outcome of our negotiation with
12 Sydney Water as the benchmark, I don't think that that
13 would be appropriate because, in our negotiation with
14 Sydney Water, they may decide to do more treatment at their
15 end or we may decide to do more at ours. That is really
16 how the negotiation would flow and that may not be
17 appropriate to translate back to another customer.

18
19 MR HARRIS: Peter, of course, the other element here is in
20 Greater Sydney at least - this applies by the way to our
21 council customers as well as Sydney Water - we have a
22 controlled catchment there. We are able, therefore, to
23 provide a higher standard, if you like, of water quality.
24 We cannot provide that in other areas of the state where
25 controlled catchments do not exist. This is the point -
26 this is at the centre of our MoU with NSW Health.

27
28 Again, whilst agreeing in principle with Paul's
29 comments on ADWG, absolutely, we are capable of providing a
30 higher level of performance to Sydney Water and our Greater
31 Sydney customers if they want that than we are able to
32 provide in non-controlled catchments.

33
34 THE CHAIRMAN: Thank you very much, David.

35
36 Are there other questions or comments? No. Let's move
37 on to management systems. Mamata?

38
39 Management Systems

40
41 MS TITUS: Thank you, Peter. I will now take you through
42 the approach we have proposed to requiring management
43 systems and the operating licence.

44
45 The Act requires that an operating licence that
46 authorises WaterNSW to capture, store, release or supply
47 water must include terms and conditions under which

1 WaterNSW is required to provide, construct, operate, manage
2 and maintain efficient coordinated and commercially viable
3 systems and services to capture, store, release or supply
4 water.

5
6 We consider that obligations requiring an asset
7 management system would be a condition which achieve this
8 requirement of the Act. This would be similar to the
9 existing operating licences which require WaterNSW to
10 develop, implement and maintain an asset management system.

11
12 The two existing operating licences previously issued
13 to State Water and SCA specified different standards for an
14 AMS. However, we understand that since the merger of the
15 previous State Water and SCA, WaterNSW has developed,
16 implemented and certified an AMS consistent with ISO55001.
17 We consider this is an appropriate standard and have,
18 therefore, included requirements in the draft operating
19 licence reflecting this.

20
21 The existing operating licences also require an
22 environmental management system to manage the impact of
23 WaterNSW's activities on the environment. We consider that
24 this is consistent with the objectives of the Act. We have
25 therefore proposed to include similar requirements in the
26 new operating licence. We understand that WaterNSW has now
27 also developed, implemented and certified an AMS for its
28 whole merged organisation consistent with Australian and
29 New Zealand standard ISO14001.

30
31 As these systems have already been implemented and
32 certified, the draft operating licence requires this from
33 its commencement.

34
35 We have proposed only one new condition that is not
36 partly included in the existing licence. This condition
37 requires that, in the absence of certification, WaterNSW
38 must maintain management programs and activities to manage
39 risks to its assets or to manage the impact of its
40 activities on the environment. This proposed requirement
41 is only intended as a temporary requirement if
42 certification is lost, lapses or is otherwise not obtained.
43 It is not intended as an alternative management obligation.

44
45 I will now hand back to Peter to take you through the
46 discussion on this topic. Thank you.

47

1 THE CHAIRMAN: Thank you very much. Any comments on
2 management systems from WaterNSW?

3
4 MS CHORA: We appreciate the structure that IPART has set
5 out, but we feel that instead of just having it, as
6 mentioned, a temporary measure to allow us not to be
7 certified, after we obtain the initial certification,
8 further down the line, we would want business flexibility
9 to decide whether certification was appropriate or not.

10
11 There are different iterations of certification over
12 time and we would want to be able to make the business
13 decision as to whether or not to incur those costs, which
14 are ultimately borne by customers. We thought that if we
15 had certification, then there should be no audit process by
16 IPART, we would just get the tick. However, if we are not
17 certified and we make that business decision, then, of
18 course, we understand that a more comprehensive audit by
19 IPART is required.

20
21 We will be proposing some drafting changes that will
22 enable that business flexibility to occur after the initial
23 round of certification is bedded down. We will provide
24 that in our written submission.

25
26 THE CHAIRMAN: Thank you very much, Yolanda. We look
27 forward to WaterNSW's contribution on that.

28
29 Any questions or comments? No?.

30
31 Let us move on to the next one, which is customer and
32 stakeholder relations. Jess?

33
34 Customer and stakeholder relations

35
36 MS HANNA: The customer and stakeholder relations chapter
37 of the operating licence is quite long and we will go
38 through quite a few different provisions in this section.

39
40 Generally we have not proposed many new requirements
41 in the draft operating licence. We have removed
42 duplicative requirements in relation to customer supply
43 agreements in the existing SCA and State Water licences.
44 We have also proposed to merge duplicative requirements
45 relating to customer advisory groups and we have made
46 updates to the membership of these groups, as was mentioned
47 earlier.

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The existing WaterNSW (State Water) operating licence names specific customers that must be invited on the customer service committees or the customer councils. In the draft operating licence, we have proposed more generic groups of customers, if applicable. Our intention is for these groups to have broad representation of the types of customers to whom WaterNSW provides services. We seek your feedback on the appropriateness of proposed memberships of these customer groups.

We have also proposed that a charter should be developed and maintained for the customer advisory groups. The intention behind this condition is to provide some consistency in how WaterNSW runs these customer advisory groups and sets out some minimum issues that the groups must address. We also take a similar approach in regulating other utilities' customer advisory groups.

In relation to memoranda of understanding, we have maintained the existing approach with regards to NSW Health and the EPA, as these are required by the legislation. The Act explains the nature of these MoUs is to be that specified in the operating licence. We have proposed non-prescriptive terms and conditions regulating the "nature" of these MoUs, consistent with the approach we take for all public water utilities.

We have also proposed a new requirement on WaterNSW to enter into an MoU with the Local Land Services. Previously Local Land Services, as the catchment management authority, was required to be a member of WaterNSW's customer service committees. However, now that we are proposing that they are not a member of the customer advisory group, we have instead proposed an MoU to maintain this relationship. We seek feedback from stakeholders on whether this is an appropriate approach.

We have also proposed that WaterNSW should be required to enter into and maintain a roles and responsibilities protocol with DPI Water to facilitate the implementation of the conferred functions. The conferred functions were previously undertaken by DPI Water and therefore currently require that many of these functions be undertaken in accordance with manuals and guidelines issued by DPI Water.

At the time of drafting the licence, DPI Water was

1 also responsible for the review and implementation of the
2 Metropolitan Water Plan. We proposed an MoU with DPI Water
3 for the review and implementation of this plan. Given the
4 recent change in ministerial and department
5 responsibilities, this provision is likely to require an
6 update in relation to the Metropolitan Water Plan in the
7 final operating licence.

8
9 However, there is still merit in an MoU with DPI Water
10 for other matters, including metering arrangements,
11 particularly since we are also proposing to remove specific
12 metering conditions from the operating licence. Similarly
13 to LLS, we have proposed to remove DPI Water as a mandatory
14 member of the customer advisory groups.

15
16 We have not prescribed the content of the MoU to
17 enable appropriate negotiation between New South Wales and
18 DPI Water.

19
20 I will now hand back to Peter to take you through the
21 discussion on customer and stakeholder relations.

22
23 THE CHAIRMAN: Thank you very much, Jess. WaterNSW?

24
25 MR HARRIS: Thanks, Peter. Jessica's comments are in two
26 categories - first of all, the transformation from customer
27 service committees to customer advisory groups. We have
28 already indicated we strongly support the changes that
29 IPART is recommending in the draft licence, in particular
30 limiting membership of those groups to customers of
31 WaterNSW - they are a customer forum - and broadening the
32 range of customers represented there, reflecting the
33 groundwater and other unregulated surface water functions
34 we picked up last year. Our position on that is pretty
35 clear.

36
37 In relation to MoUs, I want to talk about the three or
38 four specific ones in turn. However, our overriding point
39 here is that we see this requirement to have MoUs with
40 government as sending the wrong signal. It is essentially
41 saying to government agencies that the only way to work
42 with WaterNSW is through an MoU and these are only provided
43 through the operating licence.

44
45 As I indicated right at the start, we want to
46 encourage relationships with government agencies and other
47 stakeholders on a much more flexible and output-based basis

1 than simply an MoU.

2
3 Turning to the specific MoUs, we are required under
4 our Water NSW Act - it is a legislative requirement for
5 us - to have an MoU both with NSW Health and the EPA. In
6 terms of what goes in the operating licence, we believe
7 that the operating licence need only provide or make
8 reference to MoUs, as determined by the parties.

9
10 Yes, there must be a provision in our operating
11 licence in relation to the nature of those MoUs; the nature
12 of those should be described as between the parties. This
13 allows for the parties with the expertise and understanding
14 to negotiate an appropriate MoU and it provides flexibility
15 for the parties to revise and amend the MoU as they see
16 fit, rather than being constrained through the operating
17 licence.

18
19 With regard to Local Land Services, Jessica spoke
20 about why an MoU provision has been inserted in that they
21 are coming off the CSCs. I would like to point out that
22 this is a little bit of an odd one because they would, if
23 at all, be a service provider to WaterNSW. We do not
24 provide service to LLS. They manage catchments. We may
25 engage them to provide the services. Their operations have
26 the potential to impact on our ability to perform our
27 functions, not the reverse.

28
29 Again, we have a process underway with LLS at the
30 moment. We would prefer to deal with that relationship as
31 two grown-up parties that do not need to be regulated under
32 our operating licence, and it is somewhat odd to require a
33 customer to have an MOU.

34
35 In relation to DPI Water, I have a couple of comments.
36 We do not see a need for a roles and responsibilities
37 protocol with respect to the conferred functions, as those
38 functions, by their very nature, established the role and
39 responsibility. The inclusion of a conferred function in
40 the operating licence gives WaterNSW the role and
41 responsibility for performing that function on behalf of
42 the minister.

43
44 We also do not think there is a need for an MoU,
45 principally for two reasons. First, roles and
46 responsibilities between WaterNSW and DPI Water are already
47 defined in our Act, their Act and a number of other Acts,

1 and in a set of comprehensive deeds that were developed
2 between the two parties prior to the transfer of functions
3 on 1 July last year.
4

5 I might just say in respect of those three deeds that
6 it took in the order of eight months for both organisations
7 to negotiate those deeds. There are three deeds in total.
8 There is a very comprehensive, I think, off the top of my
9 head, 21-page table attached to those deeds which sets out
10 where both organisations have complementary roles. It sets
11 out their role. It sets out our role. They are legally
12 binding instruments. They were signed as legally binding
13 instruments. That deed has mechanisms for amendment and
14 they are intended to be dynamic documents that capture the
15 evolving relationship between the parties.
16

17 As I mentioned, the deed of business transfer includes
18 a schedule of roles and responsibilities in circumstances
19 where the parties have separate tasks relating to a shared
20 function. Those functions may be legislative or they may
21 be non-legislative, so the agreed schedule provides a
22 comprehensive overview of the parties' relationship.
23

24 Furthermore, the service provision deed includes
25 20 separate schedules, the detail of the services that
26 WaterNSW and either DPI Water or the Department of
27 Industry, as the case may be, provide to each other. Those
28 services range from the provision of data, billing, ICT,
29 compliance and other services.
30

31 To be quite blunt about it, in light of the resources
32 that our organisation and theirs sunk into that exercise
33 last year and the fact that we have a legally binding deed
34 between the two parties that does provide a mechanism for
35 amendment over time, we do not think it is appropriate for
36 our operating licence to require an MoU with DPI Water.
37

38 THE CHAIRMAN: Thank you very much, David. Estelle?
39

40 MS AVERY: My name is Estelle Avery, I work for DPI Water.
41 DPI Water recommends that an MoU between WaterNSW and DPI
42 Water be developed and the operating licence should include
43 a requirement for this MoU. A similar requirement to that
44 specified in the WaterNSW (State Water) operating licence
45 is considered appropriate. We do not advocate any
46 duplication with the deed of agreement.
47

1 The MoU needs to include revised terms that were
2 specified in the previous MoU; for example, responsibility
3 for water quality monitoring in relation to water
4 temperature. This is in relation to conditions about cold
5 water pollution mitigation. Those responsibilities need to
6 be clarified in the MoU.

7
8 It is also recommended that the MoU contain provision
9 for liaison groups between the two organisations.
10 Previously we had a strategic liaison group that used to
11 meet to discuss these issues.

12
13 Additional terms may also need to be included in the
14 future as issues arise; for example, it could be in
15 relation to foreshore management. DPI Water administers
16 the Water Management Act and WaterNSW is a state owned
17 corporation, so it does not require controlled activity
18 approvals in relation to management of foreshore land, but
19 we do have guidelines for this management, so these could
20 be included in the MoU.

21
22 THE CHAIRMAN: Thank you very much, Estelle.

23
24 I might add that since I have been at the tribunal
25 this is quite a typical situation to be in. Often when we
26 are reviewing a licence and the issue of an MoU comes up,
27 the licensee does not want it, but other agencies do want
28 it, and the tribunal is often called upon to step in in the
29 middle of this.

30
31 I would be particularly interested, David, to hear
32 your response to what Estelle just said in terms of issues
33 with water temperature, foreshore management and those
34 sorts of things.

35
36 MR HARRIS: Sure, Peter, and, by the way, we are more than
37 happy to provide the tribunal with the very lengthy
38 annexure A to the legally binding agreement between the
39 two. It deals with water quality monitoring. It deals
40 with temperature. It deals with a strategic liaison group.
41 We have actually called it a partnership forum, which has
42 met between the two organisations. That is a requirement
43 of the deed as well and that forum is meeting and is
44 working.

45
46 I think all of those matters - as you will see from
47 annexure A - are absolutely in detail addressed by that

1 deed. I would see no benefit whatsoever, given the
2 resources that have already been put into that, in creating
3 another MoU. I would much rather be getting on with it for
4 the benefit of our customers and our two organisations.
5

6 In relation to foreshore land, that is a standard
7 regulatory requirement that applies to all entities or
8 people who want to work within 40 metres of a water course.
9 We deal with that in the same way that any other
10 organisation operating in the state deals with it. I would
11 not have thought that was in any way, shape or form
12 necessitating an SLG or an MoU.
13

14 THE CHAIRMAN: Thanks, David. Estelle?

15
16 MS AVERY: A previous MoU did specify the requirement for
17 foreshore management and it also specified the requirement
18 for the cold water pollution interagency group. I don't
19 believe that is addressed in the deed of agreement, and
20 this is specifically in relation to temperature monitoring
21 in relation to cold water pollution. It is not in relation
22 to health requirements. I believe it is different to the
23 existing water quality requirements that you are referring
24 to.
25

26 MR HARRIS: The deed actually does deal specifically with
27 cold water pollution. It deals specifically with the
28 interagency group, and the reason why it does that is
29 because DPI Water chair that group. DPI Water have a
30 regulatory function in relation to that; we have an
31 operational function.
32

33 Again, when we provide that to the secretariat, the
34 IPART staff will see how we have described the DPI Water
35 role - ie, the policy and regulatory role - versus the
36 WaterNSW operational role for all of those matters.
37

38 THE CHAIRMAN: Good, thank you very much, David.
39

40 Anybody else? Paul?
41

42 MR BYLEVELD: NSW Health places great value on its MoU
43 with WaterNSW, given that it forms the basis for the
44 cooperative relationship. In fact, this is something that
45 NSW Health has asked of each of the state owned
46 corporations involved in water supply since the mid-1990s.
47 So NSW Health supports the clauses proposed in the draft

1 licence, and particularly the recognition of the role of
2 NSW Health in providing advice to the New South Wales
3 government on water quality and public health matters.
4

5 NSW Health notes that the scope of the MoU would
6 include WaterNSW's operations in relation to both the
7 supply of water and the capture, store and release of water
8 as defined in the draft licence.
9

10 THE CHAIRMAN: Thank you, Paul. Stefanie?

11
12 MS SCHULTE: Thank you. We have three queries about the
13 customer advisory group. The first one relates to IPART's
14 draft report on page 115. Reference is made there to
15 environmental water holders as well as environmental users
16 or groups". We would like to have an explanation around
17 where the tribunal sees a distinction between those, in
18 particular if the groups do not comprise customers of
19 WaterNSW. Otherwise we would probably imagine that that
20 could be one line item. The second point --
21

22 THE CHAIRMAN: Sorry, Stefanie, let us deal with that one.
23

24 MS SCHULTE: Yes, of course.
25

26 MR O'NEILL: We are happy to seek feedback on the
27 membership of those groups if you think we haven't quite
28 got it right.
29

30 MS SCHULTE: We just thought in terms of it, would be
31 adequate, if there is flexibility provided to WaterNSW to
32 have an appropriate balance within the group, to just have
33 a reference to one environmental water holder or
34 environmental water customer?
35

36 I guess we see some risk in broadening the scope of
37 that customer advisory group to something that includes
38 groups, which may or may not be customers, and that sort of
39 does not align with the objectives of the draft licence.
40

41 MR O'NEILL: I think when we were putting the membership
42 together we saw those two stakeholders as different
43 entities. Environmental water holders are typically
44 licensed - it may be Commonwealth, for example, or
45 state-based under the environment department - and the
46 environmental users and groups might be other lobby groups,
47 so they might come at the issues from a slightly different

1 angle. We thought those different angles were useful and
2 relevant to have represented.

3
4 The other groups are all consumptive users, typically,
5 so the balance there is five consumptive users and two
6 environmental categories. Is that your concern, that we
7 haven't got that balance right?

8
9 MS SCHULTE: I guess the reference to advocacy groups from
10 the environmental side, they are not directly paying
11 customers to WaterNSW. Maybe David actually would like to
12 comment on that. We would much prefer to have paying
13 customers sitting on those advisory groups, in particular
14 if there are issues that are discussed that directly
15 concern the prices paid by those customers and future
16 determinations.

17
18 THE CHAIRMAN: Stefanie, I think we get it, that these are
19 not paying customers in the sense that they are lobby
20 groups or other stakeholders with an interest. We will
21 take that point on board. I encourage you, if you are
22 putting in a submission, to make reference to it.

23
24 MR HARRIS: Peter, if I could just very briefly support
25 where Stefanie is coming from. We thought the intent of
26 the revised CAGs was to have only our customers, paying
27 customers, if you like, on there.

28
29 Could I note, though, that OEH is one of our largest
30 customers. Everyone would call them both a user, but also
31 a much broader stakeholder, lobbyist, however you want to
32 describe that. Those communities would include OEH, and
33 they would include the Commonwealth environmental water
34 holder, again, who is a very large customer of WaterNSW, if
35 that provides any comfort.

36
37 THE CHAIRMAN: Next issue, Stefanie?

38
39 MS SCHULTE: Actually, there is only one other one, which
40 relates exactly to this point. This is more of a comment
41 than a question. We would like to see that this provision
42 provides enough flexibility to have the composition of
43 those CAGs right, and, in particular, on the coastal
44 valleys where the balance between regulated, unregulated
45 and grant water customers is very different to inland
46 valleys, that this is also reflected in the membership of
47 the CAGs and that the licence enables that to occur.

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THE CHAIRMAN: Thank you very much, Stefanie.

Other questions or comments on customer and stakeholder relations? Yes, Michael?

MR ENGLISH: Just on the water planning, I guess we saw some benefit in formalising some sort of data sharing arrangement and similar arrangement for WaterNSW providing input to that process. That may or may not need an MoU.

I think we have worked through those in the past. The process has sometimes gone longer than expected, but we have made our way through it and made sure our plans have been released, and administrative type issues we can probably resolve without necessarily having any MoU.

THE CHAIRMAN: Thanks, Michael.

Any other questions or comments? David?

MR HARRIS: If I can just briefly respond to both those last two comments. In relation to data sharing arrangements between ourselves and Sydney Water, there is a data sharing arrangement group already established between the two organisations. Obviously Sydney Water provide demand numbers and models which are critical for us to do our water supply infrastructure planning and, vice versa, that that group already exists between the two organisations.

Again, I am a little bit wary about an operating licence providing that all of these relationships have to occur via an MoU. I am demonstrating here that already those two organisations have put that arrangement in place of their own initiative and, if you like, owned their own problem.

In relation to the composition of the CAGs, the point I would make about that, if we are thinking longer term - and I acknowledge that this comment crosses over with our current rural pricing determination process - I think that it is very important that that committee, as Stefanie said, that group, be representative of the customer groups that we serve in each valley.

The reason why I say that is because, for example, in

1 our current pricing determination process, we have
2 encouraged customers on a valley by valley basis to make a
3 decision for themselves as to their tariff structure
4 between fixed and variable tariffs. It is very important
5 that IPART be able to look at that body, whether it is a
6 CSE or a CAG, to look at that body and have comfort that it
7 is truly representative of our customers and not some other
8 groups or stakeholders, so that a decision made by that
9 body can be accepted as the voice of the customer, if you
10 like, by IPART.

11

12 In the long term, that's very, very important, I would
13 suggest, when we are thinking about the composition of
14 those committees.

15

16 THE CHAIRMAN: Thank you very much, David.

17

18 Anything else on customer and stakeholders relations?
19 No.

20

21 We can move on to the next one, which is research on
22 catchments and education programs.

23

24 Session 3 - Research on catchments and education programs

25

26 MS TITUS: Thanks, Peter.

27

28 I will now take you through our final topic, and
29 explain our proposed approach to authorising and regulating
30 how WaterNSW undertakes research on catchments generally
31 and, in particular, on health of declared catchments and
32 the educated role in the community.

33

34 These are two of WaterNSW's listed functions under
35 the ACT. We propose to authorise WaterNSW to undertake
36 these functions generally, without geographical construct,
37 consistent with the Act. We have also proposed terms and
38 conditions regulating how WaterNSW undertakes these
39 functions to increase transparency and auditability.

40

41 However, as we touched on earlier this morning, we
42 have deliberately made these terms and conditions
43 non-prescriptive, so that WaterNSW can determine where and
44 the extent to which it undertakes these functions. Our
45 intention is not to compel WaterNSW to undertake research
46 on all catchments or undertake educative programs
47 throughout its area of operations, unless it considers it

1 appropriate.

2

3 I will now hand back to Peter to take you through the
4 discussion on this topic. Thank you.

5

6 THE CHAIRMAN: Thank you very much. As to research on
7 catchments and education programs, Yolanda?

8

9 MS CHORA: We support having a prescriptive obligation in
10 relation to these catchments. This is where these
11 obligations arose from our SCA licence. Outside of the
12 declared catchment, I think the term and condition is
13 almost doing a double authorisation.

14

15 We are authorised, as you are proposing, to undertake
16 these functions generally outside of the catchment and
17 inside. So, therefore, if you do not want a prescriptive
18 obligation, there is no need to put a further
19 non-prescriptive term and condition in, because our concern
20 is, by having it non-prescriptive, over time through
21 various audits or whatever, there may be regulatory creep
22 and growth, and that that is saying, "Well, did you do
23 enough? What are you doing outside the declared catchment?
24 We haven't seen any action."

25

26 If you do want us to do something specific, then we
27 ask IPART to make that clear. If you don't, then you
28 should just be able to rely on the authorisation. Again,
29 is there a reason to have a term and condition? Are you
30 trying to get us to do something, is there a mischief that
31 you are trying to solve? We just don't see one here.

32

33 THE CHAIRMAN: We are not trying to get you to do anything
34 in particular.

35

36 Other questions or comments on this?

37

38 MS HUTCHINSON: This certainly is an area that we are very
39 concerned about - regulatory creep. We understand that it
40 is a nice obligation to do research and education for
41 communities, but at the end of the day this is funded by
42 the users of the system. We would support WaterNSW on
43 this.

44

45 THE CHAIRMAN: Thank you very much, Karen. Any other
46 questions or comments on this issue?

47

1 Other questions or comments

2

3 THE CHAIRMAN: The last slot is for any other general
4 questions or comments that people might like to make. I'll
5 start at the table. WaterNSW?

6

7 MR HARRIS: No, thank you.

8

9 THE CHAIRMAN: Paul? No. Anybody from the audience?

10

11 MR SCHUMACHER: My name is Chris Schumacher from the
12 Oberon Council. I am one of the regional valley
13 representatives.

14

15 At our last customer advisory group meeting, certainly
16 we had been made aware of the new CAG system that is
17 supposed to be proposed to be implemented. There was some
18 concern in relation to the number of representatives from
19 individual councils, in particular the central group area,
20 and particularly from Oberon Council's perspective as to
21 who that representative will be as part of our valley to
22 represent us as customers.

23

24 Is IPART taking into consideration that each consumer
25 does have individual concerns and/or needs as part of the
26 water take-up? Really the point is, on behalf of those
27 councils, to be aware that each individual customer or
28 council has unique views on this process and not all
29 councils' views are going to be the same in terms of having
30 one representative as part of that board. Thank you.

31

32 THE CHAIRMAN: Thank you. Are there any comments in
33 response to Chris?

34

35 MR O'NEILL: Chris, you'll see in the proposed draft
36 licence that we have got local water utilities listed as a
37 member of customer advisory groups, but we haven't been
38 specific on which local water utility. Have we got a gap
39 there? Local water utilities aren't always the same as
40 councils. You used the word "councils". Are you
41 suggesting that we need another potential member on the
42 list that is not a local water utility but is a council, or
43 are you asking for something slightly different to that?

44

45 MR SCHUMACHER: No. What I'm probably asking for - as
46 part of our group we have a big consumer industry, being
47 EnergyAustralia, for power stations out in the west there,

1 hence certainly they have different business interests at
2 the minute which has an impact on that particular valley.
3

4 As part of that, the CAG that is proposed is to merge
5 with the bigger metropolitan area, as far up as the Hunter.
6 The concerns are, I guess, in particular water security,
7 particularly for Oberon, from my perspective. It is the
8 only source that Oberon LGA has. From that perspective, I
9 suppose, for the CAG group, if we are talking about having
10 a CAG and having one area representative to represent all
11 councils, that includes Lithgow City Council on that panel,
12 we have different competing interests. We really need
13 councils to be represented at the table, not just a person
14 from Energy Australia representing the group, for example.
15 Does that make sense?
16

17 MR O'NEILL: The preamble to that section talks about "at
18 least one person". I think, in our mind, we are probably
19 thinking that's a minimum list, and you can negotiate with
20 WaterNSW on specific membership in specific valleys.
21 I don't see this as a constraining list.
22

23 David, you might have thoughts on that?
24

25 MR HARRIS: Chris might correct me if I am wrong, but
26 I think what he's referring to, we have been consulting on
27 the mechanisms set out in the draft operating licence in
28 our CSEs - actually, there's one happening today, but over
29 the last couple weeks - and I think there was a suggestion
30 in there that we would have one CAG for Greater Sydney and
31 Fish River together. I am more than happy to take on
32 notice and to come back to IPART. I think we probably need
33 to have a think about that, whether in fact two CAGs, one
34 for Fish River and one for greater Sydney, might be more
35 appropriate. We are more than happy to take that on board.
36

37 THE CHAIRMAN: Good. Do you want to say something else,
38 Chris?
39

40 MR SCHUMACHER: No. That's appreciated, thanks.
41

42 THE CHAIRMAN: Thanks, David. That issue is now on the
43 record, Chris, and we'll take it collectively on notice.
44 Thank you very much.
45

46 Other questions or comments? No.
47

1 CLOSING REMARKS

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THE CHAIRMAN: I would like to thank you all very much for your attendance today and your contribution. I think it has been a particularly productive discussion. We do have a number of things to think about as we go forward.

As Brian previously mentioned, a transcript of today's proceedings will be available on our website in a few days.

Just as a final reminder, we are accepting submissions from stakeholders and these are due on Friday, 7 April. We would, of course, prefer your submission via our online form which can be found on our website, but we will accept them by mail.

The final operating licence is due to be submitted to the Minister for Regional Water in May for his consideration and approval, and a new operating licence, we expect, would be effective from 1 July.

Once again, thank you very much and have a good afternoon.

AT 12.50PM THE TRIBUNAL WAS ADJOURNED ACCORDINGLY