



Dams Safety Levy Review

Public Hearing Transcript

August 2024

Zoom online

Acknowledgment of Country

IPART acknowledges the Traditional Custodians of the lands where we work and live. We pay respect to Elders both past and present.

We recognise the unique cultural and spiritual relationship and celebrate the contributions of First Nations peoples.

Tribunal Members

The Tribunal members for this review are:

Carmel Donnelly PSM, Chair
Dr Darryl Biggar
Jonathan Coppel
Sharon Henrick

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Invitation for submissions

IPART invites comment on this document and encourages all interested parties to provide submissions addressing the matters discussed.

Submissions are due by Monday, 19 August 2024

We prefer to receive them electronically via our [online submission form](#).

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

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1 Dams Safety Levy Review Public Hearing

1.1 Welcome

Andrew Nicholls (IPART): I'll be managing the public hearing today, and I'll start with just a few housekeeping notes. So firstly, please keep your microphone muted when you're not speaking to avoid feedback and background noise. We encourage you, though, to keep your cameras on if your Internet connection is up to it, and if you're comfortable with doing so. Now, please make sure your name, and if relevant, your organization is showing, and instructions for doing this are provided in the chat box. To help with accessibility we have turned on zoom captions, and there's also a message in the chat on how to turn these on as well.

Just so you know, we will be recording today's hearing to allow it to be transcribed. We don't plan to make the recording publicly available, but we will put a copy of the transcript along with our presentation slides on our website in a few days' time. Now this is a public hearing, and so the media and anyone who's present today are free to publish and refer to what is said during this event. And we want to make this an environment where everybody feels comfortable to speak, so we ask that you are respectful of each other's time in the length of your comments, and in also the way that we convey and interact with each other today.

Now with me today is the Chair of the Tribunal, Carmel Donnelly, and Tribunal members, Jonathan Coppel, Sharon Henrick and Darryl Biggar. We're assisted by the IPART Secretariat today, including Matt Mansell, Xanthe Smith and Rhea Rachel.

Now in a moment IPART's lead Tribunal Member for this review, Jonathan Coppel, will commence with a welcome. He'll also invite participants to introduce themselves. The review team will then give a short presentation overview of the draft report and will then move to Q&A. The Q&A is an opportunity to provide comments or feedback on issues that are important to you, and everyone here is encouraged to share their views. We've set aside 2 hours for today's public hearing so that we can hear everyone's views. I'll now hand over to Jonathan Coppel, our lead Tribunal member for this review.

Jonathan Coppel (IPART): Thank you, Andrew. As Andrew said, my name is Jonathan Coppel, and I'm the lead Tribunal member for this Dams Safety Levy Review.

Now let me start by acknowledging the Traditional Owners of the lands and waters from which we are all joining today. We pay our respects to elders, past and present, and we extend that respect to Aboriginal or Torres Strait Islander people who are joining today.

I'd like to open by saying that we very much welcome and value your input into our review and appreciate your time in participating in the hearing today. We thank you all for attending, and I'm looking forward to a very productive hearing.

Now this slide sets out our terms of reference. But first allow me to say just a few words for those who may not be familiar with IPART. IPART's overarching role is to help the people of NSW get safe and reliable services at a fair price. We are a NSW Government agency that investigates and gives independent advice on services, prices, and other issues across a range of sectors.

Dams play an essential role in the NSW economy and a key role in building flood resilience for the broader NSW community. And Dam Safety NSW is an independent regulator charged with ensuring the safety of declared dams. And this is an increasingly important role as we continue to experience the impacts of climate change and more extreme weather events.

The NSW Government has existing legislation which allows for dam owners to be levied to fund dam safety. And it is in this context that IPART has been tasked to design the levy, but has not been asked to make recommendations as to whether to implement the levy.

Now, as you can see on the screen, our terms of reference ask us to do 4 things. The first is to investigate Dams Safety NSW's efficient costs. The second is to design a methodology for recovering those costs. The third is then to determine the quantum of the levy for each dam owner. And finally, to make recommendations regarding information that could be collected, to inform future levy calculations.

Before we proceed further with this workshop, I would like to extend the opportunity to anyone who would like to introduce themselves and to say a few words about what is most important to you in this review. Perhaps I'll give the floor to Dams Safety NSW's Chris Salkovic who is the CEO, and he's here today to say a few words about Dams Safety NSW's role. Over to you, Chris.

Do we have a representative from Dams Safety NSW?

Margaret Hynes (DSNSW): Hi, Jonathan, it's Margaret Hynes from Dams Safety, just to let you know Chris is actually having problems with his audio this morning, so he isn't actually able to provide that introduction that we had hoped to do.

Jonathan Coppel (IPART): Okay. And is there someone else from Dams Safety NSW will be able to fill in?

Chris Salkovic (DSNSW): Hello! Can people hear me?

Jonathan Coppel (IPART): That's good. I can hear you.

Chris Salkovic (DSNSW): Oh, hello, Jonathan! I finally got my audio to work. Thank you.

Jonathan Coppel (IPART): I'm not sure if you've heard me just giving some introductory remarks. We're at the point where I've invited people who are participating today to introduce themselves and perhaps give some of the key points they'd like to get across in today's public hearing. But I thought today at the beginning it would be useful if Dams Safety NSW could say a little bit about their role and provide some context.

Chris Salkovic (DSNSW): Yes sure, thank you Jonathan and thank you everyone online. I'm not going to be running through a presentation, and apologies for the delay I had problems with audio. This appears to happen a lot with Zoom on my computer. But I'm in now.

So my name is Chris Salkovic, CEO of Dams Safety NSW. I'm joining today really to support IPART and answer any questions from the audience with respect to the functions of Dams Safety NSW. Just a very quick background - so we are a regulator of declared dams across NSW. We regulate 380 dams owned by 150 owners. Essentially, there's many thousands of dams in NSW, but we regulate the dams that are of the most critical in nature, ie. should they fail, cause things like loss of life or large economic or environmental impact. Yeah, that's it I'll leave it there. Thank you.

Jonathan Coppel (IPART): Thank you, Chris. Is there anyone else today who'd like to join at this point and perhaps get across a key message that you would like to make? If that's not the case, we will continue, and in a moment I'll hand over to Matt Mansell who is from the review team, and he will provide an overview of the draft report.

But I do ask when we come back to the open discussion that when you start to speak, just to indicate your name, and who you represent, so that we have an introduction. So I'll hand over now to Matt Mansell. Thank you, Matt.

1.2 IPART presentation

Matt Mansell (IPART): Thank you, Jonathan. I'd just like to echo Jonathan and Andrew's opening comments. We really appreciate your time coming along today, and we also appreciate all the input we've had to this review so far. I'll now take you through our draft report findings at a high level.

On efficient costs, our first task was to investigate and report on Dams Safety NSW's efficient costs. Dams Safety NSW was established in 2019. It is currently focused on education, capacity development and undertaking initial risk assessments and will begin to transition to focus more on its periodic audit function as the regulatory regime matures.

We engaged FTI Consulting to review and make recommendations to IPART on Dams Safety NSW's efficient costs. FTI bring experience reviewing, and making recommendations on efficient expenditure of regulatory agencies like Dams Safety NSW.

We held workshops with Dams Safety NSW to understand their operations, how these relate to executing its regulatory functions, and whether any of Dams Safety NSW costs are outside the scope of its dams safety regulatory functions.

Dams Safety NSW filled in data requests sent by both IPART and FTI to understand how funds were spent to better understand Dams Safety's activities and the costs involved in undertaking these activities.

FTI and IPART undertook benchmarking analysis of Dams Safety NSW's costs against comparators in other jurisdictions. Direct comparisons are challenging because of different approaches to dam safety regulation across different jurisdictions. However, this analysis did show that Dams Safety NSW's costs are broadly in line with its closest comparator, the Queensland Dams Safety Regulator.

Ultimately, we found no evidence that Dams Safety NSW is inefficient. Dams Safety NSW, like any business, Government department, or agency should keep looking for ways to innovate and deliver its regulatory functions more efficiently over time.

In terms of the levy we took Dams Safety NSW's current level of expenditure, and divided it into 3 categories.

Firstly, direct cost. This was the majority of costs, and these are directly attributable to dam owners and driven by dam characteristics. For example, audit and reviewing safety reports.

Then the second category is indirect costs which are necessary for providing services to dam owners, but they don't vary between dams. So, for example, the corporate overheads involved in providing the activities that are directly related to the dam safety regulation.

And then the third category are non-levy costs, which account for about 5% of dam safety's costs, and these are unrelated to declared dams. So, for example, advice to the Minister.

If the Government chooses to implement the levy, we recommend that the levy recover all but that 5% of costs and that that 5% of what we're calling non-levy costs should continue to be funded by the Government.

On to levy design. So once we determined the cost to be recovered through the levy, we set out building a levy that was as cost reflective as possible. We looked at a lot of different dam characteristics, but through discussions with Dams Safety NSW, we determined that dam consequence category - that is the extent of damage likely in the event of a failure - was the most relevant cost driver for Dams Safety NSW.

So IPART and FTI then developed effort ratios which measure the relative effort or resources required to regulate low, significant, high, and extreme consequence dams. These effort ratios were estimated for each dam consequence category across each of Dams Safety NSW's regulatory activities.

As a result, we split costs into 4 groups. At the top we have costs that do not vary by dam consequence rating, for example, it takes the same effort or resources for Dams Safety NSW to monitor an extreme consequence dam as it does to monitor a low consequence dam. So these costs have effort ratios of 1 across the board.

Then we have costs that vary by dam consequence. For example, we estimate that it takes Dams Safety NSW 3 times as much effort to audit the decommissioning of an extreme consequence dam relative to a low consequence dam, and twice as much for a high consequence dam as a low consequence dam. For these we have effort ratios specific to each consequence category.

We then calculated the weighted average effort ratios for each dam consequence category by taking an average of these effort ratios weighted by the share of Dams Safety NSW's costs allocated to each activity. This way we account for the fact that some activities take much more of Dams Safety NSW's resources than others. You can see these ratios in the table.

Next, we have the indirect costs. These were not allocated effort ratios, because they represent overhead costs that support the delivery of Dams Safety NSW's regulatory activities. So for corporate overheads and IT build, we applied the weighted average effort ratios to allocate these costs. We adjusted these indirect costs down to account for the fact that some of Dams Safety NSW direct costs are what we call non-levy costs and continue to be funded by Government.

Finally, we have the non-levy costs. These are activities that are that we consider should not be in the levy, because they are either not directly related to Dams Safety's regulatory functions, or are not ongoing functions that can be attributed to existing declared dams, that would be subject to the levy. So advice to the Minister, which is ad hoc, at request of Government and benefits the Government, not dam owners. Dam declaration and revocation - this is also ad hoc, and not for the benefit of existing pool of declared dam owners. Once a dam has been declared it would be added to the pool of levy payers, but until then we don't consider it reasonable that existing owners dam owners pay for the assessment of new dams. And reviewing mining consent applications - this is at the request of the planning department, so not for the benefit of existing dam owners.

Okay, next slide. The levy is made up by allocating Dams Safety NSW's costs between dam owners according to these weighted average effort ratios. You can see that the ratios from the last slide map to the levy on this slide. So, for a low consequence dam this means the levy would be \$7,670. For a significant consequence dam, it would be approximately 1.4 times the low consequence levy, so that's \$10,583. For a high consequence dam the levy would be 1.7 times the levy for a low consequence dam, so that's \$12,607. And for an extreme consequence dam the levy would be approximately double that of a low consequence dam. That is, \$15,240 per year.

We recommend applying the levy from 1 July each year and adjusting for CPI. Dams Safety NSW is not expecting to see a significant change in its budget, and this way dam owners have a greater level of certainty about what they will need to pay each year.

You might remember from the Issues Paper that we considered a performance component to the levy wherein high performing dam owners could reduce their levy. We thought it could help incentivise dam owners to comply and perform with the new regulatory framework, and that this could drive efficiencies that could be passed back to dam owners through a reduced levy.

At this stage there is insufficient information available to implement a performance component to the levy. However, we continue to see merit in the idea, and have made draft recommendations about collecting information to support further consideration of this idea at a future levy review.

We note that the levy is built from a dam consequence rating, a measure of the extent of damage likely if a dam was to fail. Another option would be to base the levy on a dam's risk rating. That is a measure that also factors in the likelihood of the dam failing. This is a more complete measure of risk, and also one that dam owners could have some more control over. Dams Safety NSW is currently working to build that risk rating for each dam, and that should be complete before the levy is reviewed again in the future.

We also note that in previous levy design that Dams Safety NSW consulted on in 2020, there was a discount for owners of multiple dams. In this review we did not find evidence that Dams Safety NSW's costs are reduced when an owner has more than one dam, so our draft recommendation is to not provide discounts for owners of multiple dams. The reason for this is that we believe it's more cost reflective that each dam pay the same levy.

Next slide. So one thing that came up a lot in stakeholder consultation to date is the idea that some dam owners will not be able to recover the costs of this levy from their customers and or ratepayers. So we've looked at this issue in detail. We considered that in the first instance there's a strong economic argument for dam owners to pay the levy. They are the ones making decisions about their dams, and they should have the full information about the costs of running their dams in order to make efficient decisions.

But second to that, there's a case that they should be able to pass the levy cost, along with other running costs of the dam, on to those that use and or benefit from the services that the dam provides. So the question becomes, who is causing the need for the dam to exist and therefore be safety regulated? So if not for that party, the dam would not exist.

We conducted a survey of dam owners and had an impressive response rate of roughly 60% (Thank you everyone), which asked about how dams are used and by whom.

From this we split down owners into 3 groups. The first group are dams that provide services to paying customers and ratepayers. This is the most common type of dam, about 90% of our sample. These dams provide services which dam owners can charge for. So this includes water supply dams. The dam is there because customers need water, and it needs to be safety regulated, so that the supply of water and the operation of the dam is safe. Dam owners can recover the costs of the levy by adding it to their water bills of their customers, or passing this on to ratepayers. And in other examples, for example, commercial dam owners, this is a cost of doing business.

The second group is dams that no longer serve a purpose. This was about 6% of our sample. Some are privately owned, but most are Government owned. Some stakeholders have argued that these dams should be exempt from the levy, but we argue that Dams Safety NSW is still having to do the work to check these dams are safe and incurring costs to do this work, so it would not be appropriate to not impose a levy on these dams. We also don't think a rebate would be appropriate for these dams, because they're not providing broad benefits that they can't charge for - they are no longer providing benefits, so there is no reason to have these dams continue.

Instead, we think the best solution would be for the Government to consider providing one off funding to decommission some of these Government/council owned dams. This would be a single capital expense to avoid the ongoing safety and cost burden of these dams. Once the dams are decommissioned, they will not need to be regulated, and therefore they would not incur the levy.

The third group of dams are dams that also provide services or benefits to other parties that are beyond the direct customer or rate payers of the dam owner. This is the smallest group, about 4% of dams that responded to the survey. They're largely council owned, but not in every case. The easiest example is to think of a council owned dam that's providing flood mitigation for both its own community and also downstream communities. Some of these are people from the council's own rate base, but some are in neighbouring council jurisdictions. The council would have no way to pass the levy cost onto those people being protected from flood in the other council area. Here we considered a rebate whereby the Government could cover the portion of the cost that those in the neighbouring council would pay.

However, the levy is only one small component of a set of dam maintenance costs that dam owners should be sharing in this example. The best practice solution in this case would be that the council that owns the dam is able to come up with a cost sharing arrangement with the neighbouring council to share all of the costs of operating the dam, including the cost of the dams safety levy. We've made 2 suggestions of how this could be done.

The first is IPART's newly established Council Reference Group, which is designed to deal with cost issues that councils are facing. Should the Government decide to implement this levy, we could ensure the levy is on the agenda for this meeting of councils where they could discuss cost sharing arrangements, and even consider a special adjustment to the council rate peg in the future.

The second is to look at the issue as part of the Government's ongoing reviews into local council ability to pay for infrastructure.

Ultimately, we did not recommend a rebate because it would not solve the larger cost, sharing issue. It would not result in costs being recovered from the parties driving the need to incur these costs, and it could even result in unintended outcomes where dam owners change the reported purpose of their dam in order to access a rebate.

We also made recommendations about information that should be collected going forward, or other changes that Dams Safety NSW could consider to inform or improve the levy in the future.

The first is that Dams Safety NSW's efficient costs in the levy should be independently reviewed in 3 years. This is new. The regulatory regime is maturing, and it's likely that in 3 years the allocation of costs in Dams Safety NSW's operations will have changed, and the availability of data should have improved. The levy will need to be assessed to see if it is still fit for purpose.

The second recommendation is that Dams Safety NSW should improve data collection to allow for more accurate cost allocation in the levy and provide assurance that its costs are efficient. In particular, we recommend that Dams Safety NSW collect timesheet data showing how staff members spend their time. This would serve as a check for future estimates of effort ratios, and could enable a performance component to be added to the levy.

The third recommendation is that in the upcoming review of the Dam Safety Act, Dams Safety NSW should consider adding the ability to charge fees for service and possibly retaining some funding from penalty notices. Statutory review is starting soon, and we've made a few suggestions that could help enhance the design of the levy next time. Fee for service could allow the last 5% of Dams Safety NSW costs, or at least some of them, to be recovered from those benefiting from the services instead of them being fully funded from the Government. For instance, Dams Safety NSW could potentially charge the Department of Planning when it reviews mining consents at the Department's request.

Retaining funds from penalty notices could potentially mean that the levy is reduced for dam owners that comply with the regulations and require less regulatory effort for Dams Safety NSW as a result. Similar to the performance adjustment idea that we discussed earlier, the extra effort Dams Safety NSW has to expend on non-performers could be funded through penalty notices which go through a procedural fairness process instead of being funded by all dam owners through the levy.

Dams Safety NSW's performance should be reviewed, regardless of whether the levy is introduced. So Dams Safety NSW does important work, and this is a high risk area. So the impact of a dam failure could be catastrophic. To our knowledge, Dams Safety NSW's performance has not yet been reviewed, and we think there is merit in the government looking into some kind of performance review before the levy is reviewed again in 3 years. To be clear, we're not suggesting that Dams Safety NSW is not performing, but rather suggesting it would be prudent to review and/or audit the organisation at some stage to confirm that it is meeting all its regulatory obligations and meeting community expectations.

Fifth recommendation is the Government should consider providing funds to decommission some unused dams, as discussed in the last slide we found there are some dams that are no longer in use, but have not been shut down because owners have no funds to decommission these dams. These represent an ongoing safety and cost risk, and we think the Government should think about providing one-off funding to help decommission dams that are in this situation and that are Government owned.

I'll now hand back to Andrew for the Q&A session.

1.3 Q & A session

Andrew Nicholls (IPART): Thank you, Matt, and in a moment I'll open the discussion up to the floor, and I encourage everyone to share your views and ask some questions.

We're using the chat box in zoom. So if you have a question, could you enter your name and organisation and I'll aim to come to as many of you as possible. You can also type out your comments or questions in the chat box. We'll aim to come to those as soon as we possibly can, and as many of those as we can. But please be assured that if you do make a comment in the chat box, and we don't get to it we will still take those views into account as part of the process here today. You can also virtually raise your hand, which you'll find there's a special button that you can press with your mouse if you're not familiar with zoom that will allow you to raise your hand if you've got a question as well and I will do my best through the raised hands, and to the questions that you might type in the chat to get to as many of you as possible, as I say.

Now, as Jonathan mentioned at the outset, can you please say your name, and where you're from, particularly if it's your first question of the day. And so on that note. There's a bit to get through. Quite a lot of ideas that have been presented in the draft report that we'd love to get your feedback on, and that Matt's outlined so if you could put your hand up or drop any questions into the chat, we'll come to you right now.

Have we got anyone who wants to go first? It's like an auction sometimes where the first bidder is always the hardest one. Michael. Thank you, Michael, from Sydney Water.

Michael English (Sydney Water): Happy to volunteer. Yeah, Michael English from Sydney Water. Sorry I'm trying to get my video to work. It's not coming up. I was interested more than anything. There's a lot to get your head around. Thanks for the presentation.

I think it was back in the earlier part, where there was discussion or presentation about the cost. I think it was education and reaching out like the regulator reaching out to dam owners, basically to inform them of the regulation and how it all works.

And I think the idea was, or the final conclusion, was that that level of effort didn't vary, I think, depending on either the number of dams, or whether they were high or low consequence. I was just interested in maybe hearing a bit more about the thinking that led to that conclusion. I thought there might have been some difference. But obviously, you guys have done a lot of thinking behind it, and might want to share some of that.

Andrew Nicholls (IPART): Great thanks, Michael. Matt, I was wondering if you're best placed to take that or one of the team.

Matt Mansell (IPART): Yeah, I'm just wondering, do we have someone from FTI here on the line?

Sean Crees (FTI Consulting): Yeah. Matt, Sean Crees from FTI. Thank you for that. I'll put my camera on. So it's a good question. Thanks for that. Michael. We had a similar thought at the start of the process, too, that that might seem to be the case, that there might be some differing costs in education amongst dam owners - and it still may be the case. But what we did also find was that the consequence rating might not have been the best source of that difference if you like. So there's an assumption that we had at the start that consequence rating would generally relate to a type of dam owner - so that would be a large water authority or a council, or a small dam owner. But that wasn't the case. There was a great mixture between who actually owns the dam and what consequences, and rather smallish dam owners that have extreme consequence dams, and some rather large there some smaller, so that that was one factor. But in our discussions with Dams Safety, I think, and Chris might be able to add to this in terms of the overall education that there has been a period of a larger sort of broad-brush approach undertaken thus far, and there certainly is differences in working with dam owners, with regards to assessing risks and things like that. But I think that it's fair to say that the education and inform has been more of a broad-brush approach. I'm wondering, Chris, whether you know a bit more to that.

Chris Salkovic (DSNSW): Yeah, thanks Sean. It is broad brush. I mean education, mainly in the form of, you know, providing guidance material or webinars, forums that we run, they're generally, you know, delivered across the board. They're not specifically targeted, you know to a consequence cohort of dams.

Michael English (Sydney Water): Do you see that maybe evolving over time, as you get into it, like you know you, you build up your base knowledge of everybody, and then it's maybe a bit more targeted in the future, perhaps, I don't know.

Chris Salkovic (DSNSW): Could do. Don't see any evidence of it at this stage. It could happen.

Andrew Nicholls (IPART): Okay. Any other comments, questions on that point?

Jonathan Coppel (IPART): Just briefly on that point. I mean what one of the reasons for why we were also recommending that there be a review in 3 years, if the levy were to be introduced, is to look at some of these issues again, using the benefit of the experience of the application of the levy. So at the moment the evidence we have is just that there isn't that sort of economy of scale that can come from being a multiple dam owner, or difference in the consequence of the dam category that's being used.

Andrew Nicholls (IPART): Right. Thanks, Jonathan, thanks, Michael, for that question. I think, Joyce, you have received a direct question from Shaun McBride. I'm not sure if Sean's here from Local Government, New South Wales has got a question about who pays. If you're here, Sean, happy for you to ask the question, otherwise I'll read it out. Which is, will the State-owned dams pay this levy? Just wondering, Matt, if you could maybe answer that one.

Matt Mansell (IPART): Yes, so the draft recommendation is that the levy apply to all owners of declared dams in NSW. Regardless of if they're privately owned, local council dams or NSW Government owned dams.

Andrew Nicholls (IPART): Great thanks, Matt, and thanks, Shaun, for that question. Have we got any other takers for questions today? There's quite a lot of issues to get your head around. What about this question of using consequence as the main category for distributing the costs? Does anybody have any comments or views on that. Steven, I think. And then, Shaun, I'm not sure if I've got you in the right order.

Shaun McBride (Local Government NSW): Hello! Can you hear me now? It's that zoom thing. Yeah, well, I think, it was presented earlier that the consequence model isn't ideal, that a risk-based model is you know, more reflective, cost reflective. And you know, we'd probably think it's premature to be introducing a consequence model ahead of the risk model.

Andrew Nicholls (IPART): Great, thank you for that comment, Shaun. I think we'll take that as a comment. I'll see if we're having trouble with the zoom audio – we might try Stephen again, are you having any luck there Stephen? If not I think your hand is down. G. Mellor, from Wingecarribee.

Graeme Mellor (Wingecarribee Shire Council): Hello there! It's Graeme in Wingecarribee. I wondered if in the considerations there was any differentiation between the local councils who are tasked, not in making a profit, but making sure that any money is reinvested from our fees that we can charge, compared to a business that is you know centred around making a profit? Because obviously there is a slight differentiation between the purposes of the billing and the reinvestment side of things.

Andrew Nicholls (IPART): Okay, is there any comments from the team on that one on that point? Is that something we have taken into consideration?

Matt Mansell (IPART): So in terms of the sort of principles that we looked at - the idea is really to design a levy that reflects the efficient cost of Dams Safety's operation. We did look at issues around impacts; what that means for different types of dam owners. But you know, in terms of setting an efficient price that reflects the efficient cost of the activity, we think, sort of in first principles, it makes sense that all dam owners pay a levy that reflects the efficient costs as opposed to paying a subsidised price below the efficient cost. Because that's unlikely to achieve the sort of main outcome that we're looking for in setting a cost reflective levy. I hope that answers the question.

Graeme Mellor (Wingecarribee Shire Council): It does. I suppose I'm just questioning the ability to pay side of things. Given a commercial, profitable exercise versus a 'for the good of the community exercise'. You're right from an equality of charging perspective. But I'm thinking there's an element of equity of ability to pay.

Andrew Nicholls (IPART): Great thanks. Thanks for that, Graeme. I think we'll take that as a as a comment to feed into our feedback. So appreciate that very much. And I was down in the Wingecarribee over the long, the weekend and there was beautiful weather. So lovely indeed! I'll go to James. And then Leonie has a comment online.

James Ogg (Inner West Council): Hi, thank you. My name is James Ogg. I'm the Stormwater and Asset Planning Coordinator for Inner West Council, and therefore have some of the responsibility for the flood mitigation dams.

We have a flood mitigation dam in our council area again. It's probably just more a statement again, than a question necessarily. But like Graeme from Wingecarribee said, appreciate the breakdown of cost provided, but it doesn't appear to account for the impact both in terms of commercial benefit received and the community impact achieved by those high and extreme dams compared to low consequence dams, and consequently the sort of the balance of costs at the moment, where basically a low consequence dam is paying half of the costs effectively of an extreme consequence dam, despite the greater benefit of that extreme consequence dam. It places greater burden on those that own smaller dams.

And note that there was a discussion, the risk rating to further modify these costs and potentially reduce that. But in this hearing or in this proposal, there's no promise of when this may or may not actually be taken up. It's just sort of pushed down the line into a one of the future reviews and so, and in terms of from a Local Government point of view it is seen again as cost shifting from a State Government point of view, where, particularly for the Inner West, which is a metropolitan council, the only dams that we have are flood mitigation dams, and they're designed to provide a community benefit that then reduces the amount that the State Government has to pay in disaster relief or the burden that's on insurers.

Andrew Nicholls (IPART): Thanks for that. James, I'll take that as a comment and check if anyone has anything to add to that.

Jonathan Coppel (IPART): I think, James, you're raising an issue where some of the benefit from the dam is also shared by a broader community, maybe a neighbouring council.

James Ogg (Inner West Council): Not necessarily that. The dam we have is purely located in our LGA. It's not about the benefit to a neighbouring council. It is about though, the Council might, you know, Inner West is looking at a few spaces to provide flood mitigation dams, and this reduces the damage cost of a flood event which is then a benefit to either the insurer, the people that are insuring private homes. It's a benefit to the private home, and it's a benefit to State Government in terms of reduced disaster relief. So this is this becomes a dam, that is, a council asset that we are responsible for, but the benefit is not felt by council totally it's not an adjacent area, so to speak. It's not about a charging neighbour that, but it is like other services, where the benefit does come somewhat to the State Government, and the State Government is asking us to pay for it.

Jonathan Coppel (IPART): Yeah.

Carmel Donnelly (IPART): Thanks, James, if I can jump in. I was just going to say as I understand it, you're raising the issue of where in terms of flood mitigation, these dams are effectively providing a natural hedge for insurers, reducing and creating a benefit more broadly. We'll take that on board thinking about that. So thanks very much for raising the comment. Thanks.

James Ogg (Inner West Council): And the only other thing that I - thank you for that for taking that board. The only other thing I've realised I didn't mention was the argument that was raised in terms of being able to pass it on to a benefitting person. When we're speaking about councils passing it on, we're talking about issues that have already been identified in terms of the council rate pegs.

You know, I appreciate the argument of passing the cost on where, as Graeme from Wingecarribee said that they're a supply dam, and you can be charging for water supply and or electricity, and you can be charged for electricity where they are a storage for safety. That thing where there's not a direct thing that we're charging people for. It does become just a cost that has to be taken into Council's general costs, which are rate pegged, and which means that comes at the cost of other services.

Carmel Donnelly (IPART): Yeah, okay. And we certainly have that issue on our minds in terms of the rate peg and I know I've had some discussions with people from Local Government, and I think what will make sure that we're alive to is that difference between times that the Council might be a local water utility and supplying water versus risk mitigation in terms of flood they're different functions. So, thanks for the comments.

James Ogg (Inner West Council): Thank you for that.

Andrew Nicholls (IPART): Right. Thanks, James for that. Now we had a little bit of a hiccup, I think, with the chat, but it's now starting to work again. So if you put your questions in the chat, we will pick those up. I did say I would go to Leonie's question. Then I'll come back to Stephen, who, I know, has been waiting patiently and hopefully the tech will work. So Leonie's question, Leonie, are you there, would you like to speak to your question?

Leonie Gray (Fairfield Council): I'm here. Yeah, yeah. So again, I'm in this similar situation that I, from Fairfield City Council, we have 11 flood mitigation dams that have been declared. So I mean, I guess it's not really about the cost sharing kind of thing. For us it's more about, you know, we've got so many dams, and they all range from low to high. So we've got a lot of money that we need to outlay every year according to this levy but if you're not going to do something about the equity in the community paying for this with, and it's kind of rehashing what was said previously, but you know, and there's no rebate available. Also there's no grant funding pool for upgrading any of our dams so it really puts us in a hard situation that we just don't have funds for. Already it's really hard for us to be upgrading our dams the way that they should be from a risk perspective, let alone if we've got another levy on top of it, so I really would appreciate if you would take on board what's been said here about flood mitigation dams. Because, yeah, and we again see it as cost shifting from State Government.

Andrew Nicholls (IPART): Great. Thank you, Leonie. I think we're certainly getting that theme. So unless there are any questions or responses to that point, we'll take that as a as a as a comment on the issue. Thank you.

Leonie Gray (Fairfield Council): Thanks.

Andrew Nicholls (IPART): Stephen, let's see how your technology goes this time.

Stephen Pemberton (Wollongong City Council): Hello. Sorry about before. I learned something new today.

So look, this is probably a bit of an extension on what James and Leonie commented upon before. But there's been a non-trivial increase in the cost of works that we've seen, whether it's asset renewal, whether it's maintenance, whether it's, you know, say, risk mitigation associated with our dam safety management activities, that the organisation's been bearing. And realistically, it's, you know, things are... it's getting a little difficult to make ends meet in kind of the renewal space to make sure that we can meet our levels of service in terms of maintenance and operations. Things along those lines. And I suppose on top of that, the dam engineering market is red hot at the moment, kind of by virtue of everybody, kind of scrambling to get their safety reviews and dam break studies and risk reports and get to compliance all at the same time. And the levy is kind of just another straw on the camel's back. So Wollongong Council's got 8 declared dams at the moment. I think the report said approximately \$92,000 a year to be charged. All of them are flood mitigation. So yes, it's I suppose it's another thing for us to find the money to pay for and kind of my expectation is that it will impact level of service somewhere, whether it's within our stormwater service stream or whether it's kind of more broadly if we have to pull money out of the capital program or something along those lines.

So that was kind of just a general comment. Some other things that were kind of running through my head was, just in terms of the efficient costs of Dams Safety NSW, were it to be applied. I know there was some questions in the draft report around performance measures and things like that. The things that are running through my head is just whether there's some sort of performance measure in there to ensure that suppose indirect costs are lowered to the extent possible. And that as much of the revenue and as much of the expenditure that Dams Safety NSW get through across a period is focused towards safety outcomes and compliance as opposed to, I don't know accommodation or things along those lines. Like, obviously, everybody's got to be comfortable. But yeah, I think something just to ensure that there's at least visibility of that sort of proportion.

And the other one, and it's something that I've kind of seen generally in organisations is the degree of leverage. So if we get through this big push in terms of compliance, and the work dries up, or things get, you know, de-declared, and the revenue drops. If everybody's on permanent full-time, things get a little bit difficult in terms of lowering costs to match the workload or the income. So they were just a couple of things that I was thinking of that might be might be prudent in terms of measures.

Andrew Nicholls (IPART): Right. Thank you, Stephen. I think your first comment was consistent with some of the themes that we're hearing, and certainly on your second comment, one of the reasons we've recommended a performance review and further reviews to ensure that the efficiency question remains, amongst other questions around performance. Very valid points. Did anyone in the team want to comment on any of those 3 points or issues? Otherwise we'll take those as comments.

Great. Thank you very much, Stephen. Appreciate your reflections on those issues. Meredith Macpherson dropped a comment in the chat when it wasn't showing up for all of us. Which is there about the Productivity Commission. Meredith, are you online? And would you be happy to speak to your point? Otherwise I'm happy to read it out.

Meredith Macpherson (Central NSW Joint Organisation): Yes, certainly. I don't think I need to read it out. I think it's been reflected by Leonie, James, and Stephen. I think it's the common theme that you're hearing. But I will just say I represent Central NSW Joint Organisation of Councils. We have a lot of dams across our membership. And just, I'm very alive, having been through the NSW Productivity Commissioner's review process in recent weeks to the full extent of the challenges that we're seeing in our regions, particularly in some of our more regional and remote councils. And I think your other speakers have picked up on the issues of passing those costs onto our rate base, which is small. And I don't think I need to labour that any further. But thank you for the opportunity.

Andrew Nicholls (IPART): Right. Thank you. Appreciate it. Any other questions or comments, either from the floor. Any of the issues that we've raised today. James?

James Ogg (Inner West Council): Thank you again. My comments before were general. So it's more specific question in terms of the how are the levy designs and the effort, the equal effort, and the variant effort. Once looking at it, taking a bit of time to try and interrogate that a little bit more, and it's things like responding to incident reports which are considered to be equal effort across the consequence categories. But your extreme dams are likely to create more incidents as an example. Yeah, or you know, declaring dam mining notification area, you know, again some mitigation dams aren't going to have a mining notification area.

And so there's some costs which appear to have been attributed to equal effort, or some ones which would appear to have more effort for an extreme dam or a high dam compared to low dam. So can you go into more about how that was devised?

Andrew Nicholls (IPART): Matt, or consultants, or?

Sean Crees (FTI Consulting): Yeah, I can talk about the process. So James, in terms of the way it was undertaken, is we first of all sat down with Dams Safety and tried to get an understanding of activities they undertook as a starting point. And then we basically by interviewing them in their executive team to say, okay, well are there, first of all, any differences in the effort required to undertake those activities, and if there are differences in that effort, what's the sort of ratio? So how much more effort is required? And why?

So we had a couple of sessions with the team at Dams Safety to understand that, and then use those results in our final report. So that was a process that we undertook. We had the discussions with Dams Safety. Chris might be better place to give you his view from Dams Safety's perspective. But from our perspective we sat down with them in a discussion and tried to understand where you are coming from and so forth'

Chris Salkovic (DSNSW): Yeah, look, I missed part of James' question so just trying to understand. So you're saying you would have thought some extreme category dams would have attracted more effort on some functions.

James Ogg (Inner West Council): Yeah. So under the effort ratio being equal, regardless to consequence, the idea of responding to incident reports or declaring dam mining notification areas. That they, to my understanding, would be not equal to all dams. They would be unique, depending on what the sort of dam is. Particularly incident reports where an incident at an extreme dam might have a greater consequence, and is likely to need a more urgent response, or an extreme dam is likely to have more incident reports than a low consequence dam. And so currently, that cost has just been put across equally. So there, there's some of these costs that seem to be attributed equally.

Chris Salkovic (DSNSW): Yeah, thanks. With respect to incidents, there's not a high number of them. And you know, over the past 2-3 years, I don't think we have any evidence to say that you know a category attracts more than others. We're not seeing that. So that's probably why that has been spread.

James Ogg (Inner West Council): Good! Good to hear there's not many incidents. Thanks for that feedback.

Chris Salkovic (DSNSW): Yes, that's right. Yeah. Oh, look sorry you're just glitching a bit. There, I think I'm catching what you're saying. With respect to the mining notification, again, that's yeah. Mining notification areas are declared in places where it's more likely for mining to occur. So yeah, again, I'm not too sure of how that sort of spreads across the different consequence categories. I don't have a handle of that. But again, we've just looked at the efforts that that we've put in to date. On mining notification declarations and work around there, and it must have sort of equally spread across different consequence categories. That's how we would come to that conclusion.

Andrew Nicholls (IPART): Thanks, Chris, and thanks, James. For certain James we will take on board your feedback about just questioning those, and we'll certainly have a look at those, and they're the sort of things that we'd also be considering in future reviews, too, as costs unfold. But thank you, James for that comment and the responses from Sean and Chris.

Were there any other comments on that point, or any other questions people would like to raise? While we're on that point I can ask maybe a question to lead something around your views on the way that we've applied those indirect costs on the same ratio based on those consequence ratings. Does anybody have a view around whether that seems to be a sensible way of applying the indirect costs?

Any questions or comments on that issue or any other issue as you've listened to the presentation today. Stephen?

Stephen Pemberton (Wollongong City Council): I've got one trivial thing that there's probably not an answer to today, but just for consideration. We've got a couple of dams that we've got new dam break studies for, and the consequence categories come back from like significant to very low on account of the method that's been applied in the thing. Our experience previously is it can take some time for Dams Safety NSW to formally de-declare a dam through a Gazette. So what, I suppose my question is, how would the levy apply in that scenario where potentially we had something that was significant consequence category, we've applied for it to be de-declared but it doesn't get de-declared and then when we get to 1 July, and then the levy applies. Would we still have to pay the full amount, or would there be some other arrangement? So anyway, that was just a bit of a comment. Food for thought.

Andrew Nicholls (IPART): It may fall in the category of food for thought about the implementation of the levy as opposed to the calculation of it. I think certainly it's a valid question. Obviously, if dams are either being commissioned or decommissioned, there's an important question about kind of when the start and end dates apply. I suspect that's in the category of implementation. But again, very happy if anybody wants to take that point on. I see, Darryl, you've got your hand up. I'm not sure if you're on this point or on another.

Darryl Biggar (IPART): I'll let you finish on this point first.

Andrew Nicholls (IPART): Right? Okay, is there anyone else who wanted to comment on that? Are we happy to take that as an issues log item for implementation. James, are you on this topic?

James Ogg (Inner West Council): Yeah, yeah, just on this one. Say, I suppose with the indirect costs. That's probably the one from our perspective that... I'm just trying to word it right. That would seem to be part of the cost of doing business for Dams Safety NSW trying to shift the sort of corporate work, and the State Government has decided we need a body to do this.

This is probably the component of it that would be most considered to be a cost shifting from the State Government to Local Government. You know the indirect cost of corporate support, IT systems and that sort of stuff that's part of the cost of doing the business for the agency that the Government has decided to create, and so to ask for some of the other factors, I agree, can be helped in response to assets that agencies have decided to put into place, but to shift the indirect costs of that \$1.4 million is more of a cost shifting from State to Local Governments or other agencies.

Andrew Nicholls (IPART): Thanks, James, happy to take that on as a comment. Unless anyone has any further questions or comments on that point? If not, I'll throw to Darryl Biggar, one of our Tribunal members.

Darryl Biggar (IPART): Thanks, Andrew. I just wanted to go back to the topic that we were discussing a bit earlier about flood mitigation dams, and I'd like to understand a little bit better how a flood mitigation dam works. Is it the case that a flood mitigation dam is empty most of the time, and only fills during a flood event? And if I've got that right, does that mean that a flood mitigation dam, which is classified as a high consequence dam is only going to have those high consequences when it's full? Is that right? And the consequences, are they more severe than if the flood mitigation dam did not exist to prevent the flood in the first place? So if anyone could answer those questions that would be great.

Andrew Nicholls (IPART): Thanks, Darryl. Well, Leonie's jumped in with a hand up. So I'm assuming you're having a first go at answering that one, Leonie.

Leonie Gray (Fairfield Council): Yes, so I'm the manager of the catchment team in Fairfield Council, so that's what we do - its flood mitigation. Yes, so most of the time these flow mitigation dams are dry, detention basins. So it's only when we get significant rainfall that they might start to fill up. So you're right, it doesn't have consequences unless we've had a rainfall event.

Now, the reason why they're there in the first place, is to reduce the amount of flooding downstream, so that there's less water over the land than what would have naturally occurred. So, but how it does it, it kind of fills up. We always say it's like a bathtub, so the water fills up with the rain, and it has only a small outlet like the drain from a bathtub, and if you have the tap on really hard, you can still fill up the bathtub, but eventually it will all disappear, and that's how flood detention basin works. So if it failed though, it's likely that it would spread out further than if it wasn't there in the first place.

Andrew Nicholls (IPART): Yep. Got it.

Leonie Gray (Fairfield Council): Does that make sense? Darryl.

Darryl Biggar (IPART): Yeah, that's very helpful. Thanks.

Leonie Gray (Fairfield Council): No worries.

Andrew Nicholls (IPART): And showing my ignorance on these things - do dams neatly fit into both categories, or do some dams get used for both flood mitigation and water. Graeme? Not sure if you're answering that question or raising another point?

Graeme Mellor (Wingecarribee Shire Council): Oh, it's actually more in support of what Leonie and Darryl have said. We have a storm basin that's you know, a flood dam that's being built right now, and a couple of years ago in the storm, driving through the junction that that space and now protects, you know my car nearly got washed away. So I very much support what Darryl's raising, which is that when the dam isn't in use it isn't a risk, and, like Leonie says, you know, it goes up, and it mitigates that peak, and if it fails at peak there would be a say, high consequence.

But Darryl's got a point that if you're going to look at risk, it's also about exposure and percentage of time that you're exposed to that risk and effectively you're exposed only for the peak of the storm. And it is about greater good, because obviously, that it's lopping by that dam is actually saving a lot of properties from being flooded, because, as you probably know, from Bowral on the weekend, as a river runs all the way through it, that river a couple of years ago completely cut Bowral in two, because all of the roads were flooded, including, you know, the one that the storm basin now protects particularly. So it might be a high consequence dam at its peak, when it's full, in a storm. But that's not really representative of most of the time that it's protecting the township and the population.

So I don't think it's necessarily the same, as I'll say, to water supply dams, which are mostly full, with 2000ML of water behind them, hopefully from a water supply perspective all the time. So it's an inverse arrangement. We're wanting water supply dams to be full, and therefore you have risk, whereas the storm basin you're wanting it to be, most of the time, it's going to be empty. So I just wanted to support really what Leonie and Darryl said, rather than answering that question.

Andrew Nicholls (IPART): That's good. Thank you. Thank you, Graeme.

Chris Salkovic (DSNSW): I might add to them, if I can.

Andrew Nicholls (IPART): Chris, yeah.

Chris Salkovic (DSNSW): So there are 2 methods to work out a consequence category of a dam. One's called the 'population at risk' method where you just draw a big already polygon around the potential population of risk and the other is 'potential loss of life'. And it's the potential loss of life method that takes into account a time exposure weighted value.

So we, you know, you might have a dam that might have, you know, a 0.6% loss of life, because there might be, you know, some itinerants or bushwalkers walking downstream. So I'd encourage owners of flood mitigation dams if their dam is just categorised based on a PAR [population at risk] method to look at the alternate method of a time-weighted exposure, which *may* drop the consequence category of a dam.

Andrew Nicholls (IPART): Good. Thank you, Chris. Any other comments on those points and those queries raised by Darryl? Thank you for those questions and responses. Any other questions or comments on these or any other issues that have been raised?

Anything about the cost recovery model that we haven't considered yet, or should consider? This is your chance before we wrap up the hearing today. Anything that you've read in the in the report that you've got a query about, or would like to raise? James?

James Ogg (Inner West Council): So sorry just moving to a place with better bandwidth. I suppose going back on that previous comment from Chris's about reviewing the consequence. I just had a quick look at what we are classified as, or what we'd be up for in terms of relative where the fine, or the levy, that would be passed to Inner West Council would be based on a high, a high C consequence, which is sort of the lower side of the high. But that's based on when the dam is full. I think in our in the previous dam safety reports we've done, we're currently updating it. But going back to the previous one, we're a low risk when the dam is empty. But yeah, that doesn't hold any water at that time. So that's part of why we're trying to review it.

But under the list of proposed levies we would be charged as a high consequence dam, when most of the time it is a low risk, because it's an empty sports field most of the time, apart from when being full. So the levy is currently being applied, based on that upper situation as it's been drafted. So at minimum, we should be looked at by the sunny day category, which is the term in that current report that we're updating like the sunny day consequence rather than the when full consequence.

Andrew Nicholls (IPART): Great. Thank you, James. Any comments or questions, Carmel? You've got your hand up. Yeah?

Carmel Donnelly (IPART): And it was on this and also on the issue raised by James and also, Chris, your comments. It strikes me that if the draft methodology is looking at consequence rating, but there are in fact 2 alternate methods that can be used to produce that rating, one of which is more time weighted - that we might need more information about that, Chris, from yourselves. And to think about whether, if there are incentives for councils in particular, say in the way that James is talking about, to look at whether or not they have the appropriate consequence rating method that they've used. They might have a more intermittent you know, or variable level, of consequence, particularly for the flood mitigation dams.

Then we may need to know more about that before we produce the final report. And to also understand whether or not there needs to be some modification to the classification that we use. So we'll think about that as well. But I'll just foreshadow to everyone I guess, I'm going to ask some questions a bit to seek some more information about that and if you've got more information, you might be on standby to hear from us. We'll seek some more information. So thanks very much, I'm glad that issue has been raised.

Andrew Nicholls (IPART): Right. Thank you, Carmel. All right. Any other comments or questions that anybody would like to make? I think we've had great input from many people who are here at the workshops we've been running. And I think that's reflecting in this now shaping up into something where we're really getting quite sharp on what we think the issues are that we need to address. And so I thank you for all of those comments today. But are there any others that we should be thinking about as we move to review the draft report?

This is your opportunity to raise those now. If not, going, going, gone. All right. Well, we might wrap up the Q&A session on that point, and I thank you all for those great contributions. Certainly they'll be very helpful for us in the work that we need to do now in reviewing that draft report, and as Carmel has foreshadowed, certainly that may lead us to do some follow up in a number of areas.

So thank you again for your views today. I'll hand back now to IPART's Tribunal member who's leading this particular review, Jonathan Coppel, to close the hearing out.

1.4 Closing remarks

Jonathan Coppel (IPART): Thank you, Andrew. Yes, on behalf of IPART, I would like to thank you for your questions, and feedback. It has certainly been very useful for us to hear your views today.

If you want to review what's been said today, or share it with any other stakeholders, we will be publishing a summary of the discussions at this hearing along with our presentation slides. And this summary will be available on our website in the next week.

Also a reminder that submissions to our draft report are due by 19 August and we certainly encourage you to make a submission.

Then we will consider everything that's been said today, along with those submissions, as we prepare our final report, which will be published in late September. If you'd like to talk to someone at IPART about our Dams Safety Levy Review, you're welcome to contact Xanthe Smith or Rhea Rachel, whose contact details you can see on this slide.

We hope today has been as helpful to you as it has been to us, and once again I thank you for your for your contributions.

I now formally close the Public Hearing. Enjoy the rest of your day. Thank you.

[End of Public Hearing]