

IPART 2019

Sydney Water Operating Licence

Submission on the Draft Sydney Water Licence and Customer Contracts

Dr Peter Coombes, Urban Water Cycle Solutions, Fellow of Engineers Australia,
Deputy President of Stormwater Australia and Member of AWA Water Efficiency
Specialist Network

Michael Smit, Kingspan Water and Energy, Member of Rainwater Harvesting Australia,
Stormwater Victoria and AWA Water Efficiency Specialist Network

Stormwater Management Licence provisions

Urban Stormwater Management within Greater Sydney

Provision of urban stormwater services in 2019 is no longer solely a consideration of drainage infrastructure provided by local government and mitigation of flood risks. Stormwater management is now intrinsically linked to water cycle management that is part of complex urban systems with solutions at multiple scales from local to region.¹ Stormwater management is also crucial for protection of waterway and river health, and subsequently for coastal and beach water quality. Stormwater management also incorporates the objectives of improving the liveability and amenity of urban areas.

A well-documented risk arising from climate change and population growth to Australian urban areas (ARR 2018) is flooding from more intense rain events falling on increased areas impermeable surfaces in urban areas.² While an assessment of changing flood risks due to increased impermeable surfaces and more intense rain events might have been done within some parts of Sydney the increased potential for widespread flooding across municipal boundaries is an unknown quantity. A primary requirement for risk management is an accurate risk assessment. Despite this, there appears to be a vague and shared responsibility between Sydney Water and various local governments around a narrow definition of stormwater management in their respective operational areas. There is no defined overarching and comprehensive stormwater regional management strategy and governance in regulations or legislation for the Greater Sydney region.

Regulation

The Coalition of Australian Governments (COAG) water reforms influence the direction of state water policies and regulation. The 1994 COAG water reforms motivated creation of the Water Management Act 2000 (NSW) which includes the key elements of water reform such as the principles of catchment management, water rights and economic efficiency. In 2004, COAG agreed to a National Water Initiative (NWI) and external affairs powers were utilised to provide the Water Act 2007 (Cth). This commonwealth action motivated changes in the Water Management Act 2000 (NSW) including

¹ Coombes P. J., Status of transforming stormwater drainage to a systems approach to urban water cycle management – moving beyond green pilots, *Australasian Journal of Water Resources*, 22(1), 15-28, 2018

² Coombes P. J., Roso S., Editors, Book 9: Runoff in Urban Areas, *Australian Rainfall and Runoff*, Commonwealth of Australia (Geosciences Australia), Australia, 2018

changes implemented via the Water Management Amendment Bills 2010 and 2014 (NSW). The prioritisation of principles for water sharing plans has a context with development of the National Water Initiative (NWI) and strongly influenced the Water Management Act 2000 (NSW).

The judgement in *Nature Conservation Council (NSW) Inc v Minister administering the Water Management Act 2000 (WMA)* included a finding by Chief Justice Spigelman of the High Court of Australia that the intention of sections 5 and 9 of the WMA is that decisions about water sharing plans should prioritise protection of water sources and dependent ecosystems over any other right to extract water. This ruling provides for an increased legal status for protection of waterways and dependent ecosystems in the operation of water plans. Both the Water Act 2007 (Cth) and WMA include the principles of ecological sustainability that requires ecological, social and economic outcomes.

IPART

The Independent Pricing and Regulatory Tribunal (IPART) is responsible for regulation of water and sewerage services from a declared government monopoly service provider. These government monopoly services also include provision of drainage services “if required” and provision of other water supply, sewerage and drainage services where no alternative supply exists. The activities of IPART are affected by the WMA and, over time, changes in Commonwealth water management legislation. Action by IPART to fully include stormwater management in the pricing mechanisms for government water monopolies and local government is required to ensure the full value of stormwater management is incorporated in water utility business cases. The inclusion of non-market values and values accruing to other government entities such as Local Government in the IPART decision making framework would also provide more certainty for stormwater management business cases and associated benefit cost analysis to derive Pareto Optimum outcomes for whole of society. There is a need for changes in water law and regulatory interpretations towards full inclusion of alternative water sources and stormwater management in pricing determinations which incorporate more holistic assessment of whole of society value.

Sydney Water Operating Licence

This Licence authorises and requires Sydney Water to provide, operate, manage and maintain a Stormwater Drainage System as described in section 14(1)(b) of the Act, except to the extent that the Minister is satisfied under sections 14(4) and 14(5) of the Act that satisfactory arrangements have been made for the applicable Service to be provided by another appropriate body.

This submission does not intend to provide legal advice but raises a principle of good governance and the need for framework of governance for stormwater management that combines the roles of Sydney Water, Water NSW and local government. There is evidence that there are important stormwater management issues requiring attention in the Greater Sydney region. The IPART draft report on the Operating Licence noted that no other submissions were received on this issue.

We recommend that IPART consider the need for stormwater management in Sydney Water Operational areas. This consideration should go beyond the financial viability of Sydney Water and consider the wider community costs and benefits.

We request IPART consider the need for a strategic framework for stormwater management in Sydney with binding requirements on Sydney Water, or make recommendations for an alternative arrangement that will meet important community safety and sustainability issues.

