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Dr Peter J Boxall AO
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Dear Dr Boxall

I am pleased to provide the NSW Government's submission to the Independent Pricing and Regulatory Tribunal's (IPART) review of the Sydney Water Corporation operating licence.

The Government recently approved significant reforms to improve Sydney's urban water policy and planning framework. The NSW Government submission proposes licence amendments to require Sydney Water to implement those aspects of the reforms that relate to Sydney Water. In addition, the government is also proposing licence amendments to align future licence and price reviews, re-invigorate Sydney Water's water conservation programs and implement a new customer engagement model to improve outcomes for Sydney Water's customers.

I recommend that IPART continue to liaise with my Department to assist it with developing the proposed licence amendments. Should you have any questions regarding this submission, please contact Ms Prue Gusmerini, Director Water and Utilities, Department of Planning and Environment on [REDACTED].

Yours sincerely



Don Harwin MLC

Leader of the Government in the Legislative Council
Minister for Resources
Minister for Energy and Utilities
Minister for the Arts
Vice-President of the Executive Council

Date: 27 August 2018

Encl. NSW Government's submission to the Independent Pricing and Regulatory Tribunal's (IPART) review of the Sydney Water Corporation operating licence



NSW Government Submission

Review of the Sydney Water Corporation Operating Licence

7 September 2018

Table of Contents

Page

Introduction.....	3
1. Department of Planning & Environment.....	4
• Part A – Responses to issues raised in IPART's Issues Paper.....	4
• Part B - New issues to align with improved urban water policy and planning framework for Greater Sydney	12
2. NSW Health.....	15
3. Environment Protection Authority/Office of Environment & Heritage.....	18
4. Fire & Rescue NSW.....	22
5. Office of Emergency Management.....	26

Introduction

This is the NSW Government's submission on the *Review of the Sydney Water Corporation Operating Licence – Issues Paper 2018*.

It includes contributions from the Department of Planning & Environment (DPE), NSW Health, the Environment Protection Authority (EPA), the Office of Environment and Heritage (OEH), Fire & Rescue NSW (FRNSW), and the Office of Emergency Management (OEM) which is part of the Department of Justice.

The submission is structured in five sections, with DPE's contribution in section 1, NSW Health's contribution in section 2, a combined response from EPA and OEH in section 3, FRNSW Response in section 4 and OEM in section 5.

DPE's contribution is structured in two parts, Part A and Part B. Part A provides DPE's responses to a number of the issues the Independent Pricing and Regulatory Tribunal (IPART) has raised in its Issues Paper. Part B addresses DPE's proposals for new licence obligations in relation to implementing the recent government decision to improve Greater Sydney's urban water policy and planning framework.

1. Department of Planning & Environment

Part A – Responses to issues raised in IPART's Issues Paper

Licence context and authorisation – Term of Licence

IPART's view

Currently, Sydney Water's operating licence (licence) is issued for a period of five years, and IPART sets water prices for Sydney Water every four years. IPART's view is that the licence term should be five years because that is the maximum duration permitted under the Sydney Water Act. IPART will consider different price determination durations in its next Sydney Water price review, including options to avoid concurrent reviews in 2023-24.

Sydney Water views

Sydney Water has indicated that it supports retaining the current five-year licence term, with future licences to be renewed two years prior to each pricing determination. Pricing determinations are currently on a four-year cycle.

To achieve a consistent term for the operating licences and pricing determinations with a two-year gap in between, the next licence term should be four years from 1 July 2019 to 30 June 2023. It should then revert to five-year licence terms from July 2023 onwards. The next price determination will begin on 1 July 2020 for a period of five years, followed by the subsequent price determination from 1 July 2025 to 30 June 2030 (the relationship between licence renewals and price determinations is illustrated in Figure 1 below).

DPE response

Q7. Do you agree with our preliminary view for a 5-year licence term? Do you have any views regarding the sequencing of licence and price review cycles?

The Department of Planning and Environment (DPE) agrees that the licence should be issued for a term of five years. Five-year terms balance the need to provide regulatory certainty to drive efficient capital and operational performance against the need for flexibility to respond to changes in the water sector.

DPE notes that licence issues that need to be addressed during the term of the licence can be dealt with through a licence amendment. Under the *Sydney Water Act 1994 (NSW)*, the portfolio Minister can modify the licence at any time subject to the approval of the Governor.

Price determinations should closely follow a licence review to allow Sydney Water to calculate the costs of delivering its licence obligation and for those costs to form the basis of its price submission. This will see Sydney Water's prices accurately represent its obligations under the operating licence and enable Sydney Water to recover its costs in a timely manner.

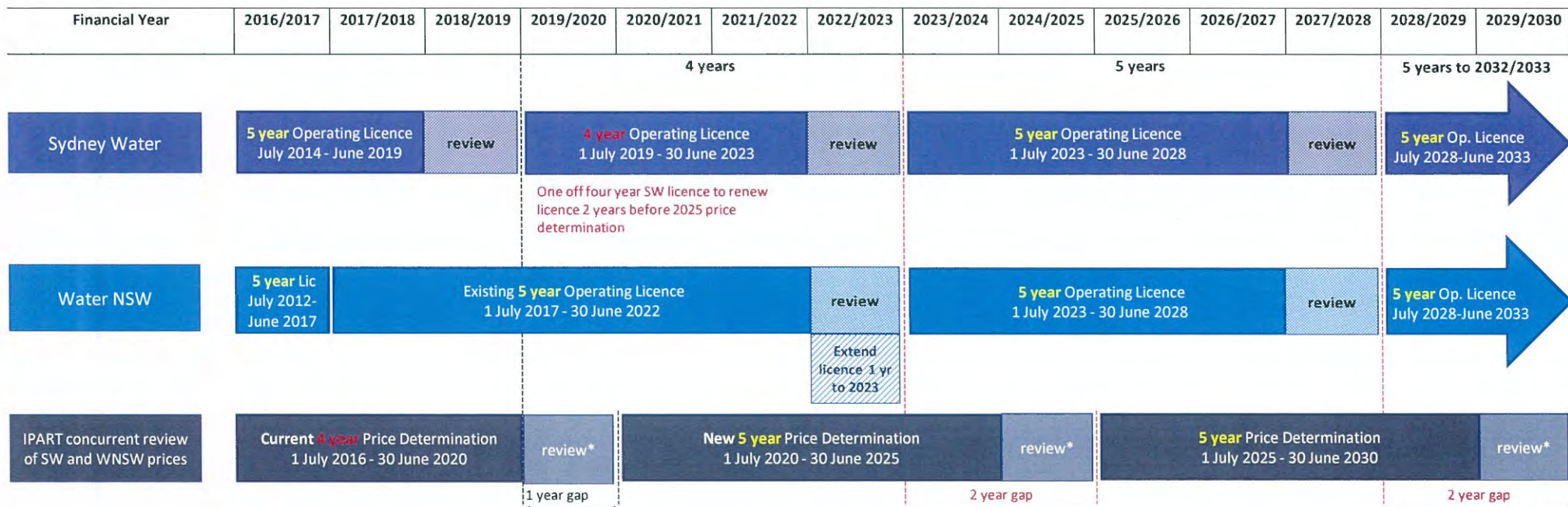
In theory, the time between a licence review and a price determination should be as short as possible, however in practice the time between reviews will need to balance the requirements of Sydney Water and IPART to undertake a price determination following a licence review. Therefore, DPE supports Sydney Water's preference for price determinations to occur two years after operating licence reviews.

Although outside the scope of this review, DPE suggests that the term of WaterNSW's operating licence be aligned with the term of Sydney Water's licence. The current WaterNSW licence expires in June 2022 and could be extended by one year to align with the Sydney Water licence term (see Figure 1). Aligning the licence terms will allow government to better implement operating conditions for water planning and infrastructure investment in a more holistic and integrated way across the two utilities. It also allows for anticipated efficiencies arising from such an approach to be passed onto customers in a more timely and transparent manner.

Similarly, DPE seeks that IPART consider aligning the operating licence and price determination reviews for the Sydney Desalination Plant (SDP) with the Sydney Water reviews. There are some important dependencies between Sydney Water and the SDP, and the prices charged by SDP have a flow on effect to Sydney Water prices. Aligning the SDP and Sydney Water reviews could improve the operating and pricing arrangements between the two utilities.

DPE notes that against these potential benefits IPART will need to consider the practical implications in undertaking and delivering aligned operating licence reviews and price determinations across Greater Sydney's water utilities.

Figure 1



Inconsistent time period for licence reviews and price determinations

Licence reviews aligned 2 years before price determination

Alignment allows for operating licence obligations to be included in next price determination



IPART review of Sydney Water operating licence - 1 year



IPART review of WaterNSW operating licence - 1 year



Extend WNSW licence 1 year to put its licence review on same cycle as Sydney Water licence review



*IPART review of Sydney Water and WaterNSW prices held concurrently. Both price determinations in place for the same period.

Water industry Competition (WIC) Act licensees

IPART views

IPART notes that Sydney Water's current licence only requires Sydney Water to provide drinking water and sewerage services to properties in its area of operations. This means that Sydney Water is required to provide those services to property owners, but not to WIC Act licensees who do not own the properties they service.

IPART states that when WIC Act licensees deal with Sydney Water, the absence of minimum service standards and customer protection measures, as well as insufficient information, can act as non-price barriers to competition.

To minimise these barriers, IPART has identified four options for including additional obligations in Sydney Water's operating licence, as follows:

1. To provide services to WIC Act licensees without specifying service standards;
2. To provide services to WIC Act licensees at minimum service standards;
3. To negotiate services with WIC Act licensees, supported by a dispute resolution process if negotiations fail; or
4. To provide services to WIC Act licensees at minimum service standards and an obligation to negotiate with WIC Act licensees.

IPART is seeking information and comment from stakeholders, particularly WIC Act licensees, to guide further consideration of these options.

Sydney Water views

Sydney Water has indicated that it has no objection to including an obligation to provide services to WIC Act licensees in its operating licence. However, it considers that minimum service standards and an obligation to negotiate could restrict commercial negotiations with WIC Act licensees, and negotiation protocols do not seem necessary given that Sydney Water has only had to negotiate service arrangements with four WIC Act schemes to date. Nevertheless, Sydney Water has indicated it is exploring how it could provide further information to new market entrants if required.

DPE response

- Q10. Should Sydney Water be obliged to provide water and sewerage services to WIC Act licensees? What would be the long-term benefits to end-use customers?
- Q11. What are your views on imposing licence obligations on Sydney Water to service WIC Act licensees or potential competitors, such as specifying minimum service standards, prescribing a negotiation process with or without a dispute resolution process, and requiring Sydney Water to disclose certain information? What are the long-term benefits to end-use customers?
- Q12. What are your views on the four options presented in the Issues Paper to include a new obligation on Sydney Water to provide services to WIC Act licensees and the evaluation criteria to assess these options? Do you have any inputs relevant to our evaluation of options for licence obligations?

DPE supports including an obligation to provide water and sewerage services to WIC Act licensees within Sydney Water's area of operations in Sydney Water's licence. Such an outcome would be consistent with Hunter Water's operating licence. DPE also supports, in principle, IPART's examination of the costs and benefits of additional licence obligations, such as minimum service standards and dispute resolution processes. However, WIC Act licensees may prefer to leave such matters for negotiation with Sydney Water, so their feedback will be key.

There is also merit in considering requirements for Sydney Water to make more information available to new market entrants. However, IPART and the government should await feedback and information from stakeholders as part of the consultation process before further considering the options identified in the Issues Paper.

DPE notes that consideration of these matters must focus on providing for a level playing field to promote, not mandate, contestability. Sydney Water needs to balance the needs of all customers, regardless of whether they are WIC licensees or Sydney Water's customers.

Water Conservation

IPART views

IPART proposes removing the specific water conservation targets in the existing licence.

IPART also proposes retaining existing methodology for determining the economic level of water conservation (ELWC), which is set under the licence. IPART also proposes that Sydney Water will no longer require IPART's approval to amend the methodology.

Sydney Water views

Sydney Water has indicated that it would support maintaining the ELWC methodology, with a requirement to review the methodology during the next licence term. Sydney Water would also support the proposed removal of IPART's approval for changes to the methodology.

DPE response

Q14. Do you agree with our preliminary view to maintain the requirements to implement and report on water conservation program consistent with its economic level of water conservation in accordance with the ELWC method, but to remove fixed targets for water usage and water leakage (which were phased out in the existing licence term) and remove the obligation for Sydney Water to notify and obtain IPART's approval of any proposed significant change to the ELWC method? Should the licence contain any additional obligations relating to water conservation activities?

DPE supports retaining water conservation obligations in the licence. However, it proposes replacing the current obligations with alternative obligations.

The intention of the ELWC methodology is to provide a level of water conservation that responds to the value of water, of which dam storage levels and water demand are key factors.

The ELWC was an important step in assessing cost-effective conservation measures for Sydney Water to implement. While this is a prudent approach, DPE's view is that there are opportunities for improvement.

In particular, DPE seeks to ensure that water conservation measures are assessed against both the short-term cost of water and the long-term cost of water (that takes into account the cost of augmenting water storages to meet Sydney's long-term water needs). Measures that can cost-effectively defer the need for investment in new water infrastructure should be also be assessed as part of the approach to water conservation.

DPE's view is that these objectives can be delivered by using the MetroNet model in place of the ELWC. MetroNet analyses and compares different supply augmentation and water conservation options to decide the optimal mix of measures that will ensure Greater Sydney has a secure and reliable water supply at least cost over time.

DPE notes that modelling of a full range of supply augmentation and water conservation options will be an integral part of the development of a 2020 Greater Sydney Water Strategy.

As such, DPE proposes that until the full range of water conservation options are modelled through this work, Sydney Water continues to use the existing ELWC method to determine the water conservation programs it undertakes. DPE and Sydney Water will work together during the term of the licence to agree on the timing and process to phase out the ELWC.

Concurrently, Sydney Water should work closely with DPE to develop a full portfolio of water conservation measures so that DPE can assess (using Metronet) the costs and benefits of implementing any of these measures prior to 2020.

▪ **Proposed Licence Amendment**

DPE proposes that Sydney Water's operating licence be amended so that:

- i. the ELWC methodology be retained in the licence for Sydney Water to determine the water conservation programs that it undertakes, until the transition to the MetroNet modelling approach is implemented.
- ii. Sydney Water is required to develop a full portfolio of water conservation measures and provide them to DPE to model for the 2020 Greater Sydney Water Strategy, and for DPE to determine (in consultation with Sydney Water) whether any of those measures will be implemented prior to 2020.

Priority Sewerage Program

IPART views

The Priority Sewerage Program (PSP) is a government program that started in 1997 to service unsewered areas. The areas listed in Schedule 3 of the licence remain unsewered. In 2015, IPART recommended that the government undertake a review of the PSP to determine if remaining schemes are still a priority and, if they are, the timing, the form of delivery and funding for such schemes. That review has not occurred. IPART is seeking stakeholder views on whether to maintain or remove the PSP obligations from the licence.

Sydney Water views

Sydney Water has indicated that it prefers to remove Priority Sewerage Program obligations from the licence.

DPE response

Q21. What are your views on maintaining or removing the existing obligations on Sydney Water regarding the Priority Sewerage Program?

DPE proposes to maintain the current Priority Sewage Program obligations. Information including urban growth and development forecasts relevant for Austral, Menangle and Menangle Park, and planning work to connect Yanderra is now available to government to inform a review. In relation to Scotland Island, the Northern Beaches Council has been funded to undertake a commercial feasibility study for the supply of water and wastewater services to Scotland Island.

Customer Council

IPART views

IPART's view is that customer engagement obligations in the licence should be outcomes focussed rather than set prescriptive customer engagement requirements. This will ensure that Sydney Water engages more effectively with its customers. The licence obligations for the Customer Council should enable Sydney Water to effectively engage with its customers in ways that are relevant, representative, proportionate, objective, clearly communicated and accurate.

IPART proposes amending existing obligations on the composition of the Customer Council to require experts in customer engagement. This will enable Sydney Water to engage in a way that represents its entire customer base including groups or individuals with diverse views.

Sydney Water views

Sydney Water has indicated that it supports outcomes-based obligations, and that the current Customer Council obligations are overly prescriptive. It prefers generic obligations to maintain an advisory council with members to be determined by Sydney Water. Sydney Water would seek advice from the council on key issues related to its planning and operations, including customer engagement strategies.

DPE response

Q30. Do you agree with our preliminary view to remove prescriptive obligations and replace them with outcome-based obligations?

DPE supports IPART's proposal to replace the existing prescriptive obligations with outcome-based obligations that focus on improving the effectiveness of Sydney Water's customer engagement.

In its Issues Paper, IPART discusses the customer engagement model adopted by Ofwat, the economic regulator of the water sector in England and Wales. DPE supports Sydney Water and IPART considering a similar model for Sydney Water's licence. If Sydney Water and IPART believe this model would enable Sydney Water to achieve more effective customer engagement outcomes, then DPE would support including obligations in the licence for Sydney Water to implement this type of customer engagement model.

Customer Challenge Groups (CCGs), which aim to deliver better customer engagement in the water sector, are a central feature of the Ofwat model. The CCGs are set up and maintained by the water utilities; operate independently of the utility; and have an independent chair. Ofwat requires the CCGs to provide a report on the effectiveness of their utility's engagement each year. Ofwat is also supporting the engagement model by providing advice and guidance to the utilities on effective customer engagement and ensuring that customer advice feeds directly into Ofwat's price determinations (see

<https://www.ofwat.gov.uk/regulated-companies/price-review/2019-price-review-final-methodology/customer-challenge-groups/>)

The key features of Ofwat's customer engagement model are:

1. Water utilities are responsible for engaging directly with their customers to understand their priorities, needs and requirements, and using this information to drive decision making and the development of the company's business plan.
2. Each utility must have in place, and support, an independent CCG.
3. CCGs independently challenge utilities and provide independent advice to Ofwat on:
 - the quality of a utility's customer engagement
 - the degree to which this is reflected in the utility's business plan.
4. CCGs are required to provide an independent report to Ofwat when utilities submit their business plans to Ofwat.
5. Ofwat has an active role in enabling and incentivising good customer engagement by the water utilities and in its own price determination processes.
6. Ofwat has released a 'Customer Engagement Policy Statement and Expectations' document for its 2019 price review. This includes a set of guiding customer engagement principles for the utilities to follow.

▪ **Proposed Licence Amendment**

DPE proposes that IPART develops a customer engagement model similar to that implemented by Ofwat, and requires Sydney Water to implement this model under its licence. To successfully implement this model, DPE notes that IPART will most likely need to oversee Sydney Water's customer engagement obligations and monitor how effectively it implements them.

Remove obligation for a protocol with DPE

IPART views

The existing licence includes an obligation for Sydney Water to maintain a roles and responsibilities protocol with the Metropolitan Water Directorate (MWD). The Water and Utilities Branch in DPE is now responsible for these functions previously undertaken by the MWD. IPART's preliminary view is to remove the existing obligation from the licence as the same outcome can be achieved without licence obligations.

Sydney Water views

Sydney Water has indicated that it supports removing the obligation to have a roles and responsibilities protocol with DPE. This is because other mechanisms are now in place to support co-operation and collaboration between Sydney Water and DPE (see below).

DPE response

- Q31. Do you agree with our preliminary view to remove the obligation for Sydney Water to maintain a cooperative relationship with the Department of Planning and Environment (DPE)?

DPE supports removing a licence obligation for Sydney Water to develop a roles and responsibilities protocol with DPE, as co-operation is being achieved through other mechanisms.

In 2017, as part of a new urban water governance structure for Greater Sydney, DPE established the NSW Water Coalition as the peak decision-making forum for Greater Sydney's urban water. The Water Coalition is chaired by the Deputy Secretary of DPE and includes the chief executive officers of Sydney Water, WaterNSW and the EPA. A senior officers group and a technical working group, with representatives from each of these agencies, have also been established to provide advice and information to the Water Coalition.

DPE and Sydney Water have also established several other co-operative working groups to address specific issues and develop collaborative responses.

Part B - New issues to align with improved urban water policy and planning framework for Greater Sydney

Obligations to implement urban water policy and planning framework for Greater Sydney

The NSW Government has recently made improvements to the urban water policy and planning framework for Greater Sydney. DPE is responsible for overseeing the new framework's implementation while Sydney Water is responsible for implementing several elements of the framework.

The improved policy and planning framework includes the following key elements:

- Sydney Water and WaterNSW to develop a joint integrated long-term capital and operational plan by December 2020, to be reviewed every 5 years. This is consistent with recommendation 92 of the NSW State Infrastructure Strategy 2018-2038, which requires Sydney Water to develop a 20-year strategic capital plan by April 2019.
- Sydney Water and WaterNSW to develop an integrated emergency drought response plan by December 2020, to be reviewed every 5 years.
- DPE to deliver a long-term water strategy for Greater Sydney by 2020 that sets out the NSW Government's long-term policy goals and strategic objectives for urban water over the next 20 years. The strategy is to be reviewed by 2023, and then at least every 5 years.
- a performance monitoring framework, developed by DPE, to ensure that Sydney Water and WaterNSW implement government policy in accordance with the government's long-term water strategy.

▪ Proposed amendment to operating licence

To deliver this improved urban water policy and planning framework, DPE proposes that Sydney Water's operating licence include new obligations for Sydney Water to implement elements of the improved framework. Specifically, these new licence obligations are that:

1. Sydney Water collaborates with WaterNSW to develop a joint, integrated long-term capital and operational plan. They are to submit that plan to the portfolio Minister by December 2020, and review that plan by December 2025.
2. Sydney Water collaborates with WaterNSW to develop an integrated emergency drought response plan. They are to submit that plan to the portfolio Minister by December 2020, and review that plan by December 2025.

DPE will seek corresponding amendments be made to WaterNSW's operating licence.

DPE anticipates further amendments may be required to both Sydney Water's and WaterNSW's operating licences to reflect the development of the performance monitoring framework, and where necessary the planning and policy framework.

Sydney Water to provide data to the Department of Planning and Environment

DPE is the NSW Government's lead policy development agency for meeting Greater Sydney's urban water needs. As part of its role, DPE carries out several functions that require detailed data about Sydney's water use, and water demand and supply forecasts. These functions include:

- water supply and demand forecast modelling that requires data inputs from Sydney Water and WaterNSW
- urban water policy and strategy development, including development of water conservation and demand management strategies
- developing performance monitoring metrics (as part of the new urban water framework) and monitoring Sydney Water's performance against the government's policy objectives.

To carry out these functions, DPE requires disaggregated water use data by sector types, industry types, dwelling types, end-use types, geolocations and time periods.

Currently, DPE has access to publicly available water usage data and forecasts that are aggregated for the Greater Sydney and Illawarra region. This data is not publicly available in a disaggregated format.

DPE proposes that Sydney Water provide disaggregated water usage and forecasting data to DPE if it requests these specific types of data within the required time periods.

To facilitate Sydney Water providing this data, Sydney Water and DPE are currently developing a data sharing agreement that identifies the types of data to be provided, the level of detail to be provided, arrangements for collecting new data, the format in which data is to be provided, and the mechanisms by which DPE will make the request and Sydney Water will provide the data. For privacy reasons, Sydney Water will not be permitted to provide any data to DPE that discloses personal information or any information that could identify individual customers. DPE will provide IPART with a copy of the data sharing agreement when it is completed.

■ Proposed amendment to licence

DPE proposes that the licence contain an obligation for Sydney Water to provide the DPE Deputy Secretary, Energy, Water & Portfolio Strategy, with specified water use and forecasting data within a specified time if it is required.

The period of time in which Sydney Water is required to provide the data must be reasonable. However, it must not be not less than 14 days from the date Sydney Water receives the request.

DPE may request, in writing, further information or details in relation to any data or information provided to DPE by Sydney Water under this obligation.

2. NSW Health

This section of the submission addresses IPART's questions that are relevant to NSW Health.

NSW Health supports the proposed changes for greater clarity in the licence and consistency with other major utility licence structures (questions 3, 5-9).

Q15. Do you agree with our preliminary views to:

- maintain the existing obligations for drinking water quality but remove duplication in the obligations?
- move the requirements in Appendix F (Health and aesthetic water characteristics and raw water operational characteristic) from the existing Reporting Manual to a reporting schedule under the Drinking Water Quality Management System required by the licence?

Q16. Do you agree with our preliminary view to maintain the existing obligations for recycled water quality but remove duplication in the obligations?

Duplication of obligations for drinking water and recycled water quality

NSW Health does not object to IPART's recommendation to remove the obligation that Sydney Water 'obtain NSW Health's approval for any significant changes' it proposes to make to its drinking water and recycled water quality management systems. NSW Health agrees that this could be captured by the obligation to fully implement this system 'to the satisfaction of NSW Health'.

NSW Health has a role to play in assisting Sydney Water to identify and manage public health risks associated with the supply of drinking and recycled water. NSW Health does not see itself as an approval authority, and generally has no statutory approval processes with respect to Sydney Water's drinking water and recycled water services. However, NSW Health expects that Sydney Water would consult on proposed significant changes to the drinking water and recycled water quality management systems. This is essential to allow NSW Health to confirm its satisfaction with how management systems are implemented.

In order for NSW Health to indicate its satisfaction with the implementation of drinking and recycled water management systems, NSW Health would require Sydney Water to:

- Regularly update the Joint Operational Group (JOG) on implementation of the management system and actions on the improvement register
- Demonstrate a record of consultation with NSW Health prior to the JOG
- Consult NSW Health on significant changes proposed to the management system
- Allow adequate time for consultation with NSW Health and incorporation of feedback prior to significant changes
- Implement a system of internal review of the management system with NSW Health involvement.

NSW Health will discuss these conditions with Sydney Water. They do not need to be included in the operating licence.

NSW Health does not object to IPART's recommendation to remove Sydney Water's obligation to notify IPART and NSW Health of any significant changes it proposes to its drinking water and recycled water quality management systems. This is already required by the Reporting Manual. IPART could assist NSW Health by requesting comments on Sydney Water's performance against the operating licence and Reporting Manual for operational audits.

NSW Health notes that Sydney Water has completed a review of its public reporting on drinking water quality. This requirement can be removed.

Reporting Manual Appendix F (Health and aesthetic water characteristics and raw water operational characteristic)

NSW Health understands it would be easier to update the list of monitoring characteristics if they were part of the drinking water quality management system. NSW Health notes IPART's comment (p20) that non-compliance with the Reporting Manual is non-compliance with a licence condition. The requirements for, or compliance with, water quality monitoring should not be reduced if the list of monitoring characteristics and frequency are moved from the Reporting Manual to the drinking water quality management system. NSW Health views water quality monitoring as essential to the satisfactory implementation of a water quality management system.

Potential duplication with the *Public Health Act 2010*

NSW Health is satisfied that Sydney Water's operating licence requirements are consistent with the requirements of the *Public Health Act 2010* (the Act) and Regulation and therefore appropriately manage the delivery of safe drinking water. Sydney Water previously requested and received an exemption from the Chief Health Officer from the requirements under section 25(1) of the Act and clause 34(1) of the Regulation.

NSW Health agrees that this exemption avoids regulatory duplication for the duration of the operating licence. NSW Health would consider continuing this exemption subject to the conditions specified in the exemption.

The Chief Health Officer may revoke the exemption if Sydney Water's implementation of the drinking water quality management system is not satisfactory. Additionally, the Chief Health Officer may revoke the exemption if the operating licence was amended in such a way that the requirements of the Act were not being met.

Q17. Given that the Fluoridation of Public Water Supplies Act 1957 and the Fluoridation of Public Water Supplies Regulation 2017 requires Sydney Water to fluoridate drinking water, what are your views on maintaining or removing fluoridation obligations in the licence?

NSW Health supports retaining obligations relating to fluoridation in the operating licence. NSW Health considers the licence to be the most appropriate mechanism to set out key Government requirements of public interest in a succinct and accessible form. NSW Health made the same recommendation during the 2014-15 review of the operating licence. NSW Health does not consider it necessary to add the proposed modification 'except to the extent

that NSW Health specifies otherwise' to the clause, as the Fluoridation Code already allows NSW Health to specify otherwise.

- Q18. Do the existing System Performance Standards measure the most appropriate and relevant service outcomes? Are they specified in the best way to provide cost-effective service outcomes?
- Q19. Do you agree with our preliminary view that we should use an economic approach to setting System Performance Standards that takes account of the value that customers place on the level of services?
- Q20. Given the obligation to report on response times on water main breaks and leaks appears in two separate parts of the existing licence, what are your views on removing licence clause 4.3.1 and consolidating the reporting requirement in clause 8.2.1 of the licence? What are your views on the usefulness of collecting information on response times for water main breaks and leaks?

NSW Health notes IPART's comment (p23) that 'customers' willingness to pay would be a key consideration in reviewing the System Performance Standards.' A safe drinking water supply is essential for public health and loss of service for extended periods may have health impacts. If System Performance Standards were set based on customers' willingness to pay, there is potential that different standards may be applied for different areas. IPART should carefully consider the rationale for this approach, particularly if the outcomes were health-related. NSW Health considers that there may be a risk if health standards are diminished.

- Q31. Do you agree with our preliminary view to maintain the obligation for Sydney Water to maintain cooperative relationships with NSW Health, the Environment Protection Authority (EPA) and the Water Administration Ministerial Corporation (WAMC)?

NSW Health supports the obligation to require a Memorandum of Understanding (MoU) with NSW Health. The MoU outlines the basis for the cooperative relationship between the organisations and has been revised as required over time. The MoU review is aligned to the operating licence review, which provides an opportunity to revise any relevant clauses.

- Q32. Do you agree with our preliminary view to maintain the existing obligations for operational audits?

NSW Health supports maintaining obligations for operational audits. IPART's audit process is well established and well regarded. IPART consults NSW Health for input into the audit scope and then, during the audit period, directly by IPART as required. NSW Health regards the audit process essential to ensure the ongoing adequacy of the recycled water and drinking water management plans and compliance with the *Australian Drinking Water Guidelines* and *Australian Guidelines for Water Recycling*.

- Q33. Do you agree with our preliminary view to maintain the existing obligations on reporting but consolidate these obligations in the amended licence?

NSW Health supports maintaining the reporting obligations and consolidation provided no obligations are removed. NSW Health considers reporting essential to the satisfactory implementation of a water quality management system.

3. Environment Protection Authority/Office of Environment and Heritage

The EPA has provided comments focused on issues relevant to environmental performance and on matters pertinent to the EPA's role as Sydney Water's environmental regulator. The EPA has not provided comment where it considers the existing operating licence is satisfactory or where IPART has proposed minor change with which the EPA concurs.

OEH has provided comments on what it deems to be the necessary issues.

Licence structure

EPA response

Q3. Do you agree with our proposed amended licence structure?

The EPA supports the proposed licence structure.

Licence context and authorisation

EPA response

Q4. Do you agree with our preliminary view to modify the existing licence objective to also reflect the intended outcomes of the licence? Do you support our proposed objective?

The EPA supports the proposal to modify the licence objective. The EPA suggests that the proposed objective be amended as shown below. While Sydney Water does dispose of wastewater, the EPA is encouraging the use of wastewater (such as through recycling and irrigation). The EPA's view is that management would be a more appropriate and all-encompassing term.

The objective of the licence is to authorise and require Sydney Water, within its area of operations, to supply water; provide sewerage services and stormwater drainage systems; and dispose of and manage waste water. It also requires Sydney Water to set efficient and effective terms and conditions including quality and performance standards; balancing the requirements to protect public health; providing services to customers; and meeting the needs of the community as a whole.

Supply services and performance standards

EPA response

Q20. Given the obligation to report on response times on water main breaks and leaks appears in two separate parts of the existing licence, what are your views on removing licence clause 4.3.1 and consolidating the reporting requirement in clause 8.2.1 of the licence? What are your views on the usefulness of collecting information on response times for water main breaks and leaks?

The EPA agrees that clause 4.3.1 could be consolidated with the reporting section of the licence so long as the obligation to report is maintained. The EPA's view is Clause 4.3.1, requires Sydney Water to continue to report, in accordance with the Reporting Manual, on response times for water main breaks and leaks. This is important as it reflects Sydney

Water's ability to respond appropriately, in a timely manner and to indicate how much water is lost which can be of concern to the community.

Q21. What are your views on maintaining or removing the existing obligations on Sydney Water regarding the Priority Sewerage Program?

The EPA encourages improved sewerage systems where they can provide improved protection to human and environmental health.

OEH response

Q18. Do the existing System Performance Standards measure the most appropriate and relevant service outcomes? Are they specified in the best way to provide cost-effective service outcomes?

Wastewater overflow standard measures (pg. 58) currently exclude public properties. This should be reconsidered due to the impact of overflows on environment, biodiversity, public health and amenity including recreational access to public lands. An increasing number of eco-tourism based industries rely on the perception that the natural environment is clean and safe. This change to the specifics of the measure would ensure an appropriate service outcome for the community.

Maintain and consolidate existing drinking water obligations.

OEH agrees with the preliminary view to:

- Maintain existing obligations for drinking water quality but remove duplication in the obligations.
- Move the requirements in Appendix F (Health and aesthetic water characteristics and raw water operational characteristic) from the existing Reporting Manual to a reporting schedule under the Drinking Water Quality Management System required by the licence.

Maintain and consolidate the existing recycled water obligations.

OEH agrees with the preliminary view to maintain the existing obligations for recycled water quality but remove duplication in the obligations.

Organisational systems management

EPA response

Q24. Given there are other environmental regulatory instruments and policies in place to manage Sydney Water's environmental performance, what are your views on maintaining or removing an Environmental Management System (EMS) obligation in the amended licence? If the EMS obligations are retained, what are your views on removing the EMS certification and the requirement to notify IPART of any significant changes that Sydney Water proposes, and updating the clause to specify the most current standard? Do you or your organisation depend on Sydney Water having an EMS to achieve certain performance outcomes or mitigate certain risks?

The EPA considers that Sydney Water's EMS should be maintained as it ensures organisation wide consideration of environmental principles. This includes consideration of environmental objectives beyond EPA licence requirements relating to pollution.

The EMS provides the framework to develop, implement, monitor and review the environmental objectives, actions and targets set out in Sydney Water's Environment Plan. The EPA's Risk Based Licencing System provides licensees with financial incentive through discounted fees for maintaining an EMS certified to ISO 14001 or any other demonstrated equivalent system.

OEH response

Existing Quality Management System (QMS) obligations may not be well designed.

OEH believes that:

- The QMS should be maintained in the amended licence despite other obligations already in the licence to ensure Sydney Water delivers quality products and services.
- If the QMS obligations are retained, the QMS certification and the requirement to notify IPART of significant changes that Sydney Water proposes should remain, but the clause to specify the most current standard should be updated with the more recent Australian/ New Zealand Standard AS/NZS ISO 9001:2016 or other standard approved by IPART.
- OEH does not depend on Sydney Water having a QMS to achieve certain performance outcomes or mitigate certain risks.

Customer and stakeholder relations

EPA response

Q31. Do you agree with our preliminary view to:

- Maintain the obligation for Sydney Water to maintain cooperative relationships with NSW Health, the Environment Protection Authority (EPA) and the Water Administration Ministerial Corporation (WAMC)?
- Maintain and update the obligation for Sydney Water to maintain a cooperative relationship with Fire and Rescue NSW (FRNSW)?

The EPA agrees that Sydney Water maintains a cooperative relationship with the EPA. We also consider that MOUs are an important component of the relationship between agencies and that the MOU between Sydney Water and the EPA is important in clearly defining this relationship.

OEH response

OEH agrees with the preliminary view to:

- Continue the obligation for Sydney Water to maintain cooperative relationships with NSW Health, the EPA and the Water Administration Ministerial Corporation (WAMC).
- Maintain and update the obligation for Sydney Water to maintain a cooperative relationship with Fire and Rescue NSW (FRNSW).

Performance monitoring and reporting

OEH response

Existing environmental indicators are mostly well designed but contain some duplication.

OEH agrees with the preliminary view to:

- Maintain the existing environmental indicator obligations and remove duplication with the existing reporting obligation.

OEH advises that the useful environmental indicators for Sydney Water to report on could include:

Sewage Treatment Plant discharges, with data on:

- Volume of treated sewage
- Enterococci concentration
- Dissolved nitrogen and phosphorus concentrations

Number and location of sewage overflows, with data on:

- Volume of untreated sewage
- Enterococci concentration
- Dissolved nitrogen and phosphorus concentrations

Q35. Do you have a view on what would be the most useful environmental indicators for Sydney Water to report on?

Sydney Water should specifically report on the impacts of its operations on Conservation Lands.

4. Fire & Rescue NSW

This section of the submission addresses IPART's questions that are relevant to Fire & Rescue NSW (FRNSW).

Q 3. Do you agree with our proposed amended licence structure?

FRNSW agrees with IPART's proposed amendment to the licence structure particularly if it leads to a common licence structure for all large NSW public water utilities. The adoption of a common structure would support more meaningful comparison of standards and performance across the water utilities.

Q 4. Do you agree with our preliminary view to modify the existing licence objective to also reflect the intended outcomes of the licence? Do you support our proposed objective?

FRNSW agrees with IPART's proposal to modify the existing licence objective to reflect the outcomes of the licence. FRNSW proposes that each of the objectives are presented as a separate item in a numbered list as this would allow each objective to be modified over time, if required, and any change to be more readily identified from past versions of the licence. A suggested format is detailed in Box 1.

Box 1 – A suggested structure for Sydney Water Licence Objective

The objective of this licence is to authorise and require Sydney Water, within its area of operations:

- (a) to supply water;
- (b) to provide sewerage services;
- (c) to provide stormwater drainage systems;
- (d) to dispose of waste water;
- (e) to protect public health; and
- (f) to set efficient and effective terms and conditions, including quality and performance standards, that ensure that the needs of the community as a whole are met.

Q 8. Do you agree with our preliminary view to specify IPART as the person to undertake the end of term licence review?

FRNSW strongly supports the proposal for IPART to undertake the end-of-term review of Sydney Water's Operating Licence. This support also extends to the review of all other NSW public water utilities.

Q 18. Do the existing System Performance Standards measure the most appropriate and relevant service outcomes? Are they specified in the best way to provide cost effective outcomes?

FRNSW concurs with Sydney Water view detailed in their response to the IPART issues paper that the 'current water pressure standard is not a useful driver of performance as it does not measure repeat pressure failures'. Notwithstanding this, FRNSW's view is that Sydney Water's operating licence should incorporate an amended set of system performance standards that require Sydney Water to report on the performance of their network in terms of both pressure and flow.

In relation to the provision of firefighting water, a possible proposal could be for Sydney Water to report on the areas of their network where less than 10 L/s, at less than 100 kPa, is available.

FRNSW also notes in Sydney Water's response to the IPART issues paper that there are chronic pressure problems in six localised areas. In Figure 11 *Water pressure standard – drivers of performance* indicates three possible solutions. These are as follows:

- (1) Install new water main;
- (2) Install pressure booster with network; or
- (3) Install pressure boosters within property boundaries.

In relation to point (3), Sydney Water's response notes that 'This response does not solve the issue of low pressure at the connection point, so would not remove the need to report a water pressure failure. However, it does increase pressure within the property'. In this regard, FRNSW's view is that within any area where pumps are required to meet domestic flow requirements for residential houses and apartments there would most certainly be insufficient water capacity for basic fire-fighting activities. As such FRNSW believes that Sydney Water should be required to undertake a cost benefit analysis of the differing approaches to mitigate this risk and in doing so consider the total social cost of providing water for firefighting in each case.

FRNSW believes it is important that IPART and other stakeholders understand issues that help ensure future decisions can minimise costs to the community. FRNSW is pleased to report that it has commenced discussions with Sydney Water and Western Sydney University to scope a project looking at firefighting flows in selected locations. An appropriate amended memorandum of understanding (MoU) clause will be progressed with Sydney Water as part of our ongoing collaboration. The aim of this research will be to determine that potential solutions do not impose unnecessary and avoidable costs on Sydney Water, FRNSW and/or the community.

Q 19. Do you agree with our preliminary view that we should use an economic approach to setting System Performance Standards that takes account of the value that customers place on the level of services?

FRNSW appreciates the need to minimise economic impacts of performance standards, including those within the fire service's control. These include possible changes to firefighting strategies and tactics, and enhanced response protocols for areas in which firefighting flows have been identified as being less than optimal.

FRNSW agrees with IPART's proposal of "applying an economic approach to set a water utility system performance target". FRNSW also strongly supports IPART's proposal of "deducting a total social cost for each approach". However, FRNSW believes that the proposed methodology (Box 6.8 p61) does not in fact measure the total social cost as the methodology currently does not consider the costs associated with the provision of firefighting water. The performance and capacity of the nearest available town main is, in most instances, the primary determinant of whether an on-site tank is installed, particularly for buildings having an effective height of not more than 25 m, the real total social cost can only be determined if the provision for firefighting water is considered.

While IPART's issues paper indicates that current good practice is to set systems performance standards based on what customers want and are willing to pay, and to balance the benefit of the customer with the cost of the utility maintaining a certain level of service, FRNSW believes

such a strategy is only appropriate if the customer understands all of the costs associated with their decision.

Additionally, as fire statistics indicate that the frequency of fires starts is generally socio-economically linked, FRNSW believe there is the potential under the willingness to pay strategy that areas of social disadvantage may be provided with a poorer level of service therefore increasing the likelihood of increased fire losses in these areas.

Q 28. What are your views on the effectiveness of the existing customer council?

FRNSW supports IPART's preliminary view of amending the existing obligations on the composition of the customer council to include experts in customer engagement if it will ensure Sydney Water engages more broadly with its entire customer base.

FRNSW remains committed to minimising any potential increase in costs associated with the provision of firefighting water. FRNSW's view is that any changes made regarding the Customer Council should endeavour to ensure that Sydney Water is required to engage and consult with industry groups associated with the provision of installed fire systems such as; the Association of Hydraulic Services Consultants of Australia, the Fire Protection Association of Australia, and/or the Society of Fire Safety. In this regard, FRNSW's view is that only through consultation with organisations such as these that all stakeholders will understand the total social cost associated with their planning decisions.

FRNSW also recommends that any changes made also ensure that FRNSW participates in future Customer Council activities. Including FRNSW in these activities will subsequently ensure that the unique experiences gained by FRNSW can be shared more broadly.

Q 31. Do you agree with our preliminary view to maintain and update the obligation for Sydney Water to maintain a cooperative relationship with FRNSW?

FRNSW agrees with Sydney Water's response to maintaining the licence obligation regarding the memorandum of understanding (MoU) with FRNSW and the sentiment expressed that it has strengthened and improved the relationship between Sydney Water and FRNSW. FRNSW however does not support Sydney Water's proposal to remove the prescribed matters at this stage.

FRNSW also recommends that the working group is tasked through a prescriptive requirement in the MoU of providing a report to IPART on the investigation of the provision of firefighting flows in selected local areas. Should this recommendation be adopted, it will ensure that IPART is kept abreast of the issues associated with the provision of firefighting water and the adoption of the voluntary funding methodology detailed in IPART's *Draft Report: Maximum Prices to Connect, Extend or Upgrade a Service for Metropolitan Water Agencies*. A suggested amended clause for the MoU with FRNSW is detailed in Box 2.

Box 2 – Suggested amendments to the MoU with Sydney Water.

Delete Clause 9.4.1 and Clause 9.4.2 of Sydney Water's current operating licence. Maintain Clause 9.4.3 and Clause 9.4.4 of Sydney Water's current operating licence.

Add a prescriptive requirement to Clause 9.4.4 of Sydney Water's current operating licence requiring the working group to provide IPART with a report of the provision of firefighting water in selected local areas.

A possible amended clause is detailed below. New items are detailed in italics.

- 9.4.1 *Sydney Water must use its best endeavours to comply with this memorandum of understanding.*
- 9.4.2 The purpose of this memorandum of understanding is to form the basis for co-operative relationships between the parties to the memorandum of understanding. In particular, the purpose of the memorandum of understanding referred to in clause 9.4.1 is to:
- a) develop the roles and responsibilities of the parties to the memorandum of understanding as they relate to each other;
 - b) identify the needs and constraints of the parties to the memorandum of understanding as they relate to each other; and
 - c) identify and develop strategies for efficient and effective provision of firefighting water consistent with the goals of each party to the memorandum of understanding.
- 9.4.3 The memorandum of understanding referred to in clause 9.4.1 must require:
- a) the maintenance of a working group comprised of representatives from Sydney Water and FRNSW; and
 - b) the working group to consider the following matters (at a minimum):
 - (i) arrangements regarding information sharing between Sydney Water and FRNSW;
 - (ii) agreed timelines and a format for Sydney Water to provide a report to FRNSW detailing the network performance with regard to availability of water for firefighting (taking into account the minimum available flow and pressure in localised areas of the network);
 - (iii) arrangements for Sydney Water to consult with FRNSW in the design of new assets and planning of system maintenance, where planning indicates that minimum available flow and pressure may unduly impact firefighting in the network section under consideration; and
 - (iv) other matters as agreed by both parties to the memorandum of understanding.
 - c) *the working group to provide a report to IPART on the provision of firefighting water in selected local areas.*

FRNSW can provide additional technical information directly to IPART and Sydney Water if required.

5. Office of Emergency Management (Department of Justice)

Q22. Given that the Security of Critical Infrastructure Act 2018 (Cth) regulates critical infrastructure, what are your views on including or not including critical infrastructure obligations in the licence?

The NSW Critical Infrastructure Resilience Strategy (CIRS) sets out principles and outcomes for embedding resilience into the thinking and culture of government, businesses, communities and people. It identifies that NSW infrastructure needs to withstand the shocks of natural, technological and malicious hazards to continue operating, return to service as soon as possible following a disruption, and address long-term stresses. This is broader than the management of national security risks relating to critical infrastructure, as it also encompasses resilience with respect to natural and man-made hazards. Embedding resilience in NSW infrastructure through regulation and incentives will minimise costs from disasters when they occur.

In March 2018 the Office of Emergency Management provided a submission to IPART on the Review of Water Utility Performance Indicators, encouraging IPART to incentivise operators to improve infrastructure and operational resilience using performance indicators. Incentivising operators to reduce service interruptions and minimise sewer spills will inevitably lead to investment in more resilient infrastructure.

Performance indicators should also encourage improvements to organisational resilience by ensuring that businesses create and maintain emergency plans and business continuity plans. Strategic plans that take into consideration slow onset stresses such as aging assets, population growth, climate change and the likelihood of more frequent, severe weather events should also be incentivised.

OEM reiterates these comments and encourages IPART to consider incorporating performance indicators promoting critical infrastructure resilience into Sydney Water's operating licence. Performance indicators would complement regulation through the SCI Act to ensure water infrastructure is more resilient to a broad range of hazards.

Customer and stakeholder relations

Q.31 Do you agree with our preliminary view to maintain and update the existing obligation to maintain an MOU with Fire and Rescue NSW (FRNSW).

We note that the existing licence requires Sydney Water to enter into a MoU with Fire and Rescue NSW (FRNSW). However, as both FRNSW and NSW Rural Fire Service (NSW RFS) provide firefighting services within Sydney Water's operating area, consideration should be given to including the NSW RFS in the MOU.