



Detailed paper J – Other revenue

Submission to IPART for prices from 1 July 2021 for water management services provided by the Department of Planning Industry and Environment-Water and the Natural Resources Access Regulator on behalf of the Water Administration Ministerial Corporation

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Detailed paper J – Other revenue

Water consent transactions

Water consent transactions are fee for service activities undertaken by NRAR that manage the issue, trade and amendment of water access licences, water allocations and water approvals. A new consent transaction is proposed for a fee for service undertaken by the Department for water authorities to protect town water supplies in extreme drought.

Under the *Water Management Act 2000* water access licences are tradeable assets that include a right to a share of the available water in a specified water source. Most can be transferred, subdivided, mortgaged and bequeathed, and in many areas have achieved a very high market value.

Some types of licence, such as specific purpose water access licences, are permanently linked to a particular use at a location (for example local water utility licences).

Water approvals are required for the construction and use of water supply works such as pumps, dams and bores and for the application of water to land. These approvals typically apply for 10 years, after which they can be extended on application. The approvals are attached to land and are held by the owner or lawful occupier of that land. The holder changes with changes to land occupation.

New approvals can be obtained, and existing approvals can be amended in various ways. Many of the transactions on water access licences, water allocations and water approvals are subject to consent from the NSW Minister responsible for water. This aims to ensure the integrity of the water access licences, as assets, is protected, as well as to minimise third party and environmental impacts associated with the take and use of water at a location.

Water consent transactions are charged on a fee for service basis, where users of the transactions pay a fee intended to reflect the costs of the transactions. These fees are contained in a fee schedule, under which different categories of water consent transactions attract different fees.

In 2019 we engaged consultants Nous Group to develop a proposed licensing and approvals fee schedule for water consent transactions that more accurately reflects the cost of the work we undertake. The aim was to develop an efficient and equitable licensing and approvals fee schedule based on an analysis of the costs attributable to each type of water consent transaction. It proposed:

- fee categories reflecting the transaction types we undertake
- fee amounts for each fee category to reflect the costs we incur with our current systems and procedures.

Nous Group's methodology involved a "bottom up" cost analysis and a "top down" review to normalise any anomalies in the bottom up approach. The "bottom-up" cost analysis included several steps:

- developing design principles for our fee schedule such that the schedule is based on up-front fees and is simple for applicants to understand and simple for us to administer
- estimating costs of the different types of licensing and approval activities we undertake via a staff survey
- normalising these costs via a "top-down" review to account for over or under estimation of costs in the survey.

This process resulted in the NRAR licence and approvals fee cost recovery model; our proposed fees are the output of this model.¹

In addition to the work of NOUS, we have developed an additional transaction charge to recover the costs of processing an authority to develop critical water infrastructure, to ensure that these costs are recovered from the parties that create the costs under the impactor-pays principle.

Proposed fee categories

For the next regulatory period, we propose to change the fee categories used in the 2016 IPART determination, as some of these categories are no longer relevant to the transactions we undertake for our applicant base.

We worked with Nous Group to map material aspects of our water consent transaction work tasks, including:

- factors required to be considered under legislation
- complexity of the application types, and
- assessment of whether the proposed licensing categories could be readily understood by applicants based on category descriptors.

These aspects impact on the time and resources we require to meet our water consent transaction tasks.

The following table maps the existing (2016) fee categories against the proposed fee categories for NRAR water consent transactions fees proposed for 2021-22.

Table 1. Proposed fee categories mapped against current fee categories

Existing Fee Categories			Proposed Fee Categories		
Flood Works Approvals			Flood Works Approvals		
Type	Sub Type 1	Sub Type 2	Type	Sub Type 1	Sub Type 2
New or amended approval	No advertising		New or amended approval	Flood study required	No advertising
	Advertising required				Advertising required
				No flood study required	No advertising
					Advertising required
Extension of approval	No advertising		Extension of approval		
	Advertising required				

¹ Note that the Nous Group's model included consideration of non-WAMC licensing and approval activity but the costs and proposed fees contained in this submission are only based on the water consent transactions subject to IPART regulation.

Table 2. Proposed fee categories mapped against current fee categories (continued)

Existing Fee Categories			Proposed Fee Categories			
Water Supply Works and Water Use Approvals			Water Supply Works and Water Use Approvals			
Type	Sub Type 1	Sub Type 2	Type	Sub Type 1	Sub Type 2	Sub Type 3
New or amend approval	Low Risk	Hard copy	New	Surface Water	Pump	No advertising
		Online				Advertising
	Administrative	Hard copy			Dam	No advertising
		Online				Advertising
	Bore for Stock and Domestic	Hard copy			Ground water	No advertising
		Online				Advertising
	Standard	Hard copy	Amend	Specify as inactive		
		Online		Remove supply work		
				Update holder contact details, change land description for water use or construct a replacement bore		
				Add and change water supply works, add and change water use or changes to conditions		
Extension of Approval	Before Expiry	Hard copy	Extension			
		Online				
	After Expiry	Hard copy				
Access to and use of water by Aboriginal People						

Table 3. Proposed fee categories mapped against current fee categories (continued)

Existing Fee Categories			Proposed Fee Categories			
Applications under the <i>Water Management Act 200</i> (Water Licences)			Applications under the <i>Water Management Act 200</i> (Water Licences)			
Type	Sub Type 1	Sub Type 2	Type	Sub Type 1	Sub Type 2	Sub Type 3
New water access licence	Hard copy		Zero Shares			
	Online		Controlled Allocation			
New specific purpose access licence for Aboriginal commercial, Aboriginal community development, or Aboriginal cultural purposes			Specific Purpose	Subtract any amount from existing licence		
				<=10ML	New	
					Add to existing licence	
				>10ML	New or add to existing licence	
Water Act 1912 licence relating to aquifers and aquifer interference activities (Part 5 licence)	Artesian bore		Water Act 1912 part 5	Monitoring bore		
				Aquifer interference (incl. dewatering)		
				Test bore		
	Non-artesian bore		Water Act 1912 Part 8	All applications		

Table 4. Proposed fee categories mapped against current fee categories (continued)

Existing Fee Categories			Proposed Fee Categories
Water Act 1912 licence relating to lakes and rivers, and drainage works (Part 2 licence)	Pump and channels	domestic use	N/A - no longer performed by NRAR
		farming (excl. irrigation and stock watering)	
		town water and recreation	
		stock, railway, industrial, power and mining	
		irrigation	
		high flow irrigation	
	Storage (dams, weirs, regulators)	domestic, stock and recreation	
		town, irrigation, power, industrial and mining	
	Other works e.g. drain, flumes		
	Combined works		
	Permit	up to 3 months	
		3 to 6 months	
		6 to 9 months	
		9 to 12 months	

Proposed fees - costs and amounts

Costs include:

- our staff-related costs, which were determined by a staff survey of time spent on each type of water consent transaction. These times have been normalised (to remove anomalies) by a top-down approach based on the total percentage of time estimated by staff for each instrument type. The staff times used in cost calculations were taken as the lower of the staff survey or the normalised approach, to ensure a conservative time estimate. As we propose full cost recovery for this service, employee-related costs have included salaries, on-costs and overheads.
- costs of expert assessment and advice by DPIE Water Science, for example groundwater modelling advice. DPIE Water Science has advised us that these costs are two days of assessment and one hour of supervision time for each assessment. We have apportioned these over the consent transaction types based on the ratio of assessments done by DPIE Water Science on each type from July 2018 to February 2019.
- water consent transaction application advertising costs where required by legislation.

The proposed fees' design principles are:

- fixed up-front fees where possible in order to minimise the number of financial transactions required, reducing costs to both the licensee and us
- readily understandable by the applicant, enabling them to determine the relevant fee category, thus reducing interactions and lowering costs for licensees and us
- simple to apply, reducing our administrative costs
- cost reflective to the extent that direct costs attributable to each type of water consent transaction are reflected in the fee, and
- readily adaptable to digital applications such as online portals to allow for future cost reduction.

The proposed fees resulting from this approach were calculated using 2019-20 costs and have been escalated by 2.5% CPI to reflect 2020-21 fee levels. They are set out in the following table.

Table 5. Fees proposed for water consent transactions

Fee Category	Type	Sub-type			Proposed Fees ²	
Flood Work Approvals	New or amend approval	Flood study required	No advertising		\$1,497.94	
			Advertising		\$2,311.23	
		No flood study required	No advertising		\$1,174.00	
			Advertising		\$1,888.43	
	Extension of approval				\$961.31	
Water Supply Works and Water Use Approvals	New	Surface	Pump	No advertising		\$3,064.47
				Advertising		\$3,741.72
		Water	Dam	No advertising		\$3,033.15
				Advertising		\$3,804.14
		Ground water i.e. bore		No advertising		\$2,490.80
				Advertising		\$2,920.72
	Amend	Specify as inactive				No Charge
		Remove supply work				No Charge

² Plus two additional fee components: \$20.15 per application for Water Licensing System improvements; and \$49.28 per application for on-line lodgement and payment system.

Fee Category	Type	Sub-type		Proposed Fees ²
		Update holder contact details, change land description for water use or construct a replacement bore		\$219.93 ³
		Add and change water supply works, add and change water use or changes to conditions		\$1,927.51
	Extension			\$514.23
	Water Licences	Zero Shares		
Controlled Allocation Licences			\$2,044.31	
Specific purpose		Subtract any amount from existing licence		\$1,597.06
		<=10ML	New	\$2,711.09
			Add to existing licence	\$3,455.22
		>10ML	New or add to existing licence	\$3,953.98

The revenue from these proposed fees is estimated to be \$563,043 per year (\$2020-21) on average, if the forecast volumes of water consent transactions occur.

A direct comparison with the former fee schedule is not possible because of the proposed change in fee categories. However, a broad comparison of the existing and proposed fee range for each licence and approval type is shown in the table below.

Table 6. Comparison of proposed fees with current fees

Licence or Approval Type	Existing fee range	Proposed fee range*	Maximum % increase
Flood works approvals	\$253.52 to \$1338.24	\$1,174.00 to \$2,311.23	173%
Supply works and use approvals	\$214.57 to \$2 209.63	\$219.93 to \$3,804.14	172%
Water access licences	\$304.46 to \$340.06	\$1,597.06 to \$3,953.98	1,163%

*does not include the additional fee components of \$20.15 per application for WLS improvements and \$48.28 for online lodgement and payment

This table shows significant maximum increases in fees for all licence and approval types, specifically:

- flood works approval fees will increase by approximately \$1,000

³ NRAR does not propose to change the current fee for administrative change as the complexity of this has not changed due to the different applicant base resulting from the transfer of functions. The fee has been escalated by CPI

- supply works and use approval fees will increase up to \$1,600, other than administrative amendments where we do not propose to increase the current fee, as our different applicant base does not change the complexity of the application and
- a substantial increase in more complex water access licence applications by about \$3,600, especially for those new applications involving greater than 10 megalitres.

The proposed fee increases mirror the design principles of a cost reflective fee schedule which seeks to recover the true costs in providing our water consent transaction service.

Water Supply (Critical Needs)

On 14 Nov 2019, the Water Supply (Critical Needs) Bill was passed by NSW Parliament. The Act came into force on 21 November 2019.

The *Water Supply (Critical Needs) Act 2019* (the Critical Needs Act) responds to the unprecedented drought conditions being experienced in NSW and its impact on the availability of water for town water supplies. The Critical Needs Act creates a pathway for the Minister for Water, Property and Housing to authorise critical water infrastructure developments that are urgently needed to secure water supplies for regional towns in the current drought where this cannot be achieved in time to prevent a town or locality running out of water through the usual planning approval pathways.

The approval pathway is essentially two steps:

Step 1: Under the Critical Needs Act, town or locality water supplies and associated water supply developments can be declared as critical where the Critical Needs Act is likely to provide the only pathway for proponents to legally and practically address the risk of water supplies running out prior to this happening. These are listed in schedules 1 and 2 of the Critical Needs Act, respectively through the development of regulations.

Step 2: This declaration allows public authorities, such as local councils and WaterNSW, to then apply for an authorisation issued by the Minister for proposed developments under a streamlined pathway provided in the Critical Needs Act.

This pathway involves consultation with all relevant authorities and concurrence of the Minister for the Environment. Authorisations are issued with conditions to ensure developments are carried out appropriately.

The Critical Needs Act also enables the Minister to turn off or modify the *Water Management Act 2000* to enable or speed up the granting or amendment of water licences and approvals required for critical town water supplies.

The Critical Needs Act also declares certain developments relating to dams to be critical State significant infrastructure for the purpose of the *Environmental Planning and Assessment Act 1979* to make certain these dams are built to enhance future water supply and security. These are listed in schedule 3 of the Critical Needs Act.

The Critical Needs Act is special purpose, temporary legislation which will expire after two years, unless the Minister for Water extends it due to continuing risks to town water security. The Act can be extended for up to one year. The Critical Needs Act is temporary and due to expire in 2021-22 (or 2022-23 if extended by the Minister).

Under this activity, DPIE Water:

- assesses the criticality of town water supplies and associated water supply developments to address water supply risks
- develops regulations to enable applicant towns and developments to access the approval pathway established by the Critical Needs Act

- examines potential impacts of developments and determines appropriate conditions to mitigate these impacts as part of recommending the authorisation of developments
- develops regulations to disapply or modify the provisions of the Water Management Act 2000
- liaises with public authorities (Local Water Utilities or Water NSW) to enable the legislative requirements to be met and coordinates consultation with relevant agencies regarding authorisation applications and requests from the public authorities for towns and developments to be declared under the Critical Needs Act.

Proposed WAMC charge and rationale

As the demand for declarations and authorisations is driven by users, we propose to introduce a new consent transaction charge to recover the costs associated with this water management service. These users are public authorities such as councils or WaterNSW. This ensures that the impactor-pays principles are applied effectively and transparently and that other users are not subsidising the costs. Processing these applications is resource intensive and we want to ensure we are dedicating resources to legitimate applications therefore this charge will apply at the point of application.

Efficient Costs

In accordance with the NWI Pricing Principles we have excluded the cost of government activities from the proposed consent transaction charge (e.g. the development of statutory requirements and regulations). We have calculated the proposed charge from the efficient and direct departmental staff costs involved in the following water administration and regulation activities:

- assessing the criticality of town water supplies,
- examining potential impacts of developments and determines appropriate conditions to mitigate these impacts, and
- processing the authorisation for developments.

Based on work undertaken to date these costs represent around 50% of the total staff cost of processing a successful application. The table below includes the staff time involved in each costed function.

Table 7. Function and staff cost (\$2020-21)

Item	Function	Unit	Staff time (hours)	Cost
1	Applicant liaison, strategic coordination with agencies, process and reporting	Water Assessments	256	24,725
2	Assessment of issues and risk, developing the authorisation and associated conditions	Water Policy	204	21,596
3	Assessment critical town supplies and suitability for declaring towns and developments under the Act	Water Utilities	6	685
4	Assessment of impacts and risk mitigation measures	Water Science	26	3,112

Item	Function	Unit	Staff time (hours)	Cost
5	Assessment of impacts and risk mitigation measures	Planning and Assessment	383	33,658
6	Assessment of impacts and risk mitigation measures	Biodiversity and Conservation	3	389
7	Assessment of impacts and risk mitigation measures	Department of Primary Industries	511	43,762
	Water Supply (Critical Needs) Authorisation Assessment Charge		1,389	127,926

Water Supply (Critical Needs) Authorisation Assessment Charge

We propose a Water Supply (Critical Needs) Authorisation Assessment Charge be determined by IPART.

Where applications are made for Stages described above as 1 and 2 (or listing on both Schedules 1 and 2 of the Critical Needs Act) the applicant would pay the full Water Supply (Critical Needs) Authorisation Assessment Charge being \$127,926 (\$2020-21) per application, maintained in real terms throughout the 2021 regulatory period.

However, if the application was for Stage 1 only (or listing on Schedule 1 of the Critical Needs Act) the applicant would be charged for function items 1 to 3 only being \$47,006 (\$2020-21) per application, maintained in real terms throughout the 2021 regulatory period.

The Critical Needs Act exempts developments from the standard development control legislation.

The legal definition and interpretation of development control legislation encompasses permits, licences, consents or other authorities made under a range of Acts including the *Environmental Planning and Assessment Act 1979*, the *Protection of the Environment Operations Act 1997*, *Heritage Act 1977*, the *Fisheries Management Act 1994*, the *National Parks and Wildlife Act 1974*, *Rural Fires Act 1997*, *Biodiversity Conservation Act 2016* and *Local Government Act 1993*.

The Critical Needs Act establishes a framework for assessing impacts arising from the proposed development in the context of extreme drought risks and provides for specifically conditions unique to that development being placed on the authorisations.

This process has broad parallels with the challenges and costs of assessment of planning proposal made under the Environmental Planning and Assessment Act.

As with planning proposal, the Critical Needs Act sets out a range of requirements for assessing authorisation applications. This includes consultation with relevant agencies and reporting to the Minister on issues raised during those consultations. Given the breadth of development control legislation which is “switched off”, the number of relevant agencies included in the consultation and the issues they consider are significant. The consultation process involves each agency assessing the impacts and risk mitigation measures of a unique and specific proposed developments required to address critical drought conditions to support towns, liaising with the proponent to garner further information if required, and preparing formal advice to inform the report to the Minister (which is required under the Critical Needs Act). Each agency also assists in the formulation of conditions of

authorisations to manage the expected impacts and risks and is also involved in the consultation with the proponent on the proposed conditions of authorisation. Preparation of the conditions of authorisation requires careful consideration of input provided through this consultation process as well as available ecological, water resource and socio-economic evidence in order to develop conditions specific to a unique development to manage a wide range of risks. Conditions of authorisation need to be prepared outside of the more standard processes of developments, and as quickly as possible to respond to critical water supply circumstances. As such, there is substantial staff expertise and time applied to all aspects of this process.

We have compared efficient costs of Water Supply (Critical Needs) with the charges in place for the assessment of complex planning proposal levied by councils consistent with section 608 of the *Local Government Act 1993*. This comparison reflects that:

- both process charges require consultation processes with agencies to assess the impacts and risk mitigation in unique circumstances
- both processes require consideration of a specific proposal in specific context to develop new responses thereby amending existing policies and plans in relation to that development rather than the simple application of standard assessment policy processes and policies, and
- in the case of the Water Supply (Critical Needs) the assessment is expected to be undertaken as quickly as possible to secure a town's drinking water supply.

Table 8. Comparison of proposed Water Supply (Critical Needs) charge (\$2020-21)

	Council charges	Department gateway charge	Total Charge
City of Sydney	\$146,000 ⁴	\$20,000	\$146,000
North Sydney Council	\$100,000 ⁵	\$20,000	\$120,000
Penrith Council	\$120,456 ⁶	\$20,000	\$140,456
Proposed Water Supply (Critical Needs) Authorisation Assessment Charge for State 1 and Stage 2			\$128,200

Note in addition to charges payable to councils, a planning proposal applicant is required to pay a submission for rezoning request charge of \$20,000 to the Department.⁷

⁴ Request to prepare a planning proposal major application

https://www.cityofsydney.nsw.gov.au/__data/assets/pdf_file/0015/301515/Fees-and-charges.pdf, page 8

⁵ Major Planning Proposal <https://portal.lgsolutions.net.au/Fees/Public/North%20Sydney%20Council>

⁶ Application to amend a Local Environmental Plan – High Complexity, page 8. Note in addition the council charges the applicant the direct costs of advertising and independent assessment if required.

https://www.penrithcity.nsw.gov.au/images/documents/council/council-business/Fees_Charges.pdf
⁷ <https://www.planning.nsw.gov.au/Plans-for-your-area/Local-Planning-and-Zoning/The-Gateway-Process>