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Water Administration Ministerial Corporation Price Review 2010
Independent Pricing and Regulatory Tribunal
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Wednesday, 16 June 2010

Water Administration Ministerial Corporation Price Review 2010

Please find attached the submission from the Nature Conservation Council on this issue.

This submission has been prepared for NCC by Ms Wendy Ambler

Yours faithfully

A handwritten signature in black ink, appearing to read "Don White". The signature is fluid and cursive, with a long horizontal stroke at the end.

Prof Don White

**NSW Nature Conservation Council Comments on the IPART Review of Prices for the
Water Administration Ministerial Corporation**

16 June 2010

Thank you for the opportunity to comment on IPART's Issues Paper (**Issues Paper**), the Office of Water's Submissions (**NOW Submissions**) and the PriceWaterhouse Coopers/Halcrow Draft Report (**Draft Report**) that relate to IPART's current Review of the Water Administration Ministerial Corporation's Water Management Charges (**Review**).

Unfortunately it is beyond the resources available to the Nature Conservation Council (**NCC**) to make detailed comments on many of the economic matters highlighted in the Issues Paper and in the Draft Report but the NCC notes that a number of comments made in the Draft Report are critical of the level of clarity and transparency in several elements of the NOW Submissions.

However, the NCC welcomes the opportunity provided by the Review to raise an issue that it believes is relevant to the Review. Section 15 of the IPART Act reproduced in Appendix A of the Issues Paper requires IPART to have regard to:

- e) the need for greater efficiency in the supply of services so as to reduce costs for the benefit of consumers and taxpayers
- f) the need to maintain ecologically sustainable development...by appropriate pricing policies that take account of all the feasible options available to protect the environment.

The NCC submits that there is a pressing need to clearly identify the NSW Government agency or agencies in which the State's water rights are vested and the roles and responsibilities of that agency or those agencies. Clarification of the roles and responsibilities of these agencies will enable efficient service delivery to support ecologically sustainable development.

The Review is a 'review of prices for the Water Administration Ministerial Corporation' (**WAMC**). The Issues Paper advises that WAMC is the legal entity responsible for water management in NSW but that the NSW Department of Water and Energy (**DWE**) undertakes water management activities on behalf of WAMC.¹

The Draft Report postdates the July 2009 reorganisation of NSW Government agencies and records that although WAMC is the legal entity responsible for water management in New South Wales, NOW is responsible for undertaking these activities on its behalf.

¹ IPART *Review of prices for Water Administration Ministerial Corporation from July 2010*: Water Issues Paper July 2009, 1. The NCC notes that although IPART was apparently aware of the reorganisation of NSW Government agencies in July 2009 the Issues Paper continues to refer to DWE 'for the sake of simplicity': see comments in footnote 14 on page 13 of the Issues Paper.

Both the Issues Paper and the Draft Report are adamant that WAMC is legally responsible for water management in NSW, but neither of these documents provides a clear basis for this statement, nor for the assumption by the various agencies of responsibility for the conduct of WAMC's operations.

The WAMC was established under the *Water Administration Act 1986 (1986 Act)*. Section 12 of the 1986 Act vested the right to the use and flow, and to the control, of water in the WAMC. The WAMC was responsible for the administration of the *Water Act 1912 (WA 1912)* – responsibility for decision making with regard to water management in NSW was clear and unambiguous.

Section 392 of the *Water Management Act 2000 (WMA 2000)* defines the State's water rights and vests those rights in the Crown. The Minister is responsible for implementation of the water management provisions of the WMA 2000 although the WAMC constituted by Chapter 8, Part 2 of the WMA 2000 has specific functions set out in section 372 – but they do not extend specifically to the exercise of the State's water rights. The WAMC can delegate its functions.

The NCC submits that the clarity afforded from 1986 by the role of the WAMC in the management scheme of the WA 1912 has been clouded with the introduction of the WMA 2000, especially with respect to water management in the Greater Metropolitan Region.

The NOW Submissions clarify that NOW's services (presumably those delivered on behalf of WAMC or are they delivered on behalf of the Minister?) relate to water management within regulated rivers, unregulated rivers and groundwater sources, and transaction consents for water access, works and for water dealings. NOW also advises that another entity (the State Water Corporation) provides storage and delivery services for water in regulated rivers; an environmental water section within the Department of Environment, Climate Change and Water manages specific environmental contingency allowances and environmental water licences; and the new Office of the Hawkesbury-Nepean oversees river management in the Hawkesbury-Nepean.²

What functions does the WAMC actually perform under the WMA 2000?

In the Greater Metropolitan Region water management has not yet been brought under the provisions of the WMA 2000. The provisions of the WA 1912 regulate access to and use of water in the region. The WAMC continues to have authority over water management in the Sydney Region under the WA 1912. Accordingly, the WAMC has issued water management licences to Sydney Water Corporation and Sydney Catchment Authority. The Sydney Water Corporation licence clearly states that it is 'issued by' the WAMC. The Sydney Catchment Authority licence also indicates that it is issued by the

² See *NSW Office of Water Submission for 2010 Bulk Water Price Review*, 2 December 2009, pages 7 and 14.

WAMC but notes in the definition section that at the time the licence was granted the functions of the WAMC were delegated to DWE under section 377 of the 'Act' – a reference to the WMA 2000 when the authority to grant the licence arises under the 1912 Act. The Sydney Catchment Authority bore licences were issued to Sydney Catchment Authority under the WA 1912 by the Department of Natural Resources.

The NCC notes that draft water sharing plans for the Greater Metropolitan Region are now on public exhibition and that the activities of Sydney Water Corporation and Sydney Catchment Authority will be regulated by the plans when implemented. However, the NCC submits that a transition period of nearly 10 years from the introduction of the WMA 2000 has resulted in efficiencies in service delivery in the region. The NCC is concerned that there is a risk of further inefficiencies arising with the development and exploitation of new water sources, in the Greater Metropolitan Region and elsewhere in the State, that are not covered by the water management scheme of the WMA 2000.

In its area of operations Sydney Water Corporation controls wastewater and stormwater in its infrastructure and has the capacity to enter into agreements to permit the taking of wastewater and stormwater that it collects and disposes of in the Sydney Region for treatment and reuse taking the 'management' of these 'water sources' outside the legislative regime. Sydney Catchment Authority controls water in its infrastructure and can supply water to third parties. Local councils can grant access to wastewater in infrastructure that they control and can authorise water supply works in certain areas. At the same time, the Minister is responsible for the preparation of water sharing plans for the Sydney Region under the WMA 2000.

The delivery of water management in NSW is at best awkward and administrative responsibility for delivery of related services unclear.

- **Real or apparent difficulties with transitional provisions relating to the continuation of the WAMC under the WMA 2000 are curable and should be clarified as a matter of urgency.**
- **If there is not an ongoing role for WAMC under the WMA 2000 then that matter should be addressed in legislation.**
- **The proper allocation of rights to access and use new water sources – wastewater (including sewage), stormwater and seawater – in NSW requires deliberate action to ensure that the functions of asset management and resource management remain the responsibility of separate entities; to ensure efficient delivery of management services in relation to those water sources; and to ensure that ecologically sustainable development is maintained in the State.**