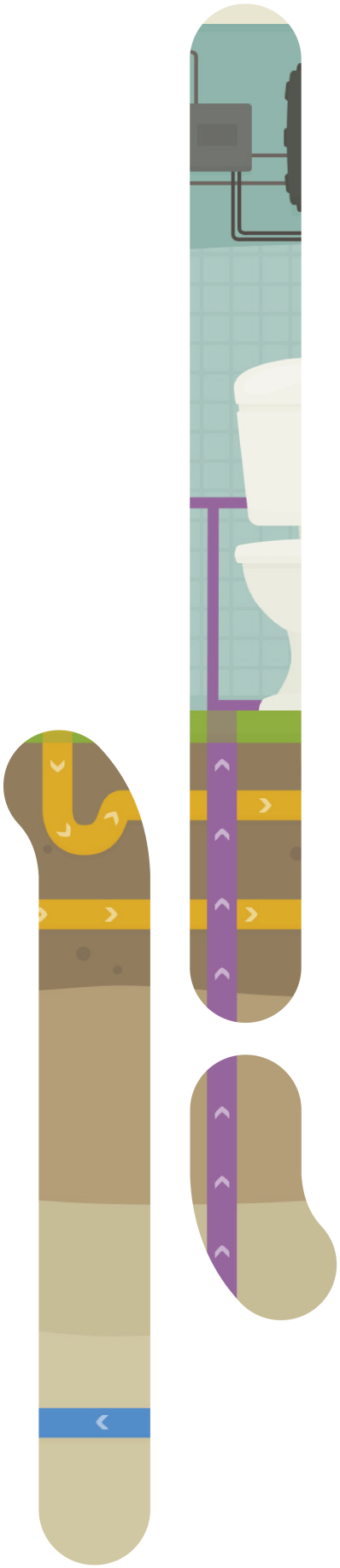
Infrastructure SEPP Review

April 7, 2017



Contents

Flow is a multi-utility company specialising in the design, operation, management and retailing of local sustainable water, energy and telecommunications infrastructure. Flow is a Brookfield company. Flow welcomes the opportunity to comment on the amendments to the ISEPP Review which have a material impact on our operations.

Executive summary

Thank you for the opportunity to comment on the *draft State Environmental Planning Policy (Infrastructure) 2007 Review*. Flow has responded with recommendations based on our experience as a pioneering Water Industry Competition Act (WIC Act) utility and sustainable multi-utility, providing district (decentralised) utility infrastructure solutions to urban infill and greenfield communities in NSW.

There is clear public interest in infrastructure solutions that are more sustainable, affordable, speed up land release and enable government to make the transition to 21st century utility solutions - delivering future-proofed and more liveable communities. Sustainable district utilities or *'shared utilities'* are disrupting Business As Usual (BAU), providing cost-effective alternatives that drive faster land release and more affordable housing in growth areas, using Integrated Water Cycle Management (IWCM) and low carbon local energy generation. There are a number of critical legislative and regulatory changes required to remove barriers to operation and begin the transition to a more efficient, affordable and resilient future.

To deliver on the objectives of *A Plan For Growing Sydney*, the *Greater Sydney Commission District Plans* and the *Metropolitan Water Plan* – it is essential attention be given to creating the best legislative and regulatory settings for the operation of next generation utility infrastructure. This includes equal powers and authorities for district utilities to design, install and operate infrastructure with the same confidence and regulatory oversight as centralised utilities currently enjoy.

Centralised utilities have larger impact on the environment than decentralised district approaches. In the case of water, a Flow WIC Act IWCM centre recycles 100 percent of wastewater in the community. It uses odourless processes to purify wastewater, generates less carbon and uses less energy while producing a new resilient, local and cheaper water supply for up to 70 percent of daily needs – preserving State drinking water supplies. The same benefits apply for local renewable energy generation and storage – for example, locally generated solar energy is more affordable for consumers, and removes large augmentation costs upstream. Despite the obvious benefits to the community of innovation and next gen technologies, centralised utilities have more legislated and regulated authority and power to plan, build and run their systems.

This bias must be addressed immediately through a review of ISEPP. Without new, more sustainable ways of generating energy, managing water and waste, accessing open data and shared mobility services – it will be impossible to drive better environmental and community outcomes. Current regulation and legislation is designed for last century centralised water and energy infrastructure – it must be updated to reflect innovation and new approaches to utility servicing.

Recommendations

Equal Powers, Entitlements and Expectations as Public Authorities:

1. **Change EP&A Act Regulations to define licensed non-public decentralised utility providers in water, energy, telecommunications, mobility as a "person" under S4 Definitions "public authority".**

2. **Amend EP&A Act S 56(2) (d) to remove the negativity, and to broaden the "public authority" classification beyond State & Commonwealth. Alternatively, add a new sub-clause to include all relevant utility "public authorities". S 56(2)(d) requirements need to be clarified that where a utility is referred to, it should include licensed decentralised private utilities.**

   District utilities require equal powers, entitlements and expectations as *Public Authorities*. Currently only registered *Public Authorities* are entitled to participate in planning gateway processes with developers and NSW Planning. While some private companies are listed under the *Public Authorities* schedule, WIC Act licensees and other district utility infrastructure providers are not. This means alternative water and energy providers are shut out, entrenching BAU utility choices and blocking faster, cheaper and more innovative ways to release land.

3. **The Planning Proposal Authority, at Bill S 54, should be required to consult with, or, at S54(3), require a land owner proponent to consult with, all relevant public authorities whether public or private.**

4. **Development without consent powers for WIC Act licensed utilities.**

   Infrastructure intended for use by a *Public Authority* can be approved as exempt development or development without consent as part of a broader development, then this must also be the case for licensees under WIC Act. Consideration must also be given to next generation multi-utility infrastructure that is bundled in multi-utility platforms to leverage innovation and cost – including telecommunications, waste and mobility. Environmental approval processes should ensure the highest environmental outcomes and be the same for public/private/ decentralised/ centralised.

5. **Access to infrastructure corridors by private infrastructure providers.**

   A new Division of Part 5 will be inserted relating to designated infrastructure corridors. Private infrastructure providers must be given equal power for planning the alignment and location of these corridors and equal access to use them for water, sewer, energy and telecommunications infrastructure to public utilities.

Equal Powers of Enforcement:

6. **Clarity in the EP&A Act of who the determining authority is for infrastructure being developed without consent by WICA licensees under SEPP (*Infrastructure*) to ensure utilities have the same design flexibility over time as their public counterparts.**

   Modernising the ISEPP regulation would also be facilitated by closing a legal loophole in the interaction of ISEPP, WICA and Part 5 of the Environmental Protection & Assessment Act (EP&A Act). The definition of the *'determining authority'* for environmental assessments is too narrow. Public water and centralised energy and telecommunications authorities already have development without consent powers. Until this loophole is closed WIC Act licensees and decentralised energy and telecommunications operators are disadvantaged in the market and innovative infrastructure solutions - such as IWCM, will be compromised.

   The definition of determining authority under the current EP&A Act and its Amendment Bill is drafted such that the tense only triggers determining authorities where future approval is required. This causes the administering regulator to be overly cautious before a licence is granted, requiring detailed environmental impact assessment upfront for infrastructure that is to be rolled out over several years and will almost inevitably change over that time, as well as the environment in which it is proposed. Flow supports high environmental requirements for both public and private providers.

   Once the *'determining authority'* is more clearly defined then environmental impact assessment can be carried out in line with the staging of a development over several years and only for that impact which is relevant over and above the housing development's own impact.

   The definition of determining authority should be redrafted to also capture Ministerial approvals from the past so that it is clear who is the determining authority for development of water industry infrastructure even after a WICA network operator's license has been issued. Similar clarity is required in the case of energy, telecommunications and waste developments.

7. **Removing the 'prescribed zones' restriction for development without consent powers for water recycling facilities**

   ISEPP only allows development without consent for water recycling facilities in 'prescribed zones' such as rural and industrial zones which reflects the nature of old, high-impact technologies.

   Often in LEP land use tables, water recycling facilities are listed as prohibited in residential and mixed use land zones, the very locations that Flow has proven benefit substantially from local, low-impact water recycling technology.

   This makes LEP amendment proposals to change to a prescribed zone or adjust permissibility long and costly – extending to 18 months and costing an average additional $150,000. It also hamstrings innovation and more sustainable and efficient approaches to infrastructure delivery. These processes must be prepared and managed even before the Part 5 environmental impact assessment is carried out.

   This situation can be addressed by removing the prescribed zones restriction from the ISEPP and/or introducing threshold requirements that allow low-impact facilities to be developed without consent on any land subject to environmental impact assessment under Part 5 of the EP&A Act.

8. Expanding development without consent provisions to include drinking water and stormwater infrastructure

The development without consent provisions in section 106 of the ISEPP must be extended to include drinking water infrastructure (section 125) and stormwater infrastructure (section 111).

At the moment, licensed WIC Act utilities providing all water services – drinking water, recycled water, wastewater/sewage and stormwater – must run two separate approval processes, one for drinking water and stormwater infrastructure and one for recycled / sewage water infrastructure.

This unnecessarily complicates the approvals process causing delays and additional cost to licensed WIC Act proponents. It also has the unintentional outcome of putting WIC Act licensees on an unfair, inequitable, uncompetitive platform compared to the traditional public utilities such as Sydney Water and Hunter Water who have development without consent powers for drinking water and stormwater within their Acts.

CASE STUDY 1:

In building its sustainable water communities, Flow designs and constructs a local water centre (water recycling facility) complete with recycled water tanks, sewerage, drinking and recycled water infrastructure and drinking water storage tanks. Flow is also constructing stormwater infrastructure for its communities – for example Green Square which requires stormwater offtake pumps and pipework.

Flow has development without consent powers for everything except the stormwater and drinking water infrastructure.

Flow must seek a separate Part 4 development consent from local council for the stormwater and drinking water infrastructure. This unnecessarily duplicates and complicates the approvals process, resulting in delays of up to 6 months, costs of an additional $100k per scheme and puts Flow on an uneven playing field with traditional public utilities.

Flow would like to maintain the development without consent powers that exist for sewerage systems in Division 18 and have similar powers apply to stormwater management systems in Division 20 and water supply systems in Division 24 to achieve a consistent approach to all water infrastructure that results in an efficient and modern planning response.

Current WIC Act approval processes for the delivery of wastewater, recycled, drinking and stormwater infrastructure are stringent. They ensure proponents providing water services are delivering the highest standards, have robust financial, organisational and operational capacity while meeting the highest quality and environmental standards. WIC Act requires approval from the NSW Minister for Utilities. This high regulatory standard applies to all WIC Act water services and should be extended to all water and sewerage infrastructure.

The following table describes three key types of development performed by Flow as a licensed authority and developers of new subdivision developments as they apply to current and proposed ISEPP and planning provisions.

<table>
<tr><td colspan="3">Development Type Sewerage reticulation network as part of subdivision development</td></tr>
<tr><td>Current SEPP Provisions</td><td>Amendments</td><td>Comments</td></tr>
<tr><td>Can be carried out by or on behalf of a public authority without consent.</td><td>Can be carried out by or on behalf of a public authority without consent.</td><td rowspan="3">The proposed change means that it is not the entity carrying out the work that determines whether consent is required, but whether a licence will be required. This might have the effect that the developer could not carry out the reticulation works as “subdivision works” under a development consent.
Clause 106(1)(b) should be amended as follows to ensure that the works can be carried out by a developer (not on behalf of a network operator) as subdivision works under a development consent for subdivision and for consistency with how clause 106(1)(a) operates for public authorities.

“106(1)(b) <s>consists of</s> is carried out by or on behalf of a corporation that will be required to obtain a network operator’s licence for the construction or operation of water industry infrastructure <s>and a network operator’s licence is required to be held (whether or not by the person carrying out the development)</s> before the development may be carried out.”</td></tr>
<tr><td>Can be carried out by or on behalf of a licensed WICA operator without consent.

In practice, carried out by developer as “subdivision works” under development consent.</td><td>Can be carried out if the works consist of the construction or operation of water industry infrastructure and a network operator’s licence is required to be held before the development may be carried out. If ultimately the work will require a WICA licence, the works will be development without consent, regardless of who carries them out.</td></tr>
<tr><td colspan="3">Development Type: Sewerage reticulation network not part of subdivision development ie. mains connecting subdivision to WRF</td></tr>
<tr><td>Current SEPP Provisions</td><td>Amendments</td><td>Comments</td></tr>
<tr><td>Can be carried out by or on behalf of a public authority without consent.</td><td>Can be carried out by or on behalf of a public authority without consent.</td><td rowspan="2">The same issue as above arises. In practice, these sorts of works will be carried out by or on behalf of the water supply authority because they will be the mains pipes connecting the facility to the residential subdivision.
The proposed amendment to clause 106(1)(b) above will ensure that works carried out on behalf of the network operator can be carried out without consent. The same process will then apply to network operators and public authorities alike.</td></tr>
<tr><td>Can be carried out by or on behalf of a licensed WICA operator without consent.</td><td>Can be carried out if the works consist of the construction or operation of water industry infrastructure and a network operator’s licence is required to be held before the development may be carried out.</td></tr>
</table>

Can be carried out by anyone else, with consent on any land.	In any other circumstances, development consent will be required. Note also that unless exemptions apply, Native Vegetation Act approval will be required (generally in rural zones). One of the exemptions includes circumstances where a Part 5 assessment has been undertaken.	
Development Type: Water Recycling Facility		
Current SEPP Provisions	**Amendments**	**Comments**
Can be carried out by or on behalf of a public authority in a prescribed zone without consent.	Can be carried out by or on behalf of a public authority in a prescribed zone without consent.	The amendment to clause 106(1)(b) proposed above will ensure that the same process applies to network operators and public authorities. It will mean that the determining factor (ie. "who" the work is for) will be the same for both entities.
Can be carried out by or on behalf of a licensed WICA operator in a prescribed zone without consent.	Can be carried out in a prescribed zone if the works consist of the construction or operation of water industry infrastructure and a network operator's licence is required to be held before the development may be carried out.	
Can be carried out by anyone else with consent in a prescribed zone and where development is ancillary to an existing land use.	In any other circumstances, development consent will be required for development in a prescribed zone or if ancillary to an existing land use.	

Flow supports the highest environmental standards and has its own commitment to low carbon infrastructure. Decentralised, local sustainability utilities have a lower impact on the environment – significantly reducing or removing wastewater from outfall and networks, preserving drinking water, reducing odour and creating local resilient water supplies. Similarly sustainable energy solutions including electric vehicle charging stations reduce reliance on coal fired power. While these systems reflect advancements in innovation and sustainability their implementation is challenging because legislation and regulation enshrines the business models of centralised public utilities. These means there is no level or fair playing field. Small changes or updates to regulation that are only applied to one or the other and not equally to both centralised and decentralised providers further disadvantages utility innovators.

An example of this is the removal of development without consent powers for WICA proponents, as IPART has suggested in its submission to the ISEPP review, and requiring Part 4 development consent instead.

The alternative allows such development to always be assessed under Part 5 of the EP&A Act ensuring one centralised determining authority familiar with these types of developments across diverse locations and stakeholders - can apply similar and efficient assessment. One central determining authority can also track lessons learnt, leading to more efficient delivery of next generation technology and speedier housing development.

9. **Exempt development provisions for water supply and sewerage systems to be extended to WIC Act licensees.**
10. **Exempt development powers given to centralised energy and telecommunications providers should be extended to decentralised suppliers.**

WIC Act licensees require the same powers and obligations as public water authorities to allow for efficient delivery, operation and maintenance of its sewerage and water supply systems. Clauses 107 and 127 of ISEPP should be extended to allow WICA licensees to have the same exempt development provisions as public authorities to create a more level playing field. Given that exempt development is of minimal environmental impact this should be considered a minor change.

These powers should also be extended to decentralised energy, telecommunications providers.

11. **Complying development provisions for lead in water and sewer infrastructure to be extended to WIC Act licensees**

New clauses 130 and 131 of the proposed ISEPP review will allow lead-in infrastructure that connects to the existing Sydney and Hunter water supply and sewerage network to be undertaken as complying development. These provisions should be extended to WICA licensees to retain a level playing field for WICA licensees and public authorities.

12. **Expanding development without consent provisions to include sustainable district energy along with waste, shared mobility and data infrastructure developments by non-public authorities.**

CASE STUDY 2:

In building its sustainable water communities, Flow designs and constructs local water and energy centres with recycled water tanks, sewerage, drinking and recycled water infrastructure and drinking water storage tanks. These centres can also include temporary and permanent energy generation infrastructure. Temporary energy generation infrastructure that allows faster housing development through staged development and servicing should also be provided for with development consent without being restricted to prescribed zones (s34(1)) or operational timeframes (s34(2)).

ISEPP s36(3) provides for the following:

(3) Solar energy systems
Development for the purpose of a solar energy system may be carried out by or on behalf of a public authority without consent on any land if:
(a) it is ancillary to an existing infrastructure facility, and
(b) in the case of development for the purpose of a photovoltaic electricity generating system—the system has the capacity to generate no more than 100kW.

These powers should be extended to non-public decentralised providers of low-impact next generation technology and for much greater capacity to allow faster development and transition to greater penetration of renewable energy sources.

These powers should include decentralized energy generating facilities whether the energy is generated by solar, wind or gas.

Conclusion

It is essential ISEPP address the new and continuing evolution of alternative infrastructure delivery mechanisms. Flow's recommendations play a critical role in enabling next generation utility infrastructure to be built, operated and managed. These infrastructure solutions will provide consumers with more affordable infrastructure solutions that put downward pressure on pricing. They are critical in leveling the playing field, driving more affordable housing and faster land release, while achieving critical low carbon outcomes for the State.

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