

7 April 2017

Ms Carolyn McNally
Secretary
Department of Planning and Environment
GPO Box 39
Sydney NSW 2001

Attention: Director Industry and Infrastructure Policy

Reference: **Draft State Environmental Planning Policy (Infrastructure) Amendment (Review) 2016**

Dear Ms McNally

Thank you for the opportunity to comment on the Department of Planning and Environment's (DPE) draft amendments to the *State Environmental Planning Policy (Infrastructure)* (ISEPP).

Sydney Water supports amendments to the ISEPP that will ensure it continues to provide a consistent framework for effectively delivering water, wastewater and stormwater infrastructure across our area of operations and enabling timely maintenance and emergency works. We welcome amendments that help us continue to provide efficient and timely delivery of infrastructure for our customers while achieving balanced community outcomes.

In particular, Sydney Water welcomes the proposed new provisions to make lead-in sewer and water infrastructure permitted as complying development, to connect developments into the Sydney water supply and sewerage network. We commend the Department on this improvement that will support future development of infill and new growth areas across Sydney. We have appreciated the opportunity to discuss this with the Department and our submission provides suggestions for consideration.

Sydney Water's detailed comments on the proposed changes are attached. These comments are from the perspective of a utility interested in promoting efficient environmental regulation and clarity of policy outcomes. This reflects our three equal objectives under the Sydney Water Act 1994 to protect the environment, protect public health and be a successful business.

Sydney Water looks forward to ongoing discussions with the Department of Planning and Environment about the ISEPP. If you need any further information please contact Freya Hartley at freya.hartley@sydneywater.com.au, or 8849 4632.

Yours sincerely,



Paul Plowman
General Manager
Liveable City Solutions

Attachment: Sydney Water's detailed comments on the Draft Infrastructure SEPP

	Section	Comment
1.	MISCELLANEOUS	
1.1	Exempt investigations Schedule 2 (20) for Schedule 1 and Schedule 2 (9) for clauses 43, 82, 97, 107 and 112	Sydney Water requests that the revisions retain broad provisions to be clear that investigations not linked to proposed development can be captured in the definition (for example, operational water sampling programs). The amendment proposes to insert a clause in the schedule 1 exempt development for '<i>Investigations (including geotechnical investigations and other testing, surveying and sampling) relating to proposed development or for the purposes of determining the safety or condition of infrastructure</i>'. This will replace equivalent provisions in sewage, water, stormwater, electricity, rail and road clauses. In the current Infrastructure SEPP, electricity, rail and road have a broader provision than is currently proposed (ie no restriction on investigations being related to proposed development or determining safety or condition of existing infrastructure).
1.2	Electricity generating works or solar energy systems - definition Clause 36	Sydney Water requests that clause 36 be amended to "sewerage systems" not "sewage treatment plants". Sewerage system is defined under the Standard Instrument and will allow works on both our sewage treatment plants and our sewage pump stations, etc. As an example, we have partnered with local Councils to put solar on some pump stations providing electricity to the adjacent public toilet facilities. We are also looking at energy technologies other than solar, to use across our pump station networks.
1.3	Electricity generating works or solar energy systems - Clause 36(3)(b)	Sydney Water requests that an additional provision is added to clause 36 to allow development for the purpose of solar energy systems to be carried out at an existing facility and on land in a prescribed zone by a public authority without consent - and without limiting the generating capacity. Clause 36(3)(b) of the SEPP allows development for the purpose of solar energy systems to be carried out by a public authority without consent on any land if (a) it is ancillary to an existing infrastructure facility and (b) the system has the capacity to generate no more than 100kW. While this clause is suitable for small scale systems in residential areas and is aligned with the complying development provisions, it does not provide for appropriate medium scale development on land in a prescribed zone. Sydney Water is working with many Councils and industry to establish solar on our existing sites in prescribed zones. This should be permissible without development consent. If this is not suitable, an alternative could be to cap the generating capacity limit in prescribed zones (and at existing facilities) to 5 MW without consent. This would still require appropriate environmental impact assessment and the 5 MW limit would be below the trigger for state significant development. Alternatively, energy generating works provisions could be included in the relevant schedules for water supply systems, stormwater management systems and public administration buildings.

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1.4	Emergency and routine maintenance in coastal wetlands and littoral rainforest areas Clause 8(3)	Sydney Water reiterates our support for the amendments to the ISEPP clause 8 that were proposed as part of the draft Coastal Management SEPP - that the ISEPP would prevail over clauses 11 and 12 of the Coastal Management SEPP for emergency works or routine maintenance works that can be carried out without development consent. Until such time that the Coastal Management SEPP commences, Sydney Water requests that the ISEPP is amended to allow certain emergency and routine maintenance activities, exempt under the ISEPP, to also be exempt if located in coastal wetlands or littoral rainforests. This is already in place for other infrastructure activities under clause 8(3) of the Infrastructure SEPP. We request that clause 8(3) is amended to include the clause 107, 112 and 127 (particularly (a), (b) and (c)). This is required because Sydney Water will need to occasionally access existing infrastructure within a littoral rainforest or coastal wetland for routine maintenance works or emergency works. Normally this would be exempt development under clause 127(a) of the Infrastructure SEPP, however the current clause 8(2)(b) states that SEPP 14 & 26 override the Infrastructure SEPP, meaning that development consent would be required. This requirement is onerous and would delay repair works, which could result in ongoing environmental damage and potentially impact Sydney Water's operations and customers.
1.5	Infrastructure corridors EP&A Act amendments	Sydney Water notes that under the proposed amendments to the EP&A Act currently on exhibition, a SEPP can designate an infrastructure corridor if a strategic plan identifies it for that future use. Sydney Water supports the intent of protecting certain infrastructure corridors and we currently work proactively with other infrastructure agencies to minimise impacts of our activities on these. Sydney Water requests the strategic planning process ensures that relevant planning instruments, SEPPs and LEPs have consistent objectives and protections. In our submission on the Sydney District Plans, we have requested that South Creek be designated as an infrastructure corridor given its importance to water management, public access and active transport. We would appreciate the opportunity to discuss this further with the Department. In our submission on the EP&A Act amendments, we have requested that the Department consider the following in finalising these provisions: • for essential infrastructure, change the provision to a requirement to seek advice from a public authority rather than seek concurrence, to minimise delay and cost of delivering other essential infrastructure. This could be similar to the provisions in clause 44 of the ISEPP to give written notice and take into consideration any response. • exclude emergency and routine maintenance work on existing infrastructure assets from the need to obtain concurrence, or include a provision where certain activities agreed with the public authority managing the infrastructure corridor are deemed to have concurrence.

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2.	SEWERAGE, STORMWATER MANAGEMENT AND WATER SUPPLY SYSTEMS	
2.1	General comments Schedule 17, Clause 106 Schedule 22, Clause 125	The changes proposed retain the original intent (with some additional infrastructure captured such as maintenance depots). Sydney Water supports these, subject to our request for potential improvements identified in more detailed comments below.
2.2	Sewerage systems - development permitted with or without consent Schedule 17, Clause 106(2), (2A) and (3)	Sydney Water requests that clauses 106(2), (2A) and (3) be expanded to also permit development that is ancillary to an existing land use <i>in any</i> zone to be carried out without consent in the prescribed circumstances (similar to the wording used in clause 106(3A) (b)). Such provision may be needed to permit Sydney Water to construct systems for irrigation of treated effluent on sporting fields, golf courses and parks, or to construct small, decentralised sewage treatment plants (including treatment works such as artificial wetlands), biosolids treatment facilities or water recycling facilities. Further examples can be provided to the Department if needed.
2.3	Sewerage systems – development permitted with or without consent Schedule 17 Clause 106(5)	Sydney Water requests an addition to clause 106(5) to include sewage or effluent treatment devices (such as waste screening facilities or artificial wetlands) for development in connection with the sewerage system.
2.4	Water supply systems - development permitted without consent Schedule 22 Clause 125 (3B)	The intent of the new provision in 125 3(B) that makes routine maintenance on water treatment facilities permissible without consent on land in any zone is unclear. If this provision has been included to address the matter of existing facilities not located on prescribed zones, we think a more robust approach would be to include a similar provision to that available for existing correctional facilities (see our comment below on existing facilities).
2.5	Sewerage and water - existing facilities Schedules 17 and 22 Clauses 106, 125	Schedule 4 [3] clause 26 provides that certain development for the purpose of existing correctional facilities is permissible without consent in any zone (the current ISEPP only permits this in prescribed zones). A similar provision to make existing sewage treatment plants, water recycling facilities or water treatment facilities in any zone permissible without consent would be helpful for Sydney Water (schedule 17 clause 106 and schedule 22 clause 125). This would cover the occasional circumstance where our existing facilities are not in a prescribed zone (for example Prospect water filtration plant where the land is unzoned; previous circumstances where LEPs have accidentally rezoned parts of our land to residential, such as at Bondi wastewater treatment plant). The example of Prospect Water Filtration Plant has previously been raised with the Department.

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2.6	Stormwater - development permitted without consent Clause 111A	Sydney Water requests that a second clause be included in clause 111A being the same or similar to the clause proposed for 126A(3), to avoid contradicting provisions for public authorities to undertake development without consent by clause 111(1).
2.7	Sewerage, stormwater and water - buildings Schedule 17 (Clause 106(5)(j)) Schedule 18 (Clause 111(2)(d)) Schedule 22 (Clause 125(5)(n))	Sydney Water requests that the proposed clauses 106(5)(j), 111(2)(d) or 125(5)(n) are not included as development permitted without consent "for the purpose of sewerage/water supply/stormwater systems". However, we request that these clauses be included as exempt development. The proposed clauses stipulate that the construction of "buildings" to a height of 5 m is permissible without development consent. This is likely to restrict Sydney Water's ability to plan and construct a range of infrastructure on our sites. Many of the buildings (and structures) at our sewerage and water supply facilities are higher than five metres. Currently under the ISEPP, Sydney Water can construct buildings (and structures) that are in connection with a sewerage / water supply / stormwater system, without development consent. The proposed changes would apply to, and limit our work on essential structures such as digestors or vent shafts, as the definition of building (in the EP&A Act) includes any structure. We also note that the current definitions relating to sewerage systems and water supply systems in clauses 105 and 124 are proposed to be replaced with their equivalent definitions in the Standard Instrument. As a result, these terms will be defined as being a "building or place" (when currently they are defined as being a "facility", providing more flexibility). In addition, Sydney Water is likely to require future development of administration buildings at existing sites, to replace aging buildings which could involve demolition of existing buildings and construction of new buildings (and hence clause 77 will not apply). Our administration buildings are usually either one or two storeys high and often exceed the five-metre limit required for them to qualify as development without consent as defined in the proposed changes to clauses 106, 111, and 125. In some cases, we need buildings on sites without being associated with treatment facilities, such as for laboratories, warehouses or staff accommodation and amenities. Accordingly, Sydney Water requests that the ISEPP be revised to either: 1. Transfer clauses 106(5)(j), 111(2)(d) and 125(5)(n) to exempt development 2. Remove clauses 106(5)(j), 111(2)(d) and 125(5)(n) and amend clause 77(2)(b) to reflect that public administration buildings can be constructed separate from the infrastructure facility, or 3. Amend clauses 106(5)(j), 111(2)(d) and 125(5)(n) to allow the following without development consent, related to sewerage, water or stormwater systems: - public administration buildings up to two storeys high - any other building to any height Transferring the clause to be exempt development (for no greater than 5m) is preferred as it would allow all our other structures to be developed without consent, and would enable demolition as needed.

	Section	Comment
2.8	Sewerage, stormwater and water - exempt development Schedule 17, Clause 107, Schedule 18, Clause 112, Schedule 22, Clause 127	Sydney Water supports the increased flexibility to capture maintenance and replacement activities as exempt development. We also ask the Department to consider the following amendments that improve the consistency in exempt development provisions for water, sewer and stormwater: - for clauses 107 (a), 112 (a) and 127 (a), Sydney Water would like to ensure that the proposed general definition of "emergency works" (as amended by schedule 24, clause 5(2)) applies without the "emergency works" also having to "protect" a sewerage/water supply/stormwater system (as this is not always the case). Instead, only "emergency maintenance" will need to "protect" a sewerage/water supply/stormwater system. To achieve this, Sydney Water suggests the following change (using clause 112(a) as an example): (a) emergency works for, or emergency maintenance to protect, a stormwater management system. - reword clause 107(c)(v) to be the same as proposed clause 127(j) – fire trails may be relevant in both circumstances - add slope stability works to clause 107, to be consistent with new provisions proposed for water in clause 127(n)(iv) - remove the words in parentheses in proposed clause 127(l) 'but not alterations involving additional pump station equipment or its replacement'. The reasons being, the provisions should be the same for water and sewage pumping stations, and it is unclear why this exclusion is included as the reason for the alterations should not be relevant. - add to current clauses 107(c)(i), 112(c)(i) and 127(d) to provide for removal of litter, silt and debris from the system in general such as pipelines and stormwater quality improvement devices and outside - add demolition of sewerage/stormwater/water system works as exempt development (the general demolition clause in Schedule 1 only applies to buildings and structures if their erection was also exempt). Clause 43(g) includes a clause that demolition of certain electricity works is exempt development and we think a similar provision could apply to Sydney Water. For some of our projects, the only activity required is demolition of buildings or infrastructure that was not constructed as exempt development (eg removing infrastructure before surplus property is subdivided and sold). Provided it is not heritage listed, we think it is appropriate that demolition in these circumstances could be exempt. The alternative, of transferring clause 106(5)(j), 111(2)(d) and 125(5)(n) to exempt development would provide the same outcome. - add installation of new plant or equipment within existing buildings or hardstand areas provided it is not for the purpose of substantially increasing capacity and does not substantially change the external form or appearance of the site. This would provide greater flexibility to do work within our existing facilities that cannot be classified in another category of exempt development but that has negligible environmental and community impacts. There is a similar provision for electricity works (clause 43(d)(i)).

	Section	Comment
2.9	Sewerage, stormwater and water - remediation of contaminated land Clauses 106, 111, 125	We note that the draft clause 79(3) (at Schedule 15 (8)) permits remediation of contaminated land for railways or rail infrastructure facilities. Sydney Water requests a similar provision for sewerage, stormwater and water supply systems (clauses 106, 111, 125). This would allow us to undertake minor and routine remediation as development without consent. In many cases, we have sought a DA for minor remediation works (eg in a scenic protection area) where the Council has acknowledged the process would be better using Part 5 provisions.
3.	SEWERAGE AND WATER LEAD-INS	
3.1	Complying development – connections to Sydney and Hunter water supply and sewerage Schedule 23 clauses 130-132	Sydney Water appreciates the Department's work responding to our request for a streamlined approval option for this type of infrastructure. We support the provisions in this section for complying development for low risk water and sewer lead-in infrastructure, subject to the following minor changes: • Clause 130 (2)(b)(i) – please amend 325mm to 375mm, which is a standard pipe size • Clause 131 (4)(d) – please remove as this as the previous clause (131(4)(d)) refers to the Excavation Work: Code of Practice, which is standard practice for this type of work. We note the provisions relate to connections to the Sydney and Hunter networks. We would not object to these provisions being expanded for private water utilities, within the Sydney metropolitan area.

