

## Hunter Water Corporation Submission on;

4 November 2013

*Review of Dams Safety Act 1978 & Dams Safety Committee – Final Report to NSW Trade & Investment Regional Infrastructure & Services – prepared by KPMG (September 2013)*

### Introduction

Hunter Water is appreciative of the opportunity to be involved in this review and provide comment on the report. Rather than commenting on the entire document, Hunter Water has elected to focus on the key recommendations.

### Section 4 – Regulatory Framework

***Recommendation 1:*** *The Act should be amended to provide clarity in relation to the objectives of the legislation and the role and powers of the dam safety regulator. The objective should be to achieve socially acceptable levels of public safety risk in relation to stored waters in NSW and the regulatory framework should enable risk management to be achieved in the most efficient manner possible (i.e., consideration being required to be given to the broadest range of relevant operational strategies and thereby avoiding a singular focus on dam engineering solutions).*

#### HWC Comments:

Agree.

***Recommendation 2:*** *The dam safety regulator should be responsible for monitoring the compliance of dams with standards and guidelines. The regulator should determine the level of monitoring necessary for each dam based on the likelihood of non-compliance.*

*Dam owners should be responsible for compliance with standards and guidelines. The regulator should not be involved in the development of compliance strategies or in identifying particular dam safety upgrade strategies. Dam owners should report to the regulator annually on the level of compliance being achieved by their maintenance and upgrade programs.*

*If dam owners do not comply with standards, the regulator should have clear powers to compel dam owners to implement changes necessary to meet required standards and guidelines.*

#### HWC Comments:

Hunter Water supports the intent of the recommendation but believes that reporting protocols should be based on the consequence category of each dam (as is currently the case) where the higher consequence category dams require more frequent reporting. This would ensure that the costs associated with reporting are commensurate with the risk presented by the dam.

Hunter Water also believes that the application of safety standards should be on a dam-by-dam basis as every dam has its own individual idiosyncrasies depending the design of each dam. It is recommended that development of safety standards is done in consultation with dam owners.

**Recommendation 3:** *The government should change the composition of the dam safety regulator so that it:*

- *is independent of the businesses it regulates;*
- *is composed of representatives of relevant government agencies to ensure integration, complementarity and efficiency in risk reduction strategy development (for example, NSW Treasury, Department of Planning and Infrastructure, Department of Trade and Investment Resources and Energy and the NSW State Emergency Service (SES)); and*
- *has relevant independent expertise, including dam engineering, public safety risk management and benefit cost analysis.*

**HWC Comments:**

Agree.

**Recommendation 4:** *It is recommended that the dam safety regulator be funded by relevant risk creators, which in this case are all the owners of prescribed dams in NSW.*

**HWC Comments:**

Hunter Water supports this recommendation and believes that the level of contribution from dam owners should be relative to the number of dams each owner is responsible for, and the safety risk that each dam poses. Hunter Water has a legislated permanent member on the DSC but only owns three prescribed dams, one of which is a stormwater detention basin. The cost to Hunter Water to provide the permanent member to the DSC is in the order of \$100,000 annually with minimal direct benefit to Hunter Water. The current situation is not proportional to dam ownership and risk, and sees Hunter Water (and others) subsidising other dam owners.

**Recommendation 5:** *The regulator should be required to achieve high levels of public transparency with respect to the basis of its regulatory standards and the respective roles of dam owners versus government. This transparency will make clear the legal liability of dam owners and in so doing encourage levels of private investment in dam safety that align, as far as possible, with the risk preferences of the broader community.*

**HWC Comments:**

Agree.

**Recommendation 6:** *Where the dam safety regulator proposes changes to dam safety regulation, these changes should be subject to consultation with dam owners. Best practice principles suggest a consultation phase of at least 28 days.*

**HWC Comments:**

Agree.

**Recommendation 7:** *The dam safety regulator should consider the views of industry and other stakeholders when making final decisions to implement changes to dam safety regulation. When reaching its decision, the regulator should release a report explaining its decision-making process and the information it considered in making its decision.*

**HWC Comments:**

Agree.

## **Section 5 – Safety Standards**

**Recommendation 8:** *The NSW Government should seek comment from the community on its willingness to accept the risk of dam failure and the appropriate level of dam safety investment. Community feedback should be considered when the regulator sets safety standards for dams. This should be reviewed periodically to ensure that safety standards continue to be consistent with community expectations. This outcome could also be achieved through high levels of transparency with respect to benefit cost analyses undertaken to identify efficient risk reduction strategies, with community input encouraged to that process.*

**HWC Comments:**

The community consultation process should include dam owners to provide both relevant operational details and perspectives of the risk to the community, particularly those in the at-risk environment. In implementing this recommendation, consideration must be given by the regulator to the security implications in providing operational and design details to the general community. As a dam owner, Hunter Water would appreciate consultation on the terms of reference of any proposed community consultation process before this recommendation is implemented.

**Recommendation 9:** *Consideration by a dam owner of whether a potential dam safety investment is appropriate should explicitly include assessment of the benefits and costs of the proposed investment and alternative options to reduce the public safety risk associated with stored waters.*

**HWC Comments:**

Agree.

## **Section 6 – Planning Development Proposals & Mining**

**Recommendation 10:** *A systematic and proactive approach should be implemented to inform dam owners of potential developments downstream from their dams that could influence the consequence category of their dams and the cost of complying with public safety requirements. The approach should be incorporated into the planning approval process or through an alternative process considered appropriate by the NSW Government.*

**HWC Comments:**

Agree. Further to this being incorporated into the planning approval process it also should be incorporated into long-term Government settlement and infrastructure planning strategies so that dam owners are directly involved and have the opportunity to provide input to this process.

**Recommendation 11:** *The NSW Government should consider options to address dam safety considerations much earlier in the planning approval process, particularly for state significant developments and state significant infrastructure.*

**HWC Comments:**

Agree.

**Recommendation 12:** *The NSW Government should seek public comment on:*

- *whether the regulator's role in the approval of mining near prescribed dams is clearly defined; and*
- *whether the dam safety regulator should consider the economic impacts of water loss due to mining activities or whether the dam safety regulator should only be concerned with the safety of the prescribed dam.*

**HWC Comments:**

It is critical that the dams Regulator maintain a clearly defined role in approval of mining near existing and future potential dam sites. In regard to water loss from dams due to mining activities, it is the opinion of Hunter Water that the NSW Office of water be the appropriate regulator and not the Dams Safety regulator. Furthermore, dam owners should be compensated for the cost of this water by the mining industry for losses incurred where appropriate.

## Section 7 – Extreme Weather Events & Seismic Activity

**Recommendation 13:** *The NSW Government should consider whether the dam safety regulator or another government agency should be required to approve Dam Safety Emergency Management Plans (DSEPs). The relevant agency should have sufficient resources to make such assessments.*

### HWC Comments:

Agree. Hunter Water considers that this should be a dual responsibility between the DSC and the State Emergency Service (SES).

**Recommendation 14:** *The NSW Government should evaluate whether existing DSEP trigger points for alerts result in unnecessary evacuation warnings.*

### HWC Comments:

Agree, however in doing so may require refinement to hydrological catchment models and additional monitoring, which may necessitate significant investment by dam owners. The evaluation should also consider the role that dam owners play in flood alert warnings, which at present is an informal by-product of DSEP alert protocols. The responsibility for downstream resident's notification when DSEP alert levels are triggered requires formal clarification in any Dams Safety legislation amendments.

Hunter Water has been involved in this review process from its inception and looks forward to being involved in the finalisation of this process.