



Inquiry into Water Resource Management Charges
Economic Regulation Authority
PO Box 8469
Perth Business Centre
Perth WA 6849

Dear Sir/Madam

Second Draft Report: Inquiry into Water Resource Management and Planning Charges

We are pleased to provide a submission to the ERA on the draft report into water resource management and planning charges. A number of these recommendations specifically targeted the referrals process of the WAPC as suitable for cost-recovery.


The WAPC/Department of Planning have a number of concerns about the draft recommendations including the:

- application of the principles to planning activities for urban water management;
- regulatory costs of introducing some of these charges; and
- implications of charging for referral advice by government agencies.

In summation, the Department and WAPC believe that the functions of the Department of Water that support integrated land and water planning do not fall within the categories of water services for which costs should be recovered. Our detailed comments are attached and provide explanation as to our position. If you have any query regarding these comments, please feel free to contact me.

Yours faithfully

Eric Lumsden PSM
Director General

 12/2011

Attached:

WAPC/Department of Planning Submission on Second Draft Report: Inquiry into Water Resource Management and Planning Charges (ERA, 2010).

The ERA has presented its second draft report with a number of recommendations that will have significant implications for the WAPC, the Department of Planning (DoP), and the planning sector. The Department of Planning (DoP) believes that a more detailed understanding of the reasons for and activities undertaken in relation to statutory land use planning may assist the ERA in their decision-making.

Integrated land and water planning

The relationship between the Department of Water (DoW) and the WAPC is founded on the role of the WAPC as a gatekeeping authority to enforce and support the policy requirements of DoW. WAPC has a number of policies relating to water including State Planning Policy 2.9: Water Resources (2006). *Better urban water management (BUWM) (WAPC, 2008)* was developed jointly with the DoW to provide a framework for the integration of land and water planning.

It clearly provides proponents with information as to what information is needed at different stages of planning to support their planning proposals. A requirement of *BUWM* is the development of a water management strategy that addresses relevant water issues. This strategy is referred to the DoW along with the planning proposal. The strategies are designed to show compliance with the various policy requirements for urban water management.

This referral process is also undertaken with other agencies including DEC, and Health where proponents have been required to demonstrate compliance with the regulatory requirements of those organisations.

Application of the principles to urban water management

The principles underpinning the ERA report are intended to be compliant with the NWI as stated on page 7 of the second draft report. The DoP and WAPC believe that the cost recovery principles have been misapplied to the assessment and referral activities that the Department of Water undertake for statutory planning.

These activities and those of the development and planning sector are **not water resource management and planning activities** as established under the NWI. *The National Water Initiative Pricing Principles (2010)* (p12) clearly states:

“..for the purpose of cost recovery, water planning and management are those activities undertaken ..as a result of water use. Water planning and management does not include activities taken to manage land-based impacts such as those associated with land clearing.” (my emphasis)

The first principle of the second draft report (p6) also states that cost recovery is for impacts "*arising from the use of water resources*". The development of land for urban, industrial or other land uses are clearly land-based impacts not 'water use' or 'use of water resource' activities.

The NWI specifies cost recovery for water 'users' within a water market approach where resources are given as a property right therefore conferring a private benefit or meeting the requirement of a 'private good'. The NWI was intended to drive market efficiency in resource use by ensuring that water was fully valued by direct users including costs of externalities. It provided clear direction on cost recovery for specified outcomes. Extractive users of water resources, including service providers, are legitimate targets for cost recovery associated with extractive impacts.

The water resource issues for which planning proposals are referred to the Department of Water are not water resource management issues – but urban water management which comes under a different section of the NWI. Planning proposals with a water management component do not incur a water use benefit to the proponents and proponents do not acquire any form of private good. Rather the planning proposals (and water management strategies as assessed by the Department of Water) are intended to provide proof that the proponent is meeting the legislative requirements of the DoW to protect environmental assets and support urban hydrology. Developers (aside from those who procure water licences) do not 'use' the urban water and as such should not be charged.

Cost recovery vs costs already incurred

Proponents are not getting services for free nor are the assessment services of the DoW providing them with any form of private good or commercial benefit. Proponents already incur significant costs in paying for hydrological studies, detailed engineering design, and specialist consultants to develop water management strategies. These costs are all incurred to support, for example, the application of water sensitive urban design (WSUD) in order to ensure that land development does not have adverse impacts on urban hydrology. These costs do not provide the developers with a direct commercial benefit.

Public vs Private goods

Water licences are a private good – they give the user exclusive access to and use of a given amount/proportion of water. As such those activities of the DoW that contribute to planning and management of extractable water resources do meet the costs recovery criteria for a private good.

The DoP argues that urban water management activities as assessed by the DoW for statutory planning do not meet the criteria of private goods. Developers (aside from those that may apply for water licences) do not incur any private good from

their land and water management activities. The development and sale of land is a commercial enterprise but the activities relating to water management are not.

By way of example, the implementation of water sensitive urban design (WSUD), a core policy initiative of DoW, is not a private good. WSUD requirements support well-designed drainage systems which maintain the local hydrology and manages the risk of flooding. Such a system is not a private good with exclusive access. One property's 'use' of WSUD within a suburb does not reduce another persons use. The same is true of larger drainage schemes. They do not confer a sole benefit nor can the 'owner' of a drainage scheme such as a council be considered to receiving a 'private good' as the diffuse nature of the activity means you can not exclude people from using it. Drainage schemes are also a public good.

Cost recovery complications

Section 7 would benefit from reviewing the existing cost-recovery process of the WAPC and local governments to show how their proposed changes may be integrated or possible administrative difficulties. In section 7, the ERA states that their preferred position is for DoW to recover their costs from the WAPC (p70) with the expectation that the costs would then be passed on to developers. We believe this is inappropriate for a number of reasons. Firstly, principle one states that costs should be recovered from those who cause the costs to be incurred. The NWI principles also reinforce the importance of recovering costs directly from the water 'users'. As we have already established, land development is not a water 'use' activity, nor are land developers generally water 'users'. WAPC is an approval authority and is also not responsible for the incursion of costs relating to water activities therefore costs should not be levied against our referral activities.

We would argue that any proposed costs for land development would need to be recouped by the DoW direct from the proponents and **not from the WAPC**. Using the WAPC as a conduit for obtaining fees from developers or local governments would represent 'double handling' and incur unnecessary administrative costs for the DoW/WAPC to recover the costs of other agencies. This would not represent an efficient or equitable method of cost recovery.

Section 7 of the second draft report refers to the types of statutory referrals including subdivision and development applications, local, district and regional planning proposals. "Local" planning proposals can include a variety of proposals ranging from local planning scheme amendments, local planning strategies, and local structure plans. These are all different types of planning tools developed and submitted to the WAPC by different proponents (LGA's or developers) and for which different charging regimes apply.

For 'local planning proposals' a variety of charging regimes is possible. The WAPC does NOT CHARGE local governments for submitting local planning scheme amendments so it would not be appropriate for DoW to leverage fees from us for their assessment.

The LGA's may submit scheme amendments for their own benefit or because of a planning proposal by a developer. So, the DoW would need to directly charge the LGA or the developer directly for any assessments of these. LGA's also charge the developer directly for the assessment of local planning scheme amendments or local structure plans. Again, local planning scheme amendments do not result in the LGA or developer incurring a 'private good' or any form of water property right or water use' activity which would fall under the NWI cost recovery criteria.

At the development level, the WAPC charges developers for the costs of submitting subdivision applications, however the local government charges developers for the clearance of subdivision conditions.

Different cost recovery approaches for each type of planning proposal would need to be developed by the Department of Water and focussed on direct cost recovery rather than attempting to use the WAPC to leverage fees. The cost recovery of any fees to be charged by LGA's or the WAPC is controlled by the *Planning and Development act 2005*, and the *Planning and Development Regulations 2009* and any new proposals to charge fees to the WAPC for cost recovery would have to comply with these.

A full assessment of the administrative and legal costs in implementing the ERA's draft recommendations should be undertaken so that a fully informed decision by Government can be made. Any such proposal by an agency with these cost implications would require an Regulatory Impact Assessment as required by the Department of Treasury and Finance.

Implications of cost recovery for referrals

There are several further aspects to establishing a cost recovery precedent from the WAPC and its implications for the relationship of the planning system with other agencies.

Firstly, the WAPC refers planning proposals to a number of organisations to ensure that proposals comply with those organisations policy and legislative objectives. If it is accepted that it is rational for the DoW to charge WAPC for any referral advice, we would face a situation where all referral agencies may charge us for advice on planning proposals. When multiple agencies are asked for referrals, the accumulated charges could be substantial.

Secondly, the WAPC questions, if having to pay for a service, whether it would be more effective to avoid paying the DoW the costs of assessing compliance with their policies by undertaking in-house assessment. Under such circumstances, DoP would lobby for DTF recognition and the transfer of any consolidated revenue funded 'land use planning' positions in other agencies to the DoP. This would essentially result in shifting seats.

Thirdly, the WAPC could question the fundamental basis of our role in assisting other agencies to implement their legislative objectives. WAPC and DoP incur substantial costs in developing supportive policy and implementing policy

requirements of other agencies for matters that are not strictly planning matters. This is down with the broader goal of achieving sustainable communities and it is recognised that inter-agency support of land use planning assists in this. However, under an economic rationale approach, the WAPC and DoP would certainly be able to offer more streamlined approval processes if we no longer implemented the policy requirements of other agencies, and therefore did not need to use referral services. Other agencies would then incur substantially greater costs developing separate regulatory processes in order to oversee land development. This would result in much greater costs and complicated approvals processes for the development sector and a concomitant likely increase in housing and land supply costs.

We would ask that the ERA consider the broader social and economic implications of the recommendations in the second draft report. The WAPC and DoP have adopted a collaborative working relationship with many agencies to ensure that the land planning sector integrates and supports other agencies in their goals. This provides an efficient whole of government approach. If the WAPC and DoP are subject to inappropriate charging regimes for the work undertaken by other agencies to support the implementation of their legislative requirements, then WAPC/DoP would need to consider the fundamental basis for their ongoing relationships with other agencies. We do not feel such an approach would ultimately provide a broader benefit to the community, Government, or development sector.