

# FINAL DRAFT - Stormwater Developer Works Policy

## 1. Overview

Sydney Water (us, we, our) are committed to delivering efficient regional stormwater infrastructure to service Western Sydney Aerotropolis Initial Precincts including the Mamre Road Precinct in accordance with the adopted [Regional Stormwater Scheme Principles](#) and the information detailed within them. We understand that developers are often best placed to deliver our infrastructure, in parallel to land development, on behalf of Sydney Water.

### 1.1 Scope

This policy applies when regional stormwater infrastructure works are to be designed and constructed by developers on behalf of Sydney Water under an agreement with clear requirements for reimbursement.

This policy applies to areas where Sydney Water is the designated Regional Stormwater Authority (Western Sydney Aerotropolis initial precincts and Mamre Road precinct).

This policy is applicable to regional stormwater infrastructure provision only (it does not apply to drinking water supply, wastewater, or recycled water infrastructure).

References to stormwater infrastructure in this policy is to regional stormwater infrastructure required by Sydney Water as the Regional Stormwater Authority.

**Out of scope:** This policy adopts reimbursement methods currently available to Sydney Water. The development of an offset process and accounting mechanism as an alternative method of reimbursement is currently under investigation.

### 1.2 Objective

The delivery of stormwater infrastructure by developers on behalf of Sydney Water and the reimbursement cost of that infrastructure by Sydney Water is subject to a formal agreement known as a Stormwater Developer Works Agreement. This policy seeks to:

- establish a consistent and transparent process that meets Sydney Water's regulatory standards.
- achieve cost effective and timely delivery of stormwater infrastructure.
- facilitate a collaborative relationship with developers to align development needs with stormwater management requirements to meet the service levels that are required from the regional stormwater scheme.

This policy is for **external use** and should be reviewed by developers prior to entering into any Stormwater Developer Works Agreement for stormwater infrastructure works with Sydney Water.

### 1.3 Interim position

The ability to enter a Stormwater Developer Works Agreements under this policy is contingent on final business case approval by NSW Government and registration of a Sydney Water Development Servicing Plan (DSP) and associated Infrastructure Charge by the Independent Pricing and Regulatory Tribunal (IPART) that includes the development site.

Once approval is granted and the Development Servicing Plan has been registered with IPART, Sydney Water can enter into commercial agreements with developers and landowners for the funding of developer delivered stormwater infrastructure. Consequently, any expenditure by a developer / landowner on stormwater infrastructure prior to finalisation of this approval process remains at their own risk. Until then, Sydney Water will not take ownership of, nor reimburse costs associated with unapproved stormwater infrastructure or servicing.

## 2. Policy in detail

### What is a Stormwater Developer Works Agreement?

A Stormwater Developer Works Agreement is a voluntary arrangement between a developer and Sydney Water. It requires the developer to undertake identified stormwater infrastructure works that are included within a Development Servicing Plan (DSP) for provision to Sydney Water and details the amount Sydney Water will reimburse the developer for those works. We encourage developers to talk directly to Sydney Water throughout the planning process for their development. Sydney Water will work with you to design the stormwater infrastructure in a cost efficient and timely manner. This will confirm whether a Stormwater Developer Works Agreement for the works is required with Sydney Water. Once resolved, we will require you to enter into a Stormwater Developer Works Agreement.

Sydney Water has prepared a standard Stormwater Developer Works Agreement which outlines our terms. Once the Stormwater Developer Works Agreement is signed, no further negotiations will be entered into on the terms of the agreement.

Once a Stormwater Developer Works Agreement has been entered into with Sydney Water (in addition to any other planning approval requirements), the stormwater infrastructure works need to be completed to the satisfaction of Sydney Water. This is one of several requirements of a Notice of Requirements (NOR) that must be completed for a section 73 Compliance Certificate to be granted under the *Sydney Water Act 1994* for the development.

### Agreement requirements

The following requirements apply to Stormwater Developer Works Agreements and should be considered in the design and development process for your development:

- The stormwater infrastructure works must minimise risk and provide value for money, as part of their design, location, construction, and viability.
- A register of designers that have provided evidence of appropriate capability (Stormwater Designer Register) will be available on Sydney Water's website for developers to engage design consultants to prepare detailed designs for stormwater infrastructure works. The register is a guide only and should an alternate designer be preferred; their experience and capabilities will need to be assessed and endorsed by Sydney Water.
- All stormwater infrastructure works will need to be agreed, detailed, and signed by all parties under a Stormwater Developer Works Agreement. These stormwater infrastructure works must be delivered prior to the issue of the dependent section 73 Compliance Certificate.
- Costs associated with the design and construction of stormwater infrastructure can be claimed in accordance with a signed Stormwater Developer Works Agreement.
- Reimbursement will occur after the Infrastructure Contributions (IC) have been paid and the section 73 Compliance Certificate is granted. Stormwater Developer Works Agreements may be subject to review after 12 months and a variation issued, should significant changes in costs or Sydney Water procedures become apparent, as part of the regular DSP and IC twelve-month review process.
- The quality of construction works and stormwater infrastructure will be the responsibility of the developer under the Stormwater Developer Works Agreement including through defects liability and construction inspections.

- Opportunities for innovation in the provision of stormwater infrastructure, or minor modifications to the regional stormwater scheme plan designs found here (e.g., Mamre Road Stormwater Scheme Plan May 2024) may be discussed with Sydney Water during the Feasibility process (pre- development application lodgement process). These proposed scheme changes will be considered where the modified stormwater infrastructure works provide network-wide benefits and cost efficiency in accordance with the Stormwater Scheme Principles.
- The delivery of additional infrastructure works beyond an individual developer's site will also be considered during the Feasibility process, where these additional works will provide efficient delivery of, and connectivity of the regional stormwater network.

## 2.1 Development Scenarios

The delivery of stormwater infrastructure works required to enable development is unique to the site characteristics on each property. Stormwater infrastructure will be required on both private and public land to complete the broader regional stormwater network for the entire Western Sydney growth areas region. The current land ownership (at the time of entering a Stormwater Developer Works Agreement) will be used to categorise the different development scenarios related to the delivery of stormwater infrastructure works, as follows:

- a. Stormwater infrastructure works on developer's land,
- b. Stormwater infrastructure works on a third party's land,
- c. Stormwater infrastructure works on Sydney Water land.

The details of each scenario, as they relate to the delivery of stormwater infrastructure, will be addressed through individual schedules in the required Stormwater Developer Works Agreement. Those schedules will be developed by Sydney Water in consultation with the developer during the stormwater infrastructure planning and design phase for each development.

### Agreement expectations

The following details Sydney Water's expectations for entering into a Stormwater Developer Works Agreement with developers to deliver stormwater infrastructure works and provide a transparent and equitable approach to stormwater infrastructure delivery, regardless of the development scenario.

- Reimbursement for developer delivered stormwater infrastructure works (related to design and construction costs as per **Appendix A**) will occur once all stated requirements in the Stormwater Developer Works Agreement have been met (see **Payment timing**).
- Sydney Water requires the engagement of a suitably qualified design consultant. Sydney Water will provide a Stormwater Designer Register that includes entities that have provided evidence of appropriate capability. This engagement, and any construction contractor engagement, must be in accordance with Sydney Water's [Procurement guidelines for developer works](#).
- The Stormwater Developer Works Agreement will detail what components of the Design Package (see **Design assessment**) will be reimbursed under the Agreement, including details of financial liability to rectify incomplete or sub-standard stormwater infrastructure works.
- Where the reimbursement for stormwater infrastructure works, is higher than the IC for that stage of development, the reimbursement may be paid in stages, aligned to issuing of section 73 Compliance Certificates and payment of the IC for subsequent stages of the development.

## 2.2 Standard payment provisions

### Payment approach (what we will pay for)

Sydney Water's approach to payment (reimbursement) for stormwater infrastructure works delivered by a developer utilises two pathways to determine the payment amount:

- **Schedule of Assets:** used where the value of the assets to be delivered by a developer for a development is less than the payment approach threshold (discussed below).
- **Competitive Tender:** used where the value of the stormwater infrastructure works exceeds the payment approach threshold limit to ensure that competitive pricing and market costing is tested in the provision of stormwater infrastructure (discussed below).

### Threshold Limit

The current published Sydney Water Procurement guidelines for developer works has the following threshold:

- Works up to \$500,000 – Schedule of Assets
- Works above \$500,000 – competitive tender with a minimum of three tenderers.

**Note:**

- A review of these thresholds will be conducted as part of the DSP process review (12 months).
- The threshold includes asset and reimbursable works.
- The threshold is based on total project costs for all Sydney Water Regional Scheme stormwater assets associated with developer's land parcel.

### Schedule of Assets

A Schedule of Assets is being developed to show the value of the stormwater infrastructure assets. This Schedule of Assets will reflect the cost of materials, plus designing and delivering the stormwater infrastructure by a developer, as described in Appendix A. This will be used to determine the reimbursement amount for the developer delivering the regional stormwater infrastructure if the value of this infrastructure is less than the \$500,000 threshold. The value of the stormwater assets used to calculate the IC is different to the Schedule of Assets, as the DSP value includes numerous other costs that would only be relevant if the assets were delivered by Sydney Water on a timeline that aligned with Sydney Water's planned delivery program. As the majority of the regional stormwater assets will be delivered by developers, to suit their timelines, the values in the DSP will not be used for the Schedule of Assets.

The Schedule of Assets (stormwater) will be finalised following the IPART review of the Mamre Rd Development Servicing Plan.

The Table of Cost Items in **Appendix A** lists the items of work that are included as reimbursable activities. Items of work that are not included are to be borne by the developer.

## Competitive Tender

The tender process is required to be used where the developer's stormwater infrastructure works exceed the Payment Approach Threshold Limit. The tender process incorporates competitive pricing for delivery of stormwater infrastructure and requires clear probity through actual expenditure. This process ensures suitable parties (professional service providers and constructors) can undertake the stormwater infrastructure works.

Where a tender process is required, the developer **must** have regard to all relevant sections of Sydney Water's [Procurement guidelines for developer works](#).

## Payment timing

Developer stormwater infrastructure works will be reimbursed by Sydney Water once the following has occurred:

- An audit of the works has been conducted by Sydney Water and approved.
- Maintenance Bond paid by developer for ongoing maintenance works required under the Stormwater Developer Works Agreement\*.
- Transfer of Ownership Notice for those stormwater infrastructure works has been issued.
- Easements created or land transferred to Sydney Water for the purpose of stormwater infrastructure is registered with the NSW Land Registry Services.
- The developer has paid their Infrastructure Contributions.
- Sydney Water has issued a section 73 Compliance Certificate, for the development.
- An invoice for reimbursement has been issued to Sydney Water by the developer for the delivered stormwater infrastructure works. Payment to take place within business 30 days of Sydney Water's receipt of invoice.

\* **Note:** Reimbursement for stormwater infrastructure works will be subject to the developer's provision of Sydney Water's Maintenance Bond to secure the developer's maintenance obligations and amenity works for each development site after the Transfer of Ownership to Sydney Water, typically 24 months.

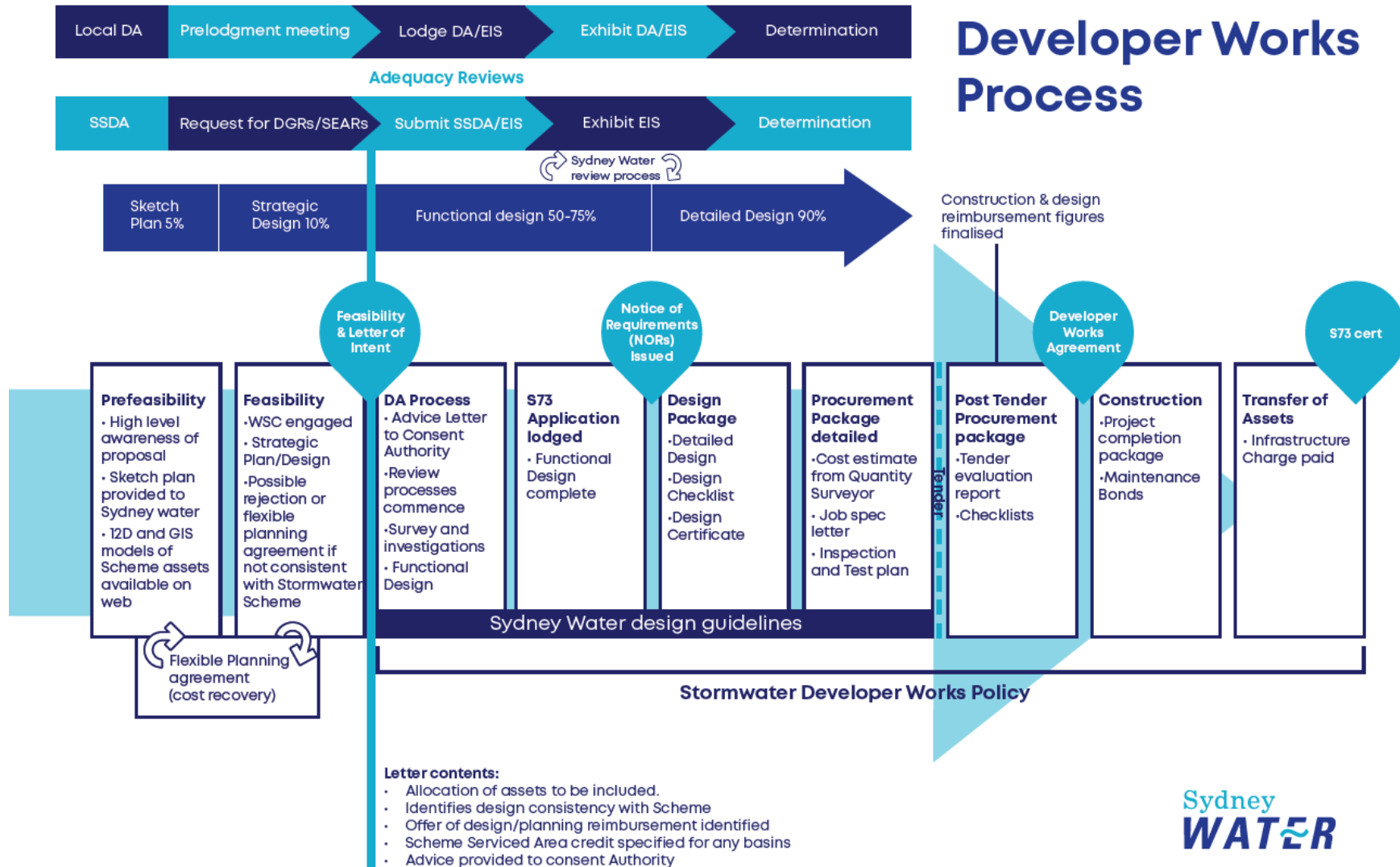
## 2.3 Stormwater Infrastructure Works Process

The following provides an indicative overview of the developer steps and Sydney Water process to deliver stormwater infrastructure works on behalf of Sydney Water, assuming a Part 4 development assessment process. Depending on the delivery scenario, alternative approvals processes may be appropriate. This should be determined on a case by case basis in consultation with Sydney Water and the relevant planning authority. The process diagram details developer-delivered works only and does not cover the Feasibility Approval process for stormwater servicing as part of obtaining development consent under the *Environmental Planning and Assessment Act 1979*. This Policy, and the Process shown below, comes into effect after the estate has received development consent.

Sydney Water, Council and DPHI will continue to work together to refine this process.

# INDICATIVE ONLY

## Developer Works Process



Note: The process diagram above is provided to show how the Sydney Water process is anticipated to integrate with the planning approval processes, assuming a Part 4 approvals pathway. The diagram is indicative only and Sydney Water, Council and DPHI will continue to work together to refine this process. The most appropriate approvals pathway for infrastructure delivery should be determine on a case by case basis in consultation with Sydney Water and the relevant planning authority.

### 2.3.1 Design assessment and development consent

The design of stormwater infrastructure works is required to comply with Sydney Water's NOR for the development and be consistent with the Sydney Water Stormwater Scheme plan and Stormwater Scheme Principles, to enable a Stormwater Developer Works Agreement to be entered. We encourage developers, and their design consultant, to engage regularly with Sydney Water throughout the design process to ensure the Stormwater Scheme Principles of each Scheme are achieved, the design is fit for purpose and complies with Sydney Water Standards, requirements, and specifications. Developer's design consultants and auditors must also meet Sydney Water's engineering competency standards.

The use of design consultants not on the register by a developer will require that design consultant to demonstrate they have the required experience and competency (via an Evidence of Competency form).

The developer stormwater infrastructure works design (Design Package) must be submitted to Sydney Water and be endorsed as the Design Plan. The Design Package must also comply with any required Planning Consents.

In most circumstances, we expect the stormwater infrastructure works will form part of the Development Consent issued for the developer's overall development. However, in some circumstances where the developer is delivering works on Sydney Water land, the developer delivered stormwater infrastructure works may need to be assessed under Part 5 (Division 5.1) of the *Environmental Planning and Assessment (EP&A) Act 1979*. This will include a Review of Environmental Factors prepared by the developer and determined by Sydney Water. Further guidance on the Review of Environmental Factors process can be provided upon request.

Sydney Water will undertake reviews of the Design Package at no cost to the developer, unless the Design Package:

- consists of the same piece of stormwater infrastructure that has been reviewed and rejected twice. The third and any following reviews will be charged at the standard Sydney Water rate.
- requires major rework, including but not limited to poor design standard, disregard for integration with other components of Sydney Water Regional Stormwater Scheme, and not adhering to Stormwater Scheme Principles.

### 2.3.2 Third Party Land access

The stormwater infrastructure work to be delivered by a developer may involve works on land adjoining the developer's development site, as required to ensure the integration and connectivity of the broader regional stormwater infrastructure network.

In circumstances where the developer requires access to third party land to deliver the stormwater infrastructure work, the developer will need to negotiate with the third-party landowner to agree on any site-specific conditions and access requirements. Sydney Water will work with the developer designing and delivering these works, following the same process as if it were on the developer's own land.

To access third-party land, the developer will need to follow and comply with Sydney Water's Permission to Enter and Notice of Entry processes. Sydney Water may assist with access issues if they arise.

Should a landowner or developer not be able to deliver the stormwater infrastructure works in an agreed timeframe, Sydney Water reserves the right to reallocate delivery to the party most able to meet the development servicing timeframes and provides the best value for money. This is to ensure that the regional

scheme is operational at the earliest possible date and that any delays in earthworks by a developer or the non-development of land by a private landowner or developer, does not delay the commencement of the operation of the regional stormwater scheme.

### 2.3.3 Spoil management

During construction and delivery of all stormwater infrastructure works on developer's land, Sydney Water expects that the developer will use or dispose of all spoil yielded by stormwater infrastructure earthworks on their site. Sydney Water will not provide reimbursement for spoil management (i.e. offsite transfer or disposal of spoil) for stormwater infrastructure works on any developer's land. This also applies to stormwater works undertaken on third party land.

Where stormwater infrastructure works are being delivered on Sydney Water land, spoil management will be negotiated on individual terms with the developer / constructor. This also includes negotiations for contaminated spoil identified as part of the stormwater site investigations and construction. Sydney Water encourages local reuse of excess spoil, within regulatory requirements, to reduce cost.

### 2.3.4 Land and Easement acquisition

Land and easements required by Sydney Water for stormwater infrastructure works and the delivery of stormwater assets will be secured in accordance with the Stormwater Developer Works Agreement. For any third-party land and easements that cannot be successfully negotiated by the developer, Sydney Water may, if it is clear there are no other options, manage the acquisition process in line with the [Land Acquisition \(Just Terms Compensation\) Act 1991](#) (NSW).

### 2.3.5 Completion of works

The Stormwater Developer Works Agreement sets out the processes for the completion works, including inspections by Sydney Water and documentation to be provided as part of the Project Completion Package (PCP).

Developer stormwater infrastructure works will be deemed completed and able to be connected to Sydney Water's regional stormwater system and network, when Sydney Water provides written notice to that effect, following the undertaking of required inspections\* of constructed stormwater assets. To confirm completion of these works the developer must provide Sydney Water written notice, submit a PCP and the Maintenance Bond.

Once the PCP is received and accepted by Sydney Water, the developer can request their infrastructure contribution invoice for the development. Sydney Water will prepare the invoice and issue to the developer for payment.

**\*Note:** Sydney Water inspections to determine completion of works will not be reimbursable.

### 2.3.6 Defects liability and maintenance

The developer shall be responsible for the maintenance of the stormwater infrastructure works and the rectification of any defects within the specified Defects Liability Period (24 months from the date of commissioning of the stormwater infrastructure works) set out in the Stormwater Developer Works Agreement.

The Stormwater Developer Works Agreement will also require the developer to submit a maintenance schedule, which shall set out the proposed maintenance works for a period of 24 months following completion of the stormwater infrastructure works.

Maintenance works will include landscaping, vegetation management and other management work, such as cleaning, inspection of damage, weed removal, re-levelling and topping up, removing salt deposits, tree inspections, watering, replacement of ties and stakes, fertilising, mowing, pest, and disease treatment, pruning, irrigation, removing debris, checking water levels. The extent of these maintenance works will be specified in the schedules of the Stormwater Developer Works Agreement.

Maintenance works such as vegetation management required after the developer stormwater infrastructure works are completed will be secured by a Maintenance Bond to Sydney Water to ensure maintenance of the future Sydney Water assets is provided for the 24 month period.

### 2.3.7 Transfer of Ownership

Prior to Sydney Water issuing a Transfer of Ownership Notice to transfer the stormwater infrastructure works to Sydney Water, all fees under the Stormwater Developer Works Agreement (and NOR as applicable) must be paid to Sydney Water.

## 3. Review of policy

Sydney Water is committed to reviewing this Infrastructure Funding – Developer Stormwater Works Policy at a 24-month interval, for the next 6 years, as the delivery of stormwater infrastructure progresses within the Mamre Road and Aerotropolis Initial Precincts. This will help refine and adjust the policy and reflect a streamlined and practical approach to stormwater infrastructure delivery.

## 4. Definitions

Term	Definition
Compliance Certificate	Means a Compliance Certificate issued under section 73 of the <i>Sydney Water Act 1994</i> issued by Sydney Water to the developer to confirm and recognise that all water requirements have been met.
Developer	Means a person or entity who either has been given approval under Part 6, Division 9 of the <i>Sydney Water Act 1994</i> and is seeking a section 73 Compliance Certificate, or is seeking approval to adjust, deviate or extend Sydney Water's assets.
Declared Stormwater Drainage Area	Means the area where Sydney Water can charge customers a stormwater charge, and development a contribution under the Development Servicing Plan. In the Aerotropolis area, the declared catchments are aligned to the precinct borders and listed under the <i>Sydney Water (Stormwater Drainage Areas) Order 2022</i> .
Development Servicing Plan (DSP)	Means the details of infrastructure and costs of the Stormwater Scheme and the contributions required. The method and process to estimate and levy these contributions are set in accordance with <i>Developer charges and backlog sewerage charges for metropolitan water agencies Sydney Water, Hunter Water and Central Coast Council, Final Determination</i> , IPART October 2018.
Infrastructure Contribution	Means the levy payable to Sydney Water by land developers to cover the costs of the DSP infrastructure.
Maintenance Bond	Means an unconditional undertaking to pay an amount equal to the Maintenance Bond Amount (plus an amount equal to GST) in the form annexed in the Schedule ("Form of Maintenance Bond") (or as otherwise approved in writing by Sydney Water) in the Stormwater Developer Works Agreement, given by a financial institution which: <ul style="list-style-type: none"> <li>(a) is authorised under section 9 of the <i>Banking Act 1959</i> (Cth); and</li> <li>(b) has its principal place of business in Australia and at least one branch in the Sydney metropolitan area.</li> </ul>

Term	Definition
Notice of Requirements	Means the notice of requirements (NOR) issued by Sydney Water Corporation under section 74 of the <i>Sydney Water Act 1994</i> .
Pre-assessed design consultant	Means designers, contractors, suppliers, and consultants who are on the Sydney Water website as pre-assessed for competencies to complete stormwater infrastructure design and construction works.
Stormwater Developer Works Agreement	Means the agreement between Sydney Water and the developer for stormwater works to be built on behalf of Sydney Water with the expectation of reimbursement.
Stormwater Infrastructure	Means all stormwater assets, including trunk drainage (pipelines), overland flow paths (conveyance channels), retarding basins, waterways, wetlands / ponds, and gross pollution traps (GPT) required to deliver regional stormwater in accordance with the DSP.
Stormwater Scheme Principles	Means the 16 principles listed as Western Parkland Stormwater Scheme Principles for the Aerotropolis and Mamre Road Precincts in Sydney Water's Stormwater Management Framework for Aerotropolis and Mamre Road Precincts document.
Stormwater Scheme	Means the detailed plan of the regional stormwater and drainage network within the declared stormwater drainage areas that is the basis for determining DSP contributions. It consists of functional designs for Sydney Water drainage assets, including pipelines, overland flow paths, retarding basins, waterways, wetlands, harvesting, treatment, storage infrastructure and identification of land to be set aside for these purposes.
Professional Service Contract	Means the agreement to provide professional or management consulting services, such as designing, feasibility studies, superintendence, contract management, or specialist reports.
Water Servicing Coordinator	Means a company listed by us and engaged under contract to act as an intermediary between us and developers. The developer/project manager can fulfil this role (as a certifier) when procuring services during the strategic and detailed planning stage.

## 5. References

Document type	Title
Compliance obligations	<i>Sydney Water Act 1994</i> <i>Environmental Planning and Assessment Act 1979</i>
Other documents	

## 6. Appendix

Appendix	Title
A	Defined extent for stormwater infrastructure works for reimbursement