

Submission

from the

Nature Conservation Council of NSW Inc.

To the

National Competition Council

on an

Application under Part IIIA Trade Practices Act 1974

by

Services Sydney Pty Ltd

3rd June 2004

Submission from the Nature Conservation Council of NSW Inc to the National Competition Council on an Application under Part IIIA of the Trade Practices Act 1974 by Services Sydney.

1. The Nature Conservation Council of NSW Inc.

The Nature Conservation Council of NSW Inc (NCC nsw) is the peak non- government environmental organisation in NSW representing some 120 environmental groups. NCC nsw has operated since 1955. It is a democratically constituted body managed by an executive elected annually by the member organisations. The executive currently includes three members elected to represent the regions.

NCC nsw is a non profit organisation and does not endorse particular commercial entities or their ventures, products and services.

NCC nsw does promote policies and decisions which are likely to lead to improved environmental outcomes and it is on this basis that we make the present submission.

While NCC nsw favours access to the SWC system in this submission, it does not necessarily view competition as an invariable precondition to good environmental outcomes.

2. Sydney Water's Environmental Performance

NCC nsw is concerned that Sydney Water Corporation (SWC) is failing to adopt or adequately implement policies that can help to mitigate its impacts on the environment.

Sydney Water has made unacceptably poor progress against critical water conservation targets in its Operating Licence:

- 2001/2 demand management targets have not been met
- 2004/5 and 2010/11 demand management targets are in serious doubt

In Sydney, less than 2% of total water used is recycled (30ML/day out of 630GL/year).

SWC's 1999 effluent recycling targets have been abandoned.

SWC discharges 450GL of sewage effluent into the ocean each year, making it by far the State's largest polluter.

The sustainable draw from the reservoirs which supply the SWC water reticulation system (managed by the Sydney Catchment Authority) is generally considered to be about 600 GL per annum but this does not take into account the needs of the river ecosystems for water. Making proper allowance for river environmental flows will reduce available water substantially, probably by 120 GL or 20%.

Some water consumed in Sydney is sourced from the Shoalhaven River, outside the physical Sydney water catchment basin. There are current proposals to increase the volume of water drawn from this source. NCC nsw believes inter-valley water transfers of this kind should be avoided for environmental and other reasons. Drawing additional water from the Shoalhaven at Tallowa Dam involves pumping to the Wingecarribee River in the Southern Highlands, some 700 metres higher in elevation, with significant energy costs and greenhouse implications.

NCC nsw considers that Sydney Water's long term strategies, as expressed in its *WaterPlan 21* are unsatisfactory, both in terms of some of the goals that are stated, and in SWC's performance in meeting important goals. Of particular concern is *WaterPlan 21's* weak commitment to large-scale re-use ("Sydney Water will seek to reduce additional flows and loads to the ocean") and its support of the status quo ("... will continue to operate the coastal sewage treatment plants"). *WaterPlan 21* represents a retreat from SWC's statutory obligations:

SYDNEY WATER ACT 1994

Re-use of sewage effluent

27 Re-use of sewage effluent

- (1) Without limiting sections 21 and 22, the Corporation is to adopt as an ultimate aim the prevention of all dry weather discharges of sewage to waters, including from ocean outfalls, except to the extent that this is necessary to safeguard public health or prevent environmental degradation, or both.

NCC nsw is concerned that SWC's de facto monopoly and its institutional commitment to "the big system" and to the continual expansion of that system, may be suppressing innovation and depriving the community of environmental benefits from larger scale waste-water recycling as well as from decentralised and smaller scale approaches to water management (cluster and on-site packages in urban fringe areas).

NCC nsw has some concerns too about the pressures which may be exerted on SWC's strategies and performance from its obligations to meet dividend payments to the NSW Treasury. These and other revenue pressures may be forcing the organisation into a conservative and defensive posture, with demand management targets seen as a risk to SWC's water sales and revenue stream.

Sydney Water is currently subject to regulation under its Operating Licence by the Licence Regulator (IPART). As a State "monopoly" SWC's pricing is also subject to regulation by IPART. While the regulatory regime performs a necessary role, it has not been able to address SWC's ongoing failures in meeting water demand management targets and in reducing ocean discharges. The provision of access to the SWC system by a competitor would perhaps increase complexity and - in the short term - add some regulatory costs, but overall the benefits to the community would be likely to outweigh the costs.

NCC nsw and other community groups, have since their first report to Sydney Water and the community in 1995 (Dowsett et al 1995 *A New Course for Sydney Water*) emphasised the importance of SWC adopting approaches to minimise loss of valuable resources such as water and nutrients and reduce pollution.

NCC nsw concerns about SWC policy and performance are more fully set out in a number of more recent reports produced by NCC nsw and other Peak Environment Non Government Organisations (collectively known as the "PENGOs"). The summary document for these *PENGO 4* reports is forwarded as an attachment to this submission (see file attached to email: *P4_Summary. Pdf*).

A CD containing the full PENGO 4 Report and supporting studies and documents will be forwarded to the National Competition Council by post.

3. Comments on matters required to be addressed under Section 44G(2) Trade Practices Act

It is understood that the National Competition Council cannot recommend that a service be "declared" unless the Council is

satisfied that it meets criteria set out in s. 44G(2) of the Trade Practices Act, that is:

- (a) that access (or increased access) to the service would promote competition in at least one market (whether or not in Australia), other than the market for the service;

Comment: access to the SWC system would promote competition in the market for collection of sewage in Sydney. Contingent on sewage water being reclaimed and distributed to customers and to the river system (obviating the need for some dam releases), competition would also be promoted in non-drinking water markets such as industry and agriculture and in the market for environmental water (river flows required by government agencies). If the proposal proceeds to treatment to potable standard there could also be competition (with the Sydney Catchment Authority) in the drinking water market.

- (b) that it would be uneconomical for anyone to develop another facility to provide the service;

Comment: The facility in this case is the SWC system for sewage collection and disposal. The system is very extensive and has been developed in increments over more than a century. No competitor could economically duplicate the facility and it would be wasteful to society if two independent facilities were provided. The costs to each service provider would be higher than if there were one facility, and the price to consumers for the service would be higher than if there were one facility.

- (c) that the facility is of national significance, having regard to:
 - (i) the size of the facility; or
 - (ii) the importance of the facility to constitutional trade or commerce; or

(iii) the importance of the facility to the national economy;

Comment: customers served by the SWC system comprise more than 20% of the population of Australia. The SWC system supports the economic performance of Australia's largest city and surrounding communities. The facility is of national significance.

(d) that access to the service can be provided without undue risk to human health or safety;

Comment: no undue risk to human health or safety should arise from providing access. SWC is regulated for health and safety and a competitor can be regulated in the same way.

(e) that access to the service is not already the subject of an effective access regime;

Comment: SWC operates a de facto monopoly in the Sydney area in sewage collection and disposal and in the supply of reticulated drinking water. The SWC Operating Licence, until some years ago, included an express condition requiring SWC not to raise barriers to competition. The Operating Licence continues to be expressed as a non-exclusive licence, that is it does not prevent another party from obtaining a licence to compete directly with SWC in its area of operations. However, this is not an effective access regime because:

- SWC's system is too costly for any competitor to duplicate;
- NCC nsw understands that SWC has refused access to its system to a potential competitor and no action has been taken (or apparently is proposed to be taken) by the Licence Regulator.

(f) that access (or increased access) to the service would not be contrary to the public interest.

Comment: access to the SWC system by a competitor - especially one with a proposal to substantially reduce ocean pollution and increase water available for environmental flows and other uses - is not obviously contrary to the public interest and it is reasonable to expect a net benefit to the public interest. Any undesirable outcomes of note (such as the emergence of a pricing cartel) can be managed by regulation.

Submission prepared for the Nature Conservation Council of NSW Inc. by Peter Prineas
