

WATER SUPPLY AUTHORITIES ACT 1987—REGULATION

(Water Supply Authorities (Upper Parramatta River Catchment Trust) Regulation
1995)

NEW SOUTH WALES



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HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Water Supply Authorities Act 1987, has been pleased to make the Regulation set forth hereunder.

KIM YEADON, M.P.,
Minister for Land and Water Conservation.

PART 1—PRELIMINARY

Citation

1. This Regulation may be cited as the Water Supply Authorities (Upper Parramatta River Catchment Trust) Regulation 1995.

Commencement

2. This Regulation commences on 1 September 1995.

Definitions

3. In this Regulation:

“**land**” includes an estate or interest in land;

“**owner**” of land includes the holder of an estate or interest in the land;

“**the Act**” means the Water Supply Authorities Act 1987;

“**Trust**” means the Upper Parramatta River Catchment Trust.

Area of operations of Trust

4. For the purposes of section 13 (1) of the Act, the area of operations of the Trust is the area shown bounded by a red line on the map

numbered 45/1203 and deposited in the office of the Department of Water Resources at Parramatta, not including the area shown bounded by a red line on the map marked “Upper Parramatta River Catchment Trust-Excluded Area” and deposited in that office.

Functions of Trust

5. For the purposes of section 13 (2) (b) of the Act, the Trust has, and may exercise, in its area all the functions of an Authority under the Act other than functions relating to the supply of water, the provision of sewerage services and the disposal of trade waste and waste water.

PART 2—SERVICE CHARGES: AND OTHER CHARGES

Classification of land

6. For the purposes of section 32 (Classification of lands) of the Act, the Trust may classify land for the purpose of levying service charges according to either or both of the following factors:

- (a) the purpose for which the land is actually being used;
- (b) the intensity with which the land is being used for that purpose.

Basis of levying service charges

7. For the purposes of section 33 (Basis of levying service charges) of the Act, the Trust may levy service charges according to either or both of the following bases:

- (a) a flat rate for all land of a particular classification;
- (b) the area of the land on which the service charge is being levied.

Determinations by Trust

8. A determination referred to in section 34 (1) of the Act is to be made by resolution of the Board of the Trust.

Payment to Trust

9. Payment to the Trust of a service charge:

- (a) is due within the time; and
- (b) may be made in any manner,

notified by the Trust when giving notice of the service charge.

Payment by instalments

10. (1) The Trust may notify a person liable to pay service charges levied, or other charges imposed, that payment of the service charges or other charges may be made to the Trust by a stated number of instalments of specified amounts.

(2) If there is a failure to make a payment in accordance with the notification, the total unpaid balance may be treated by the Trust as an overdue amount of service charges or other charges even if payment by instalments had commenced.

Rate of interest on unpaid amounts

11. (1) For the purposes of section 38 (Interest on overdue service charges etc.) of the Act, the rate of interest that may be charged by the Trust on overdue fees, service charges or other charges must not exceed the rate for the time being applicable under section 95 (Interest on debt under judgment or order) of the Supreme Court Act 1970 to a judgment debt.

(2) The Trust may determine different rates of interest for different unpaid amounts.

(3) Interest is not to be charged in respect of a period commencing earlier than 7 days after the debtor is notified that interest may be charged.

Adjustment of service charge

12. (1) If a service charge has been levied on land on the basis of a classification made by the Trust under clause 6 and the Trust later decides that the classification was incorrect, the Trust is to adjust the service charge according to the correct classification.

(2) If the Trust does not adjust the service charge and an application for it to do so is made to the Trust in writing stating the grounds of the application, the Trust:

- (a) may adjust the service charge or may refuse to do so; and
- (b) must give the applicant written notice of its decision.

(3) If a service charge is adjusted under this clause, the Trust:

- (a) must give written notice of the adjustment to the person liable to pay the service charge; and
- (b) may recover any increase as if it were part of the service charge even if an objection or appeal has been lodged but not determined; and

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- (c) must refund any amount by which a service charge already paid has been decreased or credit the amount towards payment of any amount then payable by the person liable to pay the service charge to the Trust.

Objection to certain service charges

13. (1) If a service charge is levied on land on the basis of a classification made by the Trust under clause 6, the person liable to pay the service charge may, within one month after being served with notice of the levying of the service charge, object to the service charge.

(2) If an adjustment made under clause 12 results in a service charge being increased, the person liable to pay the amount of the increase may, within one month after being given notice of the increase, object to the adjustment.

(3) If application is made to the Trust under clause 12 to adjust a service charge and the Trust:

- (a) refuses to adjust the service charge; or
- (b) refuses to adjust the service charge in the manner sought in the application,

the applicant may, within one month after being notified of the refusal, object to the refusal.

(4) An objection:

- (a) under subclause (1) may be made only on the ground that the classification of the land according to which the service charge was levied was incorrect; or
- (b) under subclause (2) may be made only on the ground that the classification of the land according to which the service charge was adjusted was incorrect; and
- (c) under subclause (3) may be made only on the ground that the refusal by the Trust was incorrect.

(5) An objection is to be made by lodging with the Trust, or by sewing on the Trust by post, a written statement of the ground for the objection and the reasons why the objector believes the ground exists.

(6) The Trust:

- (a) may allow, or disallow, an objection; and
- (b) must give the objector written notice of its decision on the objection.

Appeal relating to objection to service charge

14. (1) An objector under clause 13 who is dissatisfied with the decision of the Trust on the objection may appeal to the Land and Environment Court against the decision not later than one month after being notified of the decision.

(2) The only ground for an appeal against a decision on an objection is the ground on which the objection was made.

(3) The Land and Environment Court may allow or dismiss an appeal in whole or in part.

General power to defer or waive payment

15. (1) The Trust may, if it is of the opinion that reasonable cause has been shown:

- (a) defer payment of a service charge, or any other charge or fee, on such conditions as it thinks fit; or
- (b) waive such a payment or any part of it.

(2) The Trust may establish an account from which to fund the deferral or waiver of payments.

PART 3—FLOOD PLAIN AND RIVER MANAGEMENT AREA**Notice of flood plain or river management area**

16. (1) The Trust must keep in its office a map of any flood plain or river management area within its area.

(2) The Trust must make the map available for inspection at reasonable times during its ordinary office hours.

(3) The Trust must publish in at least one newspaper circulating in the flood plain or the river management area, as the case may be, a notice to the effect that:

- (a) the land concerned has been declared to be a flood plain or a river management area; and
- (b) a map of the flood plain or river management area may be inspected at a specified place or specified places; and
- (c) flood mitigation service charges or river management service charges, as the case may be, are to be levied on land in the flood plain or river management area within a specified time; and

- (d) an objection to the inclusion of an owner's land in the flood plain or river management area may be lodged with the Trust but only on the ground:
 - (i) in the case of land within a flood plain—that the land does not benefit from flood mitigation services proposed to be undertaken; or
 - (ii) in the case of land within a river management area—that the surface or run-off water from the land does not drain onto other land within the area; and
 - (e) an objection must be in writing and must be lodged with the Trust before a specified day (being a date that is not earlier than 14 days after the publication of the notice); and
 - (f) an objection will be referred by the Trust to an adjudicator for determination; and
 - (g) an objector is not entitled to appear, or to be represented, before the adjudicator without being required by the adjudicator to do so.
- (4) The Trust must:**
- (a) appoint a person (other than a person subject to the direction or control of the Trust) as an adjudicator on objections relating to the flood plain or river management area; and
 - (b) refer all duly lodged objections to the adjudicator; and
 - (c) serve personally or by post on each objector, at the address of the objector last known to the Trust, notice of the decision of the adjudicator on the objection.

PART 4—MISCELLANEOUS

Interest payable by owner on expense incurred by occupier

17. The prescribed rate of interest for the purposes of section 29 (5) of the Act is the rate for the time being applicable under section 95 (Interest on debt under judgment or order) of the Supreme Court Act 1970 to a judgment debt.

Service of notices

18. (1) A notice under the Act to a Department of the Government may be served on the Department Head.

(2) A notice under the Act to a corporation constituted by or under an Act may be served:

- (a) by leaving it at the principal or other office of the corporation with a person apparently employed there who seems to be at least 16 years old; or
- (b) in any manner authorised by or under the Act by which the corporation is constituted.

(3) A notice under the Act to a person liable for payment of a service charge or other charge, or to a person who is owner or occupier of land or a building, may be served:

- (a) personally; or
- (b) by leaving it, at the place where the person to be served lives or carries on business, with a person apparently employed or residing there who seems to be at least 16 years old; or
- (c) by post to the residence or place of business of the person to be served last known to the Trust; or
- (d) by affixing it to a conspicuous part of the land or building.

(4) A notice under the Act may be served on a person who appears to be absent from the State, and who has authorised service on an agent, by serving it on the agent of the person as if the agent were the person to be served.

(5) If a notice relates to unoccupied land or premises and the address of the owner is not known to the Trust, the notice may be served by an advertisement that:

- (a) is published in a newspaper circulating in the Trust's area; and
- (b) states the name of the owner of the land or premises, if known to the Trust; and
- (c) if the notice is notice of a service charge—states its amount, the period to which the charge relates and that a detailed notice of the service charge may be obtained at the office of the Trust; and
- (d) states that the advertisement operates as service of the notice.

(6) It is a sufficient description of the addressee of a notice to be served if the notice specifies “the owner”, “the occupier” or other apt description.

Recording of service charge

19. (1) The Trust must keep records relating to each service charge as required by the Ministerial Corporation and must keep the records in a manner approved by the Ministerial Corporation.

(2) An amendment of the records kept under this clause may be made by:

- (a) inserting the name of a person who claims to be, and is, entitled to be recorded as owner or occupier; or
- (b) inserting the name of a person to whom an account for a service charge should have been rendered or who has, since the levying of a service charge, become liable to pay it; or
- (c) omitting the name of a person whose name should not have been recorded; or
- (d) increasing or reducing the amount of a service charge, whether as a result of an error in recording or notifying it, as a result of an adjustment or objection or as a result of an appeal; or
- (e) inserting particulars of land that should have been the subject of a service charge; or
- (f) by making such other amendments as will ensure conformity of the records with the Act.

(3) A liability to make a payment as a result of an amendment accrues on the making of the amendment but the payment is not overdue if made within one month after notice of the amendment and of the resulting liability has been given to the person liable.

Expenses of tracing persons

20. (1) The Trust may add to the amount of a service charge or other charge any reasonable out-of-pocket expenses incurred in tracing the person liable to pay the service charge or other charge.

(2) Those expenses may be recovered as service charges or other charges, at the same time as any service charges or other charges and without the need to give any notice concerning them.

Crown land held on lease

21. If land that is vested in the Crown or in a public body is leased to a person for private purposes, a service charge in respect of the land is payable by the lessee but, if the lessee fails to pay the service charge and the land has been transferred by way of mortgage, the service charge is payable by the mortgagee.

Successive Crown lessees in the same charging year

22. (1) This clause applies to land:

- (a) that, in the same charging year for the Trust, is held successively by 2 or more lessees under a lease from the Crown (whether or not with an interval between them); and
- (b) in respect of which the Trust has levied a service charge for that year.

(2) In relation to land to which this clause applies, the Trust may:

- (a) make between the successive lessees such adjustment (if any) of the service charge, whether paid or unpaid, as the Trust considers to be proper; and
- (b) recover from each lessee the proportion of the service charge fixed for the lessee by the adjustment; and
- (c) make a refund resulting from the adjustment.

Liability of joint owners

23. (1) If land is owned or held jointly by 2 or more persons liable to pay a service charge in respect of the land:

- (a) they are each jointly and severally liable for payment of the service charge; and
- (b) as between themselves, each is only liable for such part of the service charge as is proportionate to the interest owned or held by the person in the land.

(2) If one person referred to in this clause pays more than the proportionate part of a service charge that the person is required by this clause to pay, the excess may be recovered by way of contribution from the others jointly liable.

Liability on disposing of land

24. (1) The liability of a person to pay a service charge levied by the Trust in respect of land does not cease on disposal of the land if notice of the service charge:

- (a) was given before disposal of the land; or
- (b) is given after disposal of the land and before the approved notice of the disposal is given to the Trust.

(2) A person who:

(a) disposes of land; and

(b) pays, after the disposal of the land and before the approved notice of the disposal is given to the Trust, a service charge levied on the land in respect of a period after the disposal of the land,

may recover the amount of the service charge from the person who acquired the land.

(3) In this clause:

“**approved notice**” means written notice in a form approved by the Ministerial Corporation.

(4) A notice lodged with the Registrar-General under section 39 (1B) of the Real Property Act 1900 or section 184E (4A) of the Conveyancing Act 1919 is to be treated as an approved notice for the purposes of this clause.

Daily basis of apportionment of service charge

25. As between a person liable to pay a service charge in respect of land and:

(a) a person who acquires the land; or

(b) the person from whom the land was acquired,

the service charge is to be apportioned on a daily basis.

Liability of new owner

26. (1) A person who, by becoming the owner of land, becomes liable to pay a service charge or other charge levied on, or applicable to, the land is, subject to section 41 (3) of the Act, liable for payment of all current service charges and other charges, and for all arrears of service charges and other charges, levied on, or applicable to, the land even if notice of them was not given to the person until after the person became the owner of the land.

(2) A person who:

(a) becomes the owner of land; and

(b) pays to the Trust a service charge or other charge in respect of the land that was payable before the person became the owner,

may recover the whole or a proper proportion of the service charge or other charge from the person liable for its payment at the time notice of the service charge was served.

(3) Subclauses (1) and (2) do not apply to a person who holds land under a lease from the Crown or the Trust (whether or not the land was previously held under such a lease) that was granted after the service charge or other charge was levied or became applicable.

Liability of occupier

27. (1) An occupier of land in respect of which a service charge has remained unpaid for at least one month after becoming due is liable for payment of the service charge if the Trust serves on the occupier a notice requiring the payment to be made.

(2) An occupier who pays a service charge in accordance with a notice served under this clause may set off the amount paid against rent due.

(3) If no rent is due, or if the amount paid to the Trust exceeds the rent due, the occupier may:

- (a) set off the amount paid, or the excess, against accruing rent; or
- (b) recover the amount paid, or the excess, as a debt due from the owner to the occupier.

(4) An occupier who pays a service charge for a period extending beyond the expiration of the right of occupancy may recover the amount paid as a debt due from the owner to the occupier.

(5) The receipt of the Trust for an amount paid under this clause is, to the extent of the amount shown in the receipt, a discharge of the occupier from payment of the rent.

(6) In this clause, “rent” includes money payable under a lease, licence or permit.

Proportionate liability for service charge

28. (1) A service charge is proportionate to the portion of the year for which land is leviable and to the portion of the land that is leviable.

(2) If an amount of service charge is paid in excess of the liability for a service charge because of the operation of this clause, the Trust must refund the amount of the excess or credit it towards payment of any amount then payable to the Trust by the person who would otherwise be entitled to the refund.

Repeal

29. (1) The Water Supply Authorities (Upper Parramatta River Catchment Trust) Finance Regulation 1989 is repealed.

(2) Any act, matter or thing that was done for the purposes of or, immediately before the repeal of the Water Supply Authorities (Upper Parramatta River Catchment Trust) Finance Regulation 1989, had effect under that Regulation is taken to have been done for the purposes of or to have effect under this Regulation.

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EXPLANATORY NOTE

The object of this Regulation is to repeal the Water Supply Authorities (Upper Parramatta River Catchment Trust) Finance Regulation 1989 and to replace it with this Regulation.

This Regulation covers substantially the same matters as the repealed Regulation with the exception that:

- it excludes definitions of certain terms that are not required for the operation of the Regulation; and
- it makes provision as to the area of operations and functions of the Upper Parramatta River Catchment Trust (matters currently dealt with by the Water Supply Authorities (Areas of Operations) Regulation 1987 which is to be repealed); and
- it no longer prescribes the content of, and fee for, a certificate of amounts owing as these matters may now be determined by the Trust in accordance with the Water Supply Authorities Act 1987.

In addition to describing the Trust's area of operations and making provision as to its functions, this Regulation deals with:

- the levying, payment and adjustment of service charges and other charges, and objections and appeals concerning the levying of such charges; and
- the notification of declarations of flood plain and river management areas and objections to such declarations; and
- miscellaneous matters, including the service of notices, the recording of service charges and the liability for payment of service charges on Crown land and following the disposal of land.

This Regulation is made under the Water Supply Authorities Act 1987, including sections 13 (Area of operations), 29 (Connections), 32 (Classification of lands), 33 (Basis of levying service charges), 38 (Interest on overdue service charges etc.) and 66 (the general regulation making power).

This Regulation is made in connection with the staged repeal of subordinate legislation under the Subordinate Legislation Act 1989.
