

Blacktown City Council's WSUD Compliance Program

Presented by Dr. Andrew Thomas and Daniel Rider
August 2021



What do we mean by private WSUD?

- On private property
- Under private management
- Legal obligation to maintain and manage (preferably!)

What do we mean by private WSUD systems?



(The Daily Moss, 2016)

Biofiltration (raingardens)



Gross Pollutant Traps

What do we mean by private WSUD systems?



Filter Cartridges



On-Site Stormwater
Detention

What do we mean by private WSUD systems?



Permeable Pavement



Pit inserts

What do we mean by private WSUD systems?



Rainwater tanks



(The Echo, 2019)

Non-potable Water
reporting

Why do we care?

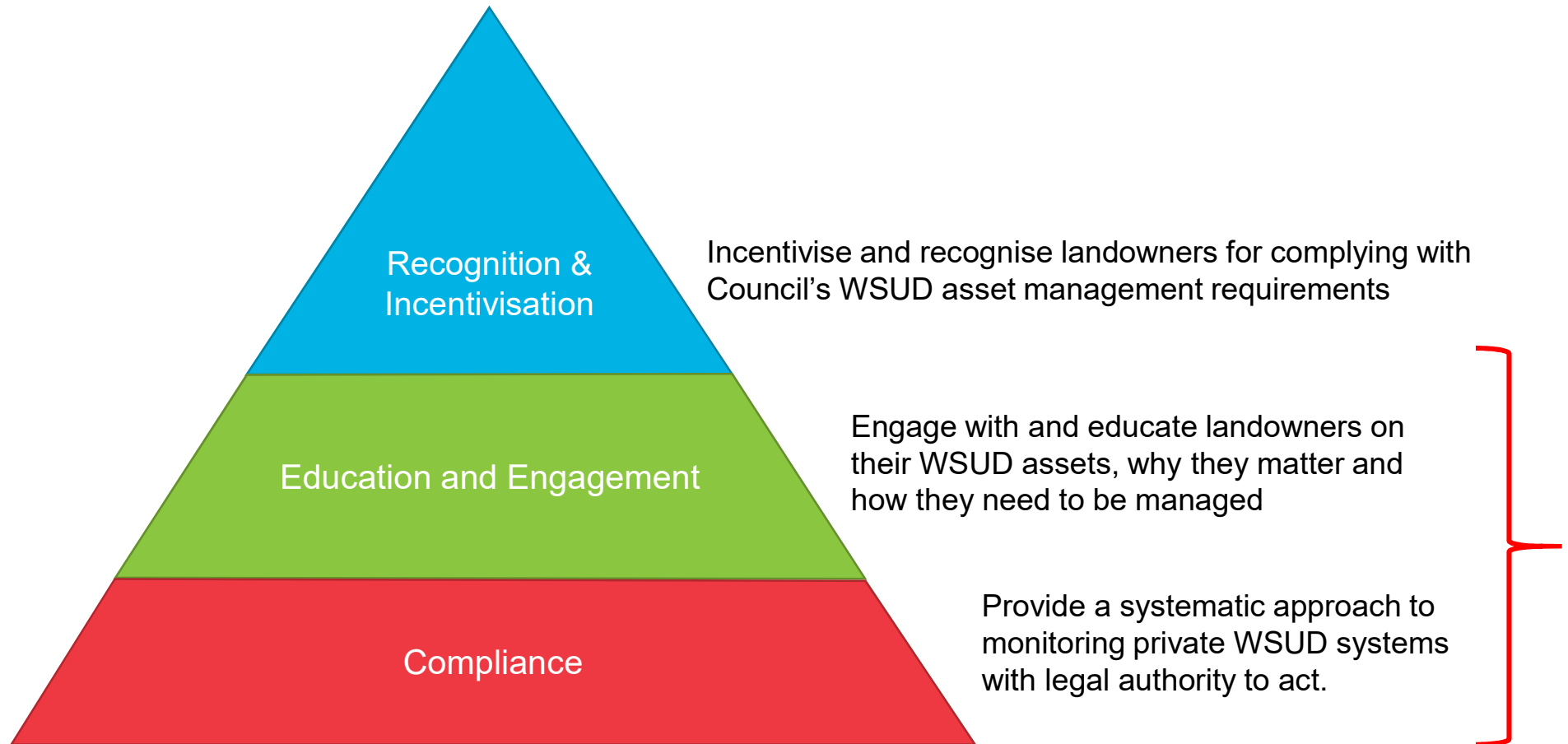
- Localised flood mitigation
- Water security
- Waterway protection
- Often majority of treatment within a catchment
- Mounting evidence – low rates of maintenance and some cases of interferences (Ardren 2020)

Compliance program – an evolution

- 2012 = Implementation
- Program = inspection based, managed via Excel spreadsheet
- 2018/19 = program reviewed
 - Legal enforceability severely limited
 - Inspection based = impractical
- New program = significant changes
 - Legal foundation thoroughly reworked
 - Integrated into Tech 1 – track properties and systems
 - Shift from Inspection to owner-reporting model



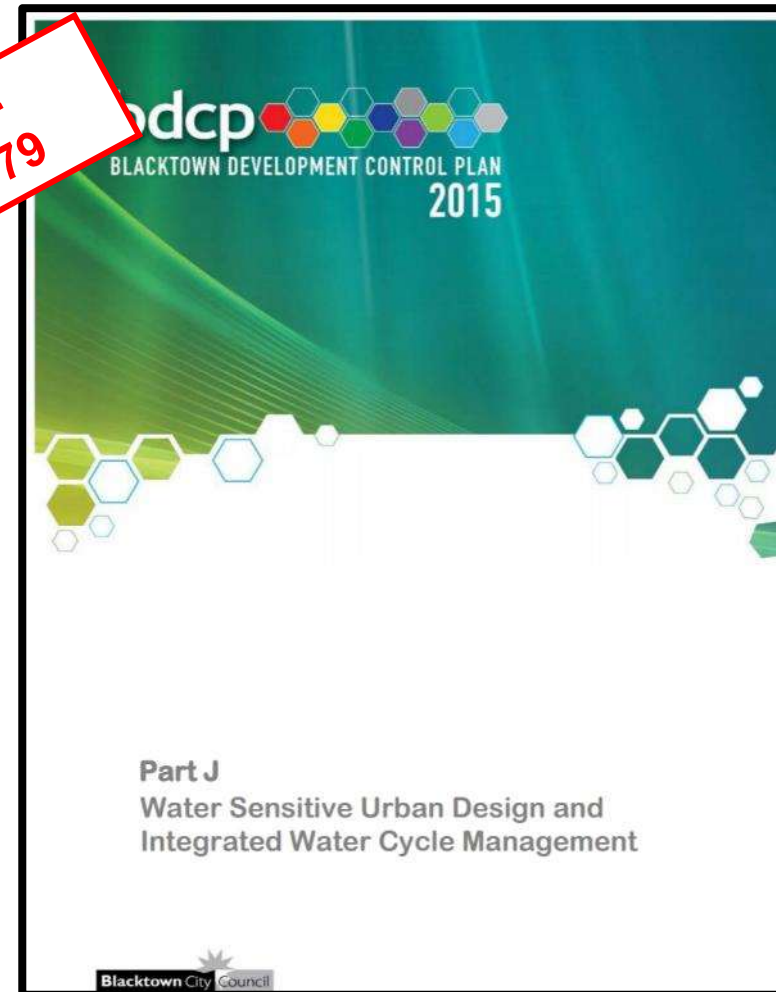
Philosophy: Less stick, more help



It all starts with a Development Control Plan (DCP)

- Identifies what types of development require WSUD systems
- Describes strategies, assessments and plans to be submitted
- Defines targets: water quality, conservation and detention

**Legal affect =
EP&A Act 1979**



Then it's Conditional

- Ensure applicants provide pertinent WSUD asset info to council
- Ensure applicants submit a maintenance schedule
- Ensure applicants enter into a maintenance contract
- Ensure applicants apply necessary positive and restrictive covenants

Legal affect =
EP&A Act 1979

14.31.1 Prior to the issue of the Occupation certificate, the applicant shall submit to Council documentation that identifies the correct locations, types, models, and model numbers of assets that form the WSUD system installed on the property. The documentation is to include the final version of the Stormwater management report and certified and signed stormwater Works-as-executed plans.

14.31.2 Prior to the issue of the Occupation certificate, the Applicant shall provide a Maintenance schedule for the WSUD system installed on the property. The Maintenance schedule is to be prepared in accordance with the Maintenance schedule template and WSUD inspection and maintenance guidelines available on Council's website. The Applicant shall submit the Maintenance schedule to Council for approval.

17.1.38 The Applicant shall enter into a Maintenance Agreement with a maintenance contractor for the WSUD system installed on the property. The Maintenance Agreement is to be in accordance with the Maintenance schedule approved by Council. The maintenance contractor is to possess the qualifications and licences, if any, required to undertake the maintenance works in accordance with Council and New South Wales policy and legislation. The Maintenance Agreement must be maintained for the life of the development. The Applicant shall submit a copy of the executed Maintenance agreement to Council for approval. The Maintenance Agreement can be replaced with an alternative Maintenance Agreement of the same or better standard. In the event that the Applicant enters into a replacement Maintenance Agreement the Applicant must, as soon as practically possible, forward a copy to Council.

14.31.3 Prior to the issue of the Occupation certificate, the applicant shall provide a Positive covenant and Restriction on the use of land over the WSUD system installed on the property. The Positive covenant and Restriction on the use of land is to be in accordance with Appendix F of Council's Engineering Guide for Development. The Positive covenant and Restriction on the use of land is to be endorsed by Council and lodged with New South Wales Land Registry Services. The applicant shall submit documentary evidence of the lodgement and execution of the Positive covenant and Restriction on the use of land to Council prior to the issue of the final Occupation certificate.

Making it 'forever'

- Positive Covenants and Restrictions on the Use of Land
- Written by councils
- Given legal effect under the Conveyancing Act 1919
- Managed by the Land Registry Service
- Applied to the property, **not** individuals per-se
- Can only be extinguished by the Consent Authority (typically Council)

Positive Covenant

- Gives definition to a WSUD System
- Defines owner responsibilities to their WSUD System
- Requires owners to act on any written instruction from Council
- Authorises council to inspect
- Authorises council to compel
- Gives Council legal rights to recover costs
- Makes the covenant binding to *property* 'in-perpetuity'

**Legal affect =
Conveyancing Act 1919
(Division 4)**

3. POSITIVE COVENANT

Water sensitive urban design system

1. Nature of Covenant

The registered proprietor of the lot burdened acknowledges that:

- (a) the covenant granted to Blacktown City Council (Council) under this clause is a public positive covenant within the meaning given to that term under section 87A of the *Conveyancing Act 1919* (Act) and that the public positive covenant is imposed on the lot burdened under section 88E of the Act; and
- (b) the provisions of section 88F of the Act apply in respect of the covenant granted to Council.

2. Covenant

The registered proprietor covenants with Council, in respect to the water sensitive urban design system (defined in clause 8 below and hereinafter referred to as the "System") constructed and/or installed on the lot burdened, that it will, at its sole cost, ensure that the System functions properly in a safe and efficient manner by:

- (a) regularly keeping the System clean and free from silt, rubbish and debris
- (b) regularly maintaining and repairing the System in accordance with the standard required by Council, as notified to the registered proprietor of the lot burdened from time to time
- (c) for the purpose of performing the obligation to maintain the System under clause 2(b), replacing the System when Council has determined and notified the registered proprietor of the lot burdened that the System is no longer capable of functioning properly in a safe and efficient manner and cannot be repaired
- (d) for the purpose of performing the obligation to replace the System under clause 2(c), replacing the System in accordance with the requirements of Council, from time to time; and

and notifications issued by Council in respect of the System and this covenant. Council or its authorised agents may from time to time and upon giving reasonable notice to the registered proprietor (without notice in the case of an emergency) enter the lot burdened and inspect the condition of the System and the lot burdened, for compliance with the requirements of this covenant, and to this extent, section 88F(2)(a) of the Act is

require the registered proprietor of the lot burdened to attend to any matter and carry out such works within the time stated in the notice and efficient performance of the System and compliance with this covenant.

3. Right to enter the lot burdened

Under Section 88E(3) of the Act, Council or its authorised agents shall have the following additional powers pursuant to this covenant:

- (a) In the event that the registered proprietor of the lot burdened fails to comply with the terms of any written notice issued by Council as set out above, Council or its authorised agents may enter the lot burdened with all necessary equipment and carry out any work which Council in its discretion considers reasonable to comply with this covenant. In carrying out the work under this clause, Council must, having regard to the nature and extent of the work to be carried out:
 - i. cause as little inconvenience as is practicable to the registered proprietor and any occupier of the lot burdened; and
 - ii. as soon as practicable, repair damage which it causes to the lot burdened; and
 - iii. take all reasonable precautions to ensure that the lot burdened is disturbed as little as possible.
- (b) Council may recover from the registered proprietor of the lot burdened, as a debt due and payable in a court of competent jurisdiction:
 - i. any expense reasonably incurred by it in exercising its powers in this covenant. Such expense shall include reasonable wages for employees engaged in effecting, supervising and administering the said works, together with costs, reasonably estimated by Council, for the use of materials, machinery, tools and equipment used in conjunction with the said work
 - ii. legal costs on an indemnity basis for issue of the notices and recovery of the costs and expenses together with the costs, charges, and expenses of registration of a covenant charge pursuant to section 88E(4) of the Act or providing any certificate required pursuant to section 88G of the Act or obtaining any injunction pursuant to section 88H of the Act.

6. Binding Covenant

This covenant shall bind all persons who are or claim under the registered proprietor as stipulated in section 88E(5) of the Act.

7. Release, variation and modification of this covenant

This covenant must not be released, varied or modified without the express authorisation of Council.

8. Definition of "System"

For the purposes of this covenant, "System" means the:

- (a) devices and systems constructed and/or installed on the lot burdened including on-site stormwater detention systems, rainwater tanks, stormwater quality improvement devices, and all other water sensitive urban design systems approved by Council; and
- (b) all built and other structures associated with and/or required for the safe and efficient function of the System including, but not limited to, all ancillary gutters, pavements, pipes, drains, swales, channels, rainwater tank pre-treatment, flow meters, water disinfection, walls, kerbs, pits, grates, screens, tanks, chambers, basins and surfaces.

Restriction on Use of Land

A proposed WSUD **restrictive** covenant that:

- Gives definition to a WSUD System
- Prevents owners from doing anything that will reduce the performance of the WSUD system
- Makes the covenant binding to *property* 'in-perpetuity'

2. RESTRICTION ON THE USE OF LAND

Water sensitive urban design system

1. Nature of Restriction

The registered proprietor of the lot burdened acknowledges that:

- (a) the restriction on use granted to Blacktown City Council (Council) under this clause is imposed on the lot burdened under section 88E of the *Conveyancing Act 1919* (Act); and
- (b) the provisions of section 88F of the Act apply in respect of the restriction granted to Council under this clause.

2. Restriction on use

The registered proprietor covenants with Council in respect to the water sensitive urban design system (defined in clause 5 and hereinafter referred to as the "System") constructed and/or installed on the lot burdened that it will not, without the prior and express written consent of Council:

- (a) do any act, matter or thing that would prevent the System from functioning properly in a safe and efficient manner
- (b) make any alterations or additions to the System other than in strict accordance with the positive provisions of the *Environmental Planning and Assessment Act 1979* to encroach upon or

bind all persons who are or claim under the registered proprietor as stipulated in Section 88E(5) of the Act.

3. Variation and modification of this restriction

This restriction must not be released, varied or modified without the express authorisation of Council.

5. Definition of "System"

For the purposes of this restriction, "System" means the

- (a) devices and systems constructed and/or installed on the lot burdened including on-site stormwater detention systems, rainwater tanks, stormwater quality improvement devices, and all other water sensitive urban design systems approved by Council; and
- (b) all built and other structures associated with and/or required for the safe and efficient function of the System including, but not limited to, all ancillary gutters, pavements, pipes, drains, swales, channels, rainwater tank pre-treatment, flow meters, water disinfection, walls, kerbs, pits, grates, screens, tanks, chambers, basins and surfaces.

6. For deferred works - On-site stormwater detention (OSD)

[The following paragraphs are only to be used when construction of the OSD system is being deferred, which will only be permitted by Council in exceptional circumstances.]

The registered proprietor of the lot burdened covenants in favour of Blacktown City Council that it will not erect or suffer the erection of any dwelling house or other structure on the lot burdened unless the registered proprietor has first constructed or has made provision for the construction of the OSD system on the lot burdened, in accordance with the design, construction and/or provision requirements of, and to the satisfaction of Blacktown City Council.

The expression "OSD system" shall include all built and other structures associated with and/or required for its safe and efficient function including, but not limited to, all ancillary gutters, pipes, drains, walls, kerbs, pits, grates, tanks, chambers, basins and surfaces graded to direct stormwater to the temporary storage.]

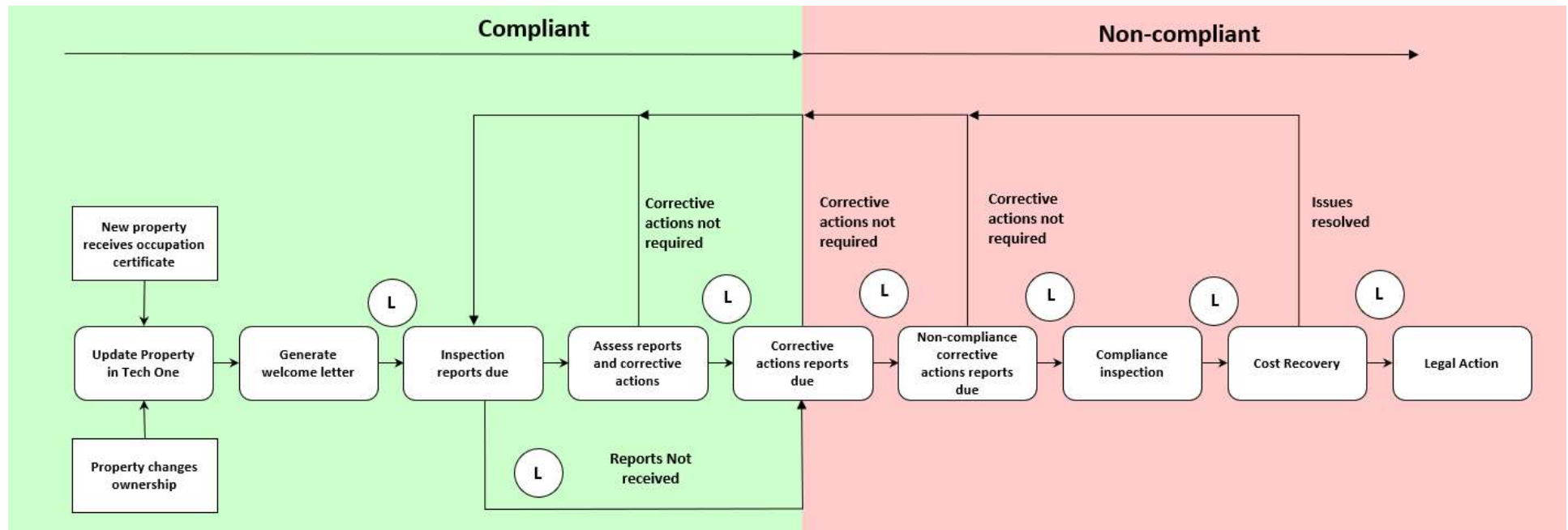
Reporting is mandatory!

- Reporting sheets
 - Inspection & Maintenance sheets available
 - Created for each asset type
- Maintenance schedule template developed
 - Create consistency
 - Easy to understand maintenance is required
 - Filled out as part of consent

INSPECTION SHEET - Rainwater tank			
Date		Purpose of visit	
Location		<input type="checkbox"/> Inspection <input type="checkbox"/> Response to complaint <input type="checkbox"/> Other (specify)	
Asset name		Rainfall conditions	
Asset ID		<input type="checkbox"/> Rainfall today (____mm) <input type="checkbox"/> Rainfall in last 3 days (____mm) <input type="checkbox"/> No recent rainfall	
Inspected by (name/company)			
Functional component		Condition score and evidence	
		Circle the score 1, 2, 3 or NA (not applicable) for each functional component based on good (1), moderate (2), or poor (3) conditions as noted in the reference sheet. Write why the score was given in the 'Notes' section.	
1 Roof, gutters and downpipes			
1a	Roof and gutters	1 2 3 NA	Notes:
1b		1 2 3 NA	Notes:
		1 2 3 NA	Notes:
		1 2 3 NA	Notes:
	Overflow	1 2 3 NA	Notes:
		1 2 3 NA	Notes:
	Base stability	1 2 3 NA	Notes:
3d	Sludge	1 2 3 NA	Notes:
4 Pumps, filters and valves			
4a	Pump	1 2 3 NA	Notes:
4b	Filter	1 2 3 NA	Notes:
4c	Valves	1 2 3 NA	Notes:

**Legal affect =
Conveyancing Act 1919
(Division 4)
(via Positive Covenant)**

How it will work

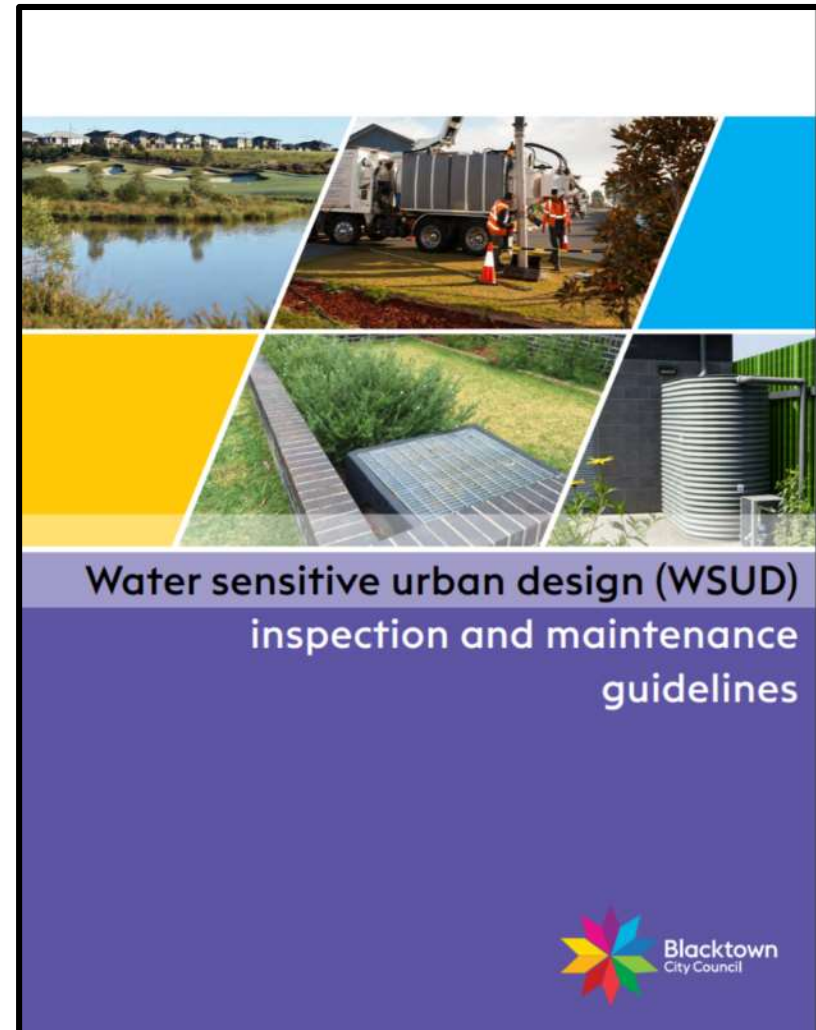


Key

(L) Letter

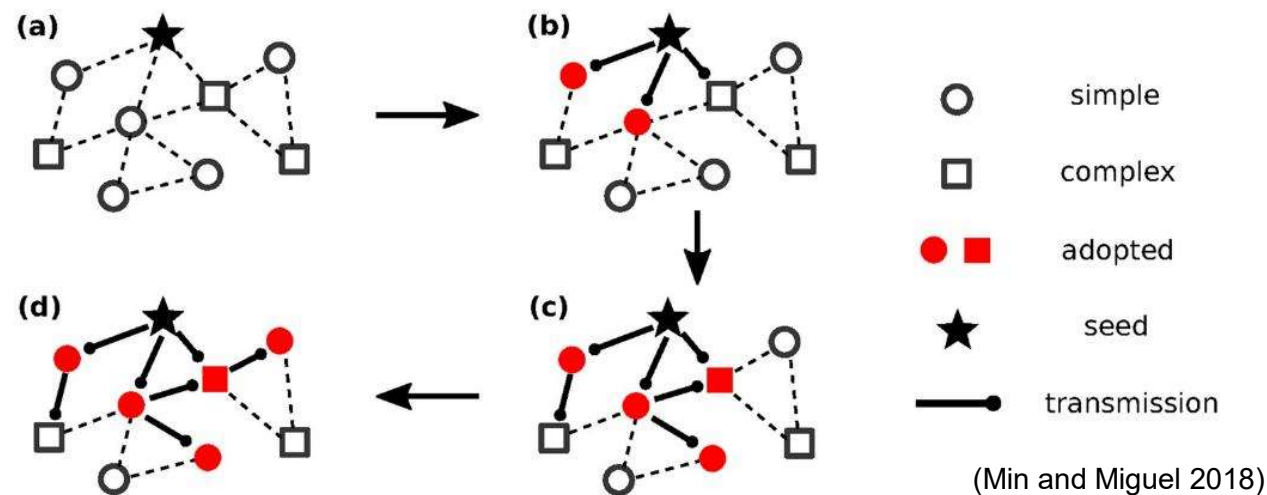
Engaging with the community

- Purpose built Website
- Letters
- Fact Sheets
- Guidelines
- Instructional videos
- Communication (provision of phone number, emails – the personal touch)



Engaging with the industry

- Documenting the program = manual
- Sharing resources (e.g. Inspection and Maintenance Guidelines)
- Working with others e.g. PRCG, Stormwater Industry Association
- Change through the spread of ideas and action
- Why engage and share? Innovation as contagion:



Contact Details

- ▶ wsud@blacktown.nsw.gov.au
- ▶ Address email to Andrew or Daniel
- ▶ Special thanks to Ben Penhallurick, Aditi Verma, Russell Cadman, and all those who have come before us at Blacktown