

# **Assessment of Lend Lease Recycled Water (Barangaroo South)'s retail supplier's licence application**

Prepared under the *Water Industry Competition  
Act 2006 (NSW)*

Report to the Minister  
July 2015

Superseded

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Enquiries regarding this document should be directed to a staff member:

Erin Cini (02) 9113 7778

Mamata Titus (02) 9113 7750

Independent Pricing and Regulatory Tribunal of New South Wales

PO Box K35, Haymarket Post Shop NSW 1240

Level 15, 2-24 Rawson Place, Sydney NSW 2000

T (02) 9290 8400 F (02) 9290 2061

[www.ipart.nsw.gov.au](http://www.ipart.nsw.gov.au)

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## 1 Summary

We recommend that the Minister grants a retail supplier's licence to Lend Lease Recycled Water (Barangaroo South) Pty Ltd (**LLRWBS**) (licence number 15\_034R) and name Lend Lease Development Pty Ltd (**LLD**) as an authorised third party on the licence. The licence would authorise LLRWBS to supply non-potable<sup>1</sup> (recycled) water and sewerage retail services by means of water industry infrastructure to the area approved under its network operator's licence (licence number 15\_029) (ie, the Barangaroo South development). This is consistent with the application that LLRWBS provided to us.

In its application, LLRWBS also applied for a licence to supply drinking water to the Barangaroo South development and to supply recycled water to Darling Harbour. LLRWBS has since requested that we do not consider its application for a licence to supply drinking water to the Barangaroo South Development,<sup>2</sup> or to supply recycled water to Darling Harbour,<sup>3</sup> at this time.

In assessing LLRWBS's licence application, we considered the licensing criteria set out in sections 10(3)-(4) of the *Water Industry Competition Act 2006* (NSW) (**WIC Act**), and had regard to the licensing principles in section 7(1) of the WIC Act.

In addition to assessing the application against the licensing criteria and principles of the WIC Act, we also considered whether LLRWBS's services should be declared monopoly services and subject to price regulation. We consider that the recycled water<sup>4</sup> and sewerage services at the Barangaroo South development are not monopoly services. Therefore, LLRWBS should not be declared a monopoly supplier in relation to those services. Should the Minister declare any monopoly services, we recommend that the Minister does not refer any of these services to IPART for a determination of pricing or a periodic review of pricing policies, at this time. In particular, we note that, in its Supply Agreement, LLRWBS has indicated that it would ensure that its recycled water and wastewater usage and service charges will reflect the charges published by IPART for equivalent supply by Sydney Water.

The Minister must consider, but is not bound to accept, any advice or recommendation in this report in determining the licence application. The Minister may, if circumstances so require, seek further advice from us in relation to the licence application.<sup>5</sup>

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<sup>1</sup> In the *Water Industry Competition (General) Regulation 2008* (NSW), non-potable water means water that is not drinking water.

<sup>2</sup> Email to IPART, Mr David Radford, Director, LLRWBS, 30 April 2015.

<sup>3</sup> LLRWBS Response to IPART Request for Information dated 6 May 2014.

<sup>4</sup> The WIC Act refers to recycled water including in section 51(2) 'declaration of monopoly suppliers'. In the WIC Act, recycled water means water obtained from the processing of sewage.

<sup>5</sup> WIC Act, section 10(2).

## 2 Background

We received a complete application for network operator's and retail supplier's licences from LLRWBS in December 2013. On LLRWBS's request, we prioritised processing its application for a network operator's licence to enable construction to commence. The network operator's licence (licence number 15\_029) was granted on 28 February 2015. The retail supplier's licence application was put on hold until 30 April 2015, when LLRWBS requested that it be processed.<sup>6</sup>

The applicant corporation (LLRWBS) is a wholly owned subsidiary company of Living Utilities Pty Ltd which in turn is a wholly owned subsidiary company of LLD. Lend Lease Corporation Pty Ltd (**Lend Lease**) is the ultimate holding company of these organisations. LLRWBS has no direct employees, other than its four directors, and relies on the full support of LLD to provide technical, organisational and financial capacity.

LLRWBS has applied for a retail supplier's licence to supply recycled water and sewerage services to its customers at the Barangaroo South development. LLRWBS will access its own infrastructure, authorised under its network operator's licence (licence number 15\_029), to supply these services. Currently, the area of operations that LLRWBS is allowed to service under its network operator's licence is confined to the buildings being developed within Lot 3 DP876514 and Lot 5 DP876514. We understand that LLRWBS may apply to expand this area of operations on its network operator's licence in future.

LLRWBS intends to collect and treat sewage from its customers to generate recycled water for dual reticulation, toilet flushing, unrestricted irrigation, cold water connections to washing machines, car washing, process water for the recycled water treatment plant, fire test water and cooling towers. The volume of sewage treated will be supplemented by sewer mining from Sydney Water Corporation's (**Sydney Water**) sewerage network in Hickson Road, as required.<sup>7</sup> Sydney Water has confirmed it can provide sufficient drinking water to top up LLRWBS's recycled water system. LLRWBS will not supply drinking water directly to its customers as this will be done by Sydney Water.<sup>8</sup>

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<sup>6</sup> Email to IPART, Mr David Radford, Director, LLRWBS, 30 April 2015.

<sup>7</sup> When the scheme first commences, all of the sewage treated will be sourced by sewer mining from Sydney Water's sewerage network. As occupancy at the Barangaroo South development increases, the volume of sewage from sewer mining will gradually decrease. LLRWBS is currently not able to access Sydney Water's sewerage network in Hickson Rd under its network operator's licence (licence number 15\_029). LLRWBS is seeking a licence variation to enable this.

<sup>8</sup> Email to IPART, Ms Danielle Francis, Sydney Water, 19 June 2015, explaining that Sydney Water will provide the property owner at Barangaroo with the drinking water connection.

LLRWBS will mostly supply services to bulk customers including the Owner's Corporations for residential buildings, and retail and commercial building owners. These bulk customers will in turn supply these services to their customers. Some of LLRWBS's customers will be classified as small retail customers,<sup>9</sup> as defined under the WIC Act, despite combining consumption figures from the individual apartments in the residential buildings.

### 3 Consultation and submissions

On 17 January 2014, we provided LLRWBS's retail supplier's licence application to, and invited submissions from, the following Ministers and their relevant departments:

- ▼ Minister for Health (Minister administering the *Public Health Act 2010* (NSW))
- ▼ Minister for Primary Industries (the Minister administering Chapter 2 of the *Water Management Act 2000* (NSW) in January 2014)
- ▼ Minister for the Environment (Minister administering the *Protection of the Environment Operations Act 1997* (NSW)), and
- ▼ Minister for Planning and Infrastructure (the Minister administering the *Environmental Planning and Assessment Act 1979* (NSW) in January 2014).<sup>10</sup>

We also provided a copy of the licence application to the Minister for Finance and Services, as the Minister administering the WIC Act in January 2014.<sup>11</sup>

We notified Sydney Water of the licence application<sup>12</sup> because LLRWBS intends to supplement its sewage source by sewer mining from Sydney Water's sewerage network. Further, Sydney Water will provide drinking water to top up LLRWBS's recycled water system and direct to the residents of the development.

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<sup>9</sup> The WIC Act defines a "small retail customer" to mean "a person who belongs to a class of persons who are declared by the [WIC] regulations to be small retail customers for the purposes of the [WIC] Act".

Clause 5 of the WIC Regulation declares that "a person is a small retail customer in relation to water supply if the maximum rate at which water is supplied, pursuant to one or more water supply contracts to all premises that the person owns, leases or occupies is less than 15 megalitres per year" and "a person is a small retail customer in relation to the provision of sewerage services if the maximum rate at which sewage is discharged, pursuant to one or more sewerage service contracts, from all premises that the person owns, leases or occupies is less than 10.5 megalitres per year, as determined in accordance with guidelines issued by IPART".

<sup>10</sup> WIC Act, section 9(1)(b).

<sup>11</sup> WIC Act, section 9(1)(a).

<sup>12</sup> As per the requirements of the WIC Act (WIC Act section 9(1)(b)(iii), WIC Regulation, Schedule 17(2)).

Drinking water will also be used as a contingency source and potentially last resort of water in case of failure of LLRWBS's recycled water system.<sup>13</sup>

We also called for submissions on the application from the public.<sup>14</sup> We advertised in the Sydney Morning Herald and Daily Telegraph for public submissions. We received a submission from Vacuum Toilets Australia Pty Ltd, which is available on our website. However, it is not relevant to LLRWBS's retail supplier's licence application.

We received one submission relevant to our assessment of LLRWBS's retail supplier's licence application and that was from Sydney Water. Sydney Water noted that it may not be able to provide alternate services to LLRWBS's proposed recycled water and sewerage services at the Barangaroo South development as a standard offering,<sup>15</sup> which is as we would expect for a privately serviced development. The submissions we received were primarily regarding LLRWBS's network operator's licence application and LLRWBS's initial proposal to supply drinking water to customers (now withdrawn). These are available on our website.<sup>16</sup>

In addition to inviting submissions, we also sought expert advice from:

- ▼ Vincents Chartered Accountants (VCA) Pty Ltd (**Vincents**) to inform our financial assessment (see section 4.2.2), and
- ▼ the NSW Self Insurance Corporation (**SICorp**) to inform our assessment of appropriate insurance arrangements (see section 4.4).

## 4 Assessment of application

This section of the report contains our assessment of LLRWBS's retail supplier's licence application and our recommendations. Our assessment considers each of the following requirements of the WIC Act:

- ▼ A licence must not be granted to:
  - a) a disqualified corporation, or
  - b) a corporation that is a related entity of a relevant<sup>17</sup> disqualified corporation.

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<sup>13</sup> Sydney Water noted in its submission dated 28 February 2014 that it had not entered into a formal agreement with LLRWBS to supply these services. However, we understand that a Utility Services Agreement covering these arrangements has been executed in June 2015.

<sup>14</sup> WIC Act, section 9(1)(c).

<sup>15</sup> Letter, Sydney Water, 28 February 2014, available from our website at [www.ipart.nsw.gov.au](http://www.ipart.nsw.gov.au).

<sup>16</sup> [www.ipart.nsw.gov.au](http://www.ipart.nsw.gov.au)

<sup>17</sup> Where the disqualified corporation would have a direct or indirect interest in, or influence on, the carrying out of the activities that the licence would authorise if granted. WIC Act, section 10(3)(b).



- ▼ A licence may not be granted unless the Minister is satisfied as to each of the following:
  - that the applicant has, and will continue to have, the capacity (including technical, financial and organisational capacity) to carry out the activities that the licence (if granted) would authorise
  - that the applicant has the capacity to carry out those activities in a manner that does not present a risk to public health
  - that the applicant has made, and will continue to maintain, appropriate arrangements with respect to insurance
  - in the case of an application for a licence to supply water, that, if such a licence is granted, sufficient quantities of the water supplied by the licensee will have been obtained otherwise than from a public water utility, and
  - such other matters as the Minister considers relevant, having regard to the public interest.<sup>18</sup>
- ▼ In considering whether or not a licence is to be granted, and what conditions are to be imposed on such a licence, regard is to be had to the following principles:
  - the protection of public health, the environment, public safety and consumers generally
  - the encouragement of competition in the supply of water and the provision of sewerage services
  - the ensuring of sustainability of water resources
  - the promotion of production and use of recycled water
  - the promotion of policies set out in any prescribed water policy document
  - the potential for adverse financial implications for small retail customers generally arising from the activities proposed to be covered by the licence, and
  - the promotion of the equitable sharing among participants in the drinking water market of the costs of water industry infrastructure that significantly contributes to water security.<sup>19</sup>

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<sup>18</sup> WIC Act, sections 10(3) and (4).

<sup>19</sup> WIC Act, section 7.

#### 4.1 Disqualified corporation and related entity checks

**We consider that LLRWBS is neither a disqualified corporation nor a corporation that is a related entity<sup>20</sup> of a relevant disqualified corporation.**

In making this recommendation, we have considered the following information:

- ▼ A statutory declaration signed by two directors on 12 June 2015 stating that:
  - neither LLRWBS, nor any director or person concerned in the management of LLRWBS is, or would be, a disqualified corporation or a disqualified individual within the meaning of the WIC Act, and
  - LLRWBS is not a related entity of a disqualified corporation that would have a direct or indirect interest in, or influence on, the carrying out of activities that the licence would authorise if granted.
- ▼ Information provided by LLRWBS regarding details of the:
  - trustees (past and current) of any trusts in relation to which LLRWBS is a beneficiary
  - current beneficiaries of any trusts in relation to which LLRWBS is a trustee
  - relevant related entities,<sup>21</sup> and
  - names of the Company Directors, Chief Financial Officer and Chief Executive Officer for LLRWBS and each of LLRWBS's relevant related entities.
- ▼ Results of ASIC and Dun & Bradstreet reports that we have obtained for LLRWBS, and for the three relevant related entities, confirmed that these companies are not disqualified, nor are their directors or persons concerned in their management disqualified individuals.<sup>22</sup>
- ▼ Results of our search of the WIC Act licence register confirmed that LLRWBS and its relevant related entities are not listed on the register as disqualified corporations.<sup>23</sup>

#### 4.2 Capacity (including technical, financial and organisational capacity) to carry out the activities

We have assessed LLRWBS's technical, financial and organisational capacity to carry out activities to be licensed (supply of recycled water and provision of sewerage services to customers).

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<sup>20</sup> A related entity that would have a direct or indirect interest in, or influence on, the carrying out of the activities that the licence authorises. WIC Act, section 10(3)(b).

<sup>21</sup> LLRWBS identified the following relevant related entities: Lend Lease (ACN 000 226 228), LLD (ACN 000 311 277) and Living Utilities (ACN 605 014 202).

<sup>22</sup> We obtained the ASIC and Dun & Bradstreet reports on 16 June 2015.

<sup>23</sup> There are currently no disqualified corporations or individuals on the register pursuant to the WIC Act, sections 16(e) and 16(f).

#### 4.2.1 Technical capacity

**We are satisfied that LLRWBS has the technical capacity to supply recycled water and provide sewerage services to its customers at the Barangaroo South development, with the support of its parent organisation, LLD.**

Our analysis included a review of LLRWBS's:

- ▼ Draft Barangaroo South Retail Supply Management Plan (**RSMP**), provided with the application, which addresses the supply of recycled water and provision of sewerage services
- ▼ Code of Practice – Customer Complaint Handling (appendix to RSMP), which describes the process LLRWBS will use to respond to complaints by Customers about services
- ▼ Code of Practice – Debt Recovery (appendix to RSMP), which describes the process LLRWBS will use to manage late payments by customers
- ▼ Recycled Water Services Supply Agreement Barangaroo South (**Supply Agreement**), which provides the terms under which LLRWBS will supply recycled water and provide sewerage services to its customers
- ▼ Customer Charter, Living Utilities<sup>24</sup> – Barangaroo South, which provides an overview of Living Utilities' commitments to the customers at the Barangaroo South development and the customers' rights and obligations
- ▼ Deed of Services Barangaroo South Recycled Water (**Deed of Services**), which provides the terms under which LLD will provide management and customer service related capability and resources to LLRWBS
- ▼ Operational Agreement for the Provision of Billing and Compliance Services for the Barangaroo South Site between Living Utilities and Serviceworks Management Pty Ltd (**Serviceworks**), which provides the scope of work for Serviceworks' contract to establish the technology for LLRWBS's billing interface; provide financial services including producing invoices and billing data, and generating reminders of unpaid bills; and provide some call centre support services in relation to billing,<sup>25</sup> and
- ▼ previous retail experience (in Australia) of Lend Lease, LLRWBS's ultimate holding company, and the specific experience of personnel who will be recruited for the project, as shown in the information provided to us in the position descriptions and LLRWBS's application form.

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<sup>24</sup> Living Utilities is the parent organisation of LLRWBS, Lend Lease Chilled Water (Barangaroo South) Pty Ltd (**LLCWBS**), and Lend Lease Embedded Network (Barangaroo South) Pty Ltd (**LLENBS**). Living Utilities' Customer Charter covers the services provided by LLRWBS, LLCWBS and LLENBS.

<sup>25</sup> We do not consider Serviceworks to be a substantial third party as it only provides some specialist services including IT and financial support. LLRWBS does not depend on Serviceworks to provide technical or organisational capacity to supply the proposed retail services at the Barangaroo South development.

We used the above information to assess LLRWBS's technical capacity to undertake the following retail supply activities at the Barangaroo South development:

- ▼ **Billing:** LLRWBS explains in its application that it will use a web-based user interface to communicate with its customers and provide billing information. The interface will enable customers to access their water meter readings and usage information; invoices and billing information; and the process to lodge complaints. LLRWBS confirms in its application that it will charge customers fixed service fees in advance and usage fees in arrears. LLRWBS's Supply Agreement addresses service and usage charges. LLRWBS's RSMF addresses payment disputes; managing financial hardship; (limited) restriction of flow for non-payment and complaint handling.
- ▼ **Complaints handling:** LLRWBS's Code of Practice - Customer Complaint Handling has been developed to be consistent with the Australian Standard, AS ISO 10002-2006. The Code of Practice addresses complaints handling including: receipt of complaints; tracking of complaints; acknowledgement of complaints; assessment and investigation of complaints; response to complaints; escalation of complaints to the Energy and Water Ombudsman (EWON); communicating the outcome of the complaint investigation with the customer; and closing the complaint including recording the complaint and any lessons learnt. LLRWBS commits to regularly reviewing its communication techniques, Corporate Policy for handling customers and complaints, and this Code of Practice. LLRWBS intends to include a redacted version of this Code of Practice in the Supply Agreement.
- ▼ **Debt recovery:** LLRWBS's Code of Practice - Debt Recovery provides guidance on communications between LLRWBS and debtors. LLRWBS will provide information to the debtor about its account; convey a demand for payment; explain the consequences of non-payment; and negotiate arrangements with the customer for repayment of debts. The Code of Practice addresses how LLRWBS will make contact with the debtor; explains allowable hours of contact; frequency of contact; location of contact; privacy obligations of the debtor; legal representation of the debtor; record keeping of communications with the debtor; policy for dealing with disputes; LLRWBS's commitment to dealing with customers suffering from financial hardship; analysis and evaluation of debts; and escalation of debtor disputes to EWON. LLRWBS commits to regularly reviewing, improving and maintaining this Code of Practice. LLRWBS intends to include a redacted version of this Code of Practice in the Supply Agreement.
- ▼ **Financial hardship:** LLRWBS's Code of Practice - Debt Recovery addresses LLRWBS's approach to reaching an agreement or payment of debts by customers who are facing financial hardship. The Code of Practice states that LLRWBS may take any legally allowable enforcement action on the debtor, if required. LLRWBS commits to not disconnecting services to residential and other small retail customers, or restricting the flow of water or that of sewage into Sydney Water's main below that which is necessary for basic hygiene.

- ▼ **Providing an appropriate level of service:** LLRWBS's application addresses the level of service for delivery of recycled water and sewerage services to customers, including information on water quality and flow rate. LLRWBS commits to complying with the requirements of the *Australian Guidelines for Water Recycling 2006 (Phase 1 Managing Health and Environmental Risks) National Water Quality Management Strategy (AGWR)* including educating customers on the responsible use and management of recycled water (addressed in more detail in the point below), ensuring community involvement, managing incidents and emergencies, and committing to regular review and improvements of its RSMP, Codes of Practice for complaints handling and debt recovery, and communication plans.
- ▼ **Communication with customers:** LLRWBS commits to developing and maintaining a communication plan that will address communicating with customers on the appropriate and safe usage of recycled water and the sewerage system; educating customers with commercial food preparation areas; educating customers on approved cleaning agents; illegal discharges into the sewer; consequences of illegal discharge to sewer causing damage to the recycled water infrastructure; on potential colour issues with the recycled water; and best water management practices for users. LLRWBS will make this information available on its website and through other media including brochures and newsletters. LLRWBS commits to using appropriate signage throughout the development site. LLRWBS will also implement and maintain a communication plan with its stakeholders. LLRWBS's Supply Agreement addresses supply obligations; notice of access to property; notice of service and usage charges and any changes to costs and charges; notice of service outages; and access to water meter reading. The Supply Agreement also includes the notice required for a customer to disconnect (30 business days).
- ▼ **Continuity of service:** LLRWBS's RSMP addresses continuity of service during interruption due to an incident, failure or unscheduled outage of the recycled water infrastructure including disruptions to sewerage services and supply of recycled water to customers. The RSMP also addresses the approach LLRWBS will use to communicate any service disruptions with its stakeholders.
- ▼ **Transfer of customers:** LLRWBS addresses transfer of customers by stating in its RSMP that it is committed to implementing and complying with the Transfer Code of Conduct as set out in the *Water Industry Competition (General) Regulation 2008 (NSW) (WIC Regulation)*.
- ▼ **Marketing to customers:** LLRWBS addresses marketing of services to customers by stating in its RSMP that it is committed to implementing and complying with the Marketing Code of Conduct as set out in the WIC Regulation.

We consider that the information submitted by LLRWBS demonstrates that it has the technical capacity to supply recycled water and provide sewerage services to its customers at the Barangaroo South development.

We recommend that LLRWBS should be subject to the following licence condition (see draft licence in Attachment A), in relation to technical capacity, if a licence is granted:

- ▼ B1.1 The Licensee must have the technical, financial and organisational capacity to carry out the activities authorised by this Licence. If the Licensee ceases to have this capacity, it must report this to IPART immediately in accordance with the Reporting Manual.<sup>26</sup>

#### 4.2.2 Financial capacity

**We are satisfied that LLRWBS has the financial capacity to supply recycled water and provide sewerage services to its customers at the Barangaroo South development, with the support of its parent organisation, LLD.**

LLRWBS relies on the full support of LLD to provide financial capacity. In making our assessment of LLRWBS's financial capacity we have considered the following information:

- ▼ LLD's summarised income statements
- ▼ LLD's summarised balance sheets
- ▼ LLD's summarised statements of cash flow
- ▼ Lend Lease Group's summarised income statements
- ▼ Lend Lease Group's summarised balance sheets
- ▼ Lend Lease Group's summarised statements of cash flow
- ▼ LLD's key financial ratios
- ▼ Lend Lease Group's key financial ratio, and
- ▼ LLRWBS's cash flow projections.

In August 2014, we sought expert advice from Vincents, to assess the financial capacity of LLRWBS and its parent entities (LLD and Lend Lease) to undertake the proposed licensed activities at the Barangaroo South development, in its application for network operator's and retail supplier's licences. Vincents was satisfied that LLRWBS had adequately demonstrated the ongoing financial capacity of its parent entities.

We note that Vincents' assessment represents the financial capacity of LLRWBS, and its parent entities, at one point in time. For this reason, we confirmed the key financial ratios of the 2013-14 financial accounts for LLD and Lend Lease Corporation follow the same trends as the previous financial accounts considered by Vincents in August 2014.

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<sup>26</sup> WIC Act Network Operator's Licence Reporting Manual.

The current cash flows provided by LLRWBS (at 12 June 2015) differ from the cash flows considered by Vincents in its assessment in August 2014. LLRWBS had considered the Barangaroo South Development to generate positive cash flows from the initial year of operation (ie, 2015-16 financial year), in the current cash flow projection LLRWBS considers that the Barangaroo South development will generate positive cash flows from the seventh year of operation (ie, 2021-22 financial year). LLRWBS has indicated the change to its cash flow projections are primarily the result of:

- ▼ Changes to the staging of building roll-out. Previously it was expected that all buildings in the development would be in operation in 2018-19, however this timeline has been extended, with the development possibly not completed until 2021-22, and
- ▼ LLRWBS has now executed contracts with its operations and maintenance service providers, with the actual costs of these activities higher than had been estimated in the cash flows previously provided.<sup>27</sup>

We also reviewed a Deed of Undertaking between LLD and LLRWBS, giving further assurance that LLRWBS would be able to pay its debts as and when they become due and payable. SICorp also reviewed the Deed of Undertaking, particularly in light of any limits of liability placed on LLD. This is discussed further in section 4.4 of this report.

Having regard to the assessment made by Vincents, the latest financial accounts of LLD and Lend Lease Corporation, and updated cash flows for LLRWBS, we consider the financial capacity of LLD, combined with the assured financial relationship between LLD and LLRWBS through the Deed of Undertaking, has demonstrated that LLRWBS has the financial capacity to carry out the activities to be licensed.

We recommend that LLRWBS should be subject to the following licence condition (see draft licence in Attachment A), in relation to financial capacity, if a licence is granted:

- ▼ B1.1 The Licensee must have the technical, financial and organisational capacity to carry out the activities authorised by this Licence. If the Licensee ceases to have this capacity, it must report this to IPART immediately in accordance with the Reporting Manual.<sup>28</sup>
- ▼ A4.1
  - a) The Licensee must have the technical, financial and organisational capacity to carry out the activities authorised by this Licence.
  - b) If a party to an Agreement proposes to:
    - i) terminate the Agreement;
    - ii) novate the Agreement;

<sup>27</sup> Email to IPART, Mr David Radford, Director, LLRWBS, 24 June 2015.

<sup>28</sup> WIC Act Network Operator's Licence Reporting Manual.

- iii) assign or transfer any of its rights or obligations under such an Agreement to any other person;
- iv) discontinue a service provided under the Agreement; or
- v) alter the Agreement in any way that materially reduces the Licensee's technical, financial or organisational capacity to carry out the activities authorised by the Licence,

the Licensee must provide IPART with written notice of that fact as soon as practicable, but no later than 3 months prior to the date that the proposed action is to occur. A written notice provided under clause A4.1b) i) – iii) or v) must provide details of how the services provided under the Agreement will be provided subsequent to the proposed termination, novation, assignment, transfer or alteration.

- c) The Licensee will also provide IPART with written notice as soon as practicable but no later than 3 months prior to reaching the Sunset Date, as defined in the Deed of Undertaking between Lend Lease Development Pty Ltd and Lend Lease Recycled Water (Barangaroo South) Pty Limited.

#### 4.2.3 Organisational capacity

**We are satisfied that LLRWBS has the organisational capacity to supply recycled water and provide sewerage services to its customers at the Barangaroo South development, with the support of its parent organisation, LLD.**

LLRWBS demonstrated its organisational capacity to provide retail services at the Barangaroo South development:

- ▼ LLRWBS has provided evidence of Lend Lease Development's corporate experience with providing retail services to customers including providing centre management, leasing and property management services to a number of leading shopping centres; facilities management services for public facilities such as schools and hospitals; and management services for retirement facilities.
- ▼ LLRWBS has provided detailed position descriptions for the Head of Green Utilities, Green Utility Operations Manager, Green Utility Development Analyst/Commercial Manager, Green Utility Technical Manager, Green Utilities Technical Analyst, and Green Utility Operations staff within the LLD Green Utilities team, who will provide resources and expertise to manage customer services and marketing and communications with customers. Further, these resources will provide support documentation to customers on matters such as charges, billing and metering; manage enquiries, the call centre and the emergency response system; manage the website interface with the customers; manage community relations; manage customer billing accounts; manage billing dispute and resolution support; and develop and maintain customer management systems.



- ▼ LLRWBS has provided evidence of a Deed of Services with LLD allowing LLRWBS access to the resources in the LLD Green Utilities team with the retail and customer service capabilities, in line with the position descriptions described above.
- ▼ LLRWBS has shown evidence of its capacity to negotiate a Utility Services Agreement with Sydney Water through its correspondence with Sydney Water and evidence of the key items that will be included in the Agreement.
- ▼ LLRWBS has explained that LLD's business management, environmental management and quality assurance systems are aligned with appropriate standards.<sup>29,30</sup>

We recommend that LLRWBS should be subject to the following standard licence condition (see draft licence in Attachment A), in relation to organisational capacity, if a licence is granted:

- ▼ B1.1 The Licensee must have the technical, financial and organisational capacity to carry out the activities authorised by this Licence. If the Licensee ceases to have this capacity, it must report this to IPART immediately in accordance with the Reporting Manual.<sup>31</sup>

#### **4.3 Capacity to carry out those activities in a manner that does not present a risk to public health**

**We are satisfied that LLRWBS has the capacity to supply recycled water and provide sewerage services to its customers at the Barangaroo South development in a manner that does not present a risk to public health.**

We assessed LLRWBS's capacity to manage the following key risks to public health, posed by supplying recycled water and providing sewerage services to the Barangaroo South development:

- ▼ **Source water quality:** LLRWBS has demonstrated its capacity to generate recycled water of an appropriate quality. We reviewed LLRWBS's application which states that it will treat sewage to the quality required under the AGWR for the intended end-uses. The recycled water generated by LLRWBS using its own infrastructure and technology (authorised under licence number 15\_029) will be the source of non-potable water for this scheme. LLRWBS will address any incidents related to the recycled water quality in accordance with its emergency response plan and communication protocols. LLRWBS's Code of Practice – Customer Complaint Handling addresses the process for handling complaints received from customers.

<sup>29</sup> Quality management systems aligned with ISO9001, environmental management systems aligned with ISO14001 and business management systems aligned with AS4801.

<sup>30</sup> Response to Request for Information dated 6 May 2014.

<sup>31</sup> WIC Act Network Operator's Licence Reporting Manual.

- ▼ **Customer exposure through end-use:** LLRWBS will supply recycled water to its customers at the Barangaroo South development. This could present a risk to public health if the customers do not use the recycled water for the appropriate purposes. LLRWBS has demonstrated its capacity to mitigate this risk.

In its RSMP and application, LLRWBS commits to educating its stakeholders on appropriate and safe usage of recycled water and the sewerage system; educating customers with commercial food preparation areas; educating customers on approved cleaning agents; illegal discharges into the sewer; consequences of illegal discharge to sewer causing damage to the recycled water infrastructure; on potential colour issues with the recycled water; and best water management practices for users. LLRWBS will make this information available on its website and through other media including brochures and newsletters. LLRWBS commits to using appropriate signage throughout the development site. LLRWBS will also implement and maintain a communication plan with its stakeholders.

- ▼ **Water supply interruption:** Interruptions in supply of water to the Barangaroo South development could pose a risk to public health. LLRWBS has demonstrated its capacity to mitigate this risk through its application, risk management assessment and RSMP, by outlining the control measures and mitigation strategies for water supply interruptions. The RSMP for the Barangaroo South development indicates that LLRWBS would continue to provide water at a reasonable flow for basic health and hygiene purposes, even if a customer has failed to pay its service charges. LLRWBS has highlighted that in these circumstances residential customers will not be disconnected. LLRWBS has indicated that should an interruption to recycled water supply occur, drinking water would be supplied through the recycled water system.<sup>32</sup> LLRWBS would have control over this as the licensed network operator for this scheme.
- ▼ **Sewerage service interruption:** Interruptions to the provisions of sewerage services could pose a risk to public health. LLRWBS has demonstrated its capacity to mitigate this risk through its application, risk management assessment and RSMP. LLRWBS has indicated that should an interruption to sewerage services occur, sewage would be diverted from the recycled water facility direct via a by-pass to Sydney Water's sewerage mains.<sup>33</sup> LLRWBS would have control over this as the licensed network operator for this scheme.

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<sup>32</sup> Email to IPART, Ms Danielle Francis, Sydney Water, 19 June 2015, explaining that Sydney Water has agreed to supply drinking water to the Barangaroo South development to top up the recycled water network and meet customer demand in case of infrastructure failure.

<sup>33</sup> Email to IPART, Ms Danielle Francis, Sydney Water, 19 June 2015, explaining that Sydney Water has agreed to allow discharge of recycled water and trade waste of up to 389kL/d to its sewerage network, assuming a pump to sewer rate of 8L/s.

NSW Health supports LLRWBS's application for a retail supplier's licence and has not identified any issues in regard to LLRWBS's capacity to protect public health in undertaking retail activities.<sup>34</sup>

We recommend that LLRWBS should be subject to the following standard licence condition (see draft licence in Attachment A), in relation to its capacity to protect public health, if a licence is granted:

- ▼ B4.1 The Licensee must carry out the activities authorised by this Licence in compliance with any requirements of NSW Health that:
  - IPART has agreed to; and
  - are notified from time to time to the Licensee by IPART in writing.

#### **4.4 Appropriate arrangements with respect to insurance**

**We are satisfied that LLRWBS has made, and will continue to maintain, appropriate insurance arrangements.**

The insurance arrangements considered in this application for a retail supplier's licence have not materially changed from LLRWBS's existing arrangements, in line with its network operator's licence (licence number 15\_029).

In making our assessment of LLRWBS's insurance arrangements, we have considered the following insurance policies for LLD or Lend Lease:<sup>35</sup>

- ▼ public and products liability insurance policy
- ▼ (non-construction) professional indemnity insurance policy
- ▼ industrial special risks insurance policy, and
- ▼ workers' compensation insurance policy.

We note that LLD and Lend Lease also hold other insurances which are not specific to the risks associated with retail activities, including construction professional indemnity, construction pollution legal liability insurance, operational pollution and remediation legal liability insurance, and global contract works insurance.

In 2014, we submitted our assessment of LLRWBS's application for a network operator's licence to the Minister. The Minister in turn sought further advice from his department, the Metropolitan Water Directorate (MWD), and SICorp, on the appropriateness of LLRWBS's insurance policies to undertake the proposed licence activities.

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<sup>34</sup> Letter, NSW Health, 27 February 2014, available from our website at [www.ipart.nsw.gov.au](http://www.ipart.nsw.gov.au).

<sup>35</sup> LLD's and Lend Lease's insurance policies also cover their subsidiary organisations, including LLRWBS.

SICorp undertook a detailed analysis of the insurance policies in place in relation to the project and the extent to which LLRWBS may need to call on the financial resources of its parent entity to cover uninsured liabilities. As such, SICorp's review served two purposes: to assess the adequacy of the proposed insurance arrangements, and to assess what liability limit could be accepted in the Deed of (financial) Undertaking between LLD and LLRWBS.

On 17 December 2014, we were provided with SICorp's advice<sup>36</sup> to include special conditions in LLRWBS's network operator's licence (licence number 15\_029) to mitigate risk to the government. It was SICorp's view that LLRWBS's insurance arrangements and Deed of Undertaking created unacceptable risks to the government. SICorp considered that the Deed of Undertaking included a very low limit on liability which protected LLD from claims relating to damage or loss where that damage or loss is not covered by insurance. To address these issues, SICorp advised that the limit of liability in the Deed should be increased to \$20 million and that LLRWBS and LLD should increase the levels of cover provided in their public liability, pollution and remediation legal liability, and professional indemnity insurance policies to \$50 million.

On 18 June 2015, SICorp confirmed that LLRWBS's insurance policies are adequate to cover operation of the recycled water scheme at the Barangaroo South development, including retail activities.<sup>37</sup>

SICorp's advice and our analysis of LLRWBS's current policies related to the proposed retail supplier activities and the amended Deed of Undertaking with a \$20 million limit showed that LLRWBS has demonstrated that it has sufficient insurance coverage in the area of public and products liability, professional indemnity, industry special risk insurance and workers' compensation.

We recommend that LLRWBS should be subject to the following licence conditions (see draft licence in Attachment A), in relation to its insurance arrangements, if a licence is granted:

- ▼ **B2 Obtaining appropriate insurance**
- ▼ B2.5 Before commencing to supply water and provide sewerage services through the Specified Water Industry Infrastructure under this Licence, the Licensee must:
  - a) obtain insurance that is appropriate for the size and nature of the activities authorised under this Licence;
  - b) provide a copy of each certificate of currency of the insurance obtained to IPART; and

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<sup>36</sup> Letter, Minister Kevin Humphries MP, Minister for Natural Resources, Lands and Water (at the time), 18 December 2014.

<sup>37</sup> Email to IPART, Mr Wayne Chandler, SICorp, 18 June 2015.

- c) demonstrate that the insurance obtained is appropriate for the size and nature of the activities authorised under this Licence by providing a report to IPART from an Insurance Expert that:
  - i) certifies that in the Insurance Expert's opinion, the type and level of the insurance obtained by the Licensee is appropriate for the size and nature of the activities authorised under the Licence; and
  - ii) is in the form prescribed by the Reporting Manual.

▼ **B3 Maintaining appropriate insurance**

B3.1 The Licensee must maintain insurance that is appropriate for the size and nature of the activities authorised under this Licence.

B3.2 The Licensee must provide a copy of each certificate of currency of the insurance maintained by the Licensee to IPART in accordance with the Reporting Manual.<sup>38</sup>

▼ B3.3 If there is to be a change in:

- d) the insurer or underwriting panel in respect of an insurance policy held by the Licensee; or
- e) the type, scope or limit on the amount of insurance held by the Licensee, in relation to the activities authorised under this Licence, the Licensee must provide a report to IPART in accordance with the Reporting Manual.

▼ B3.4 From time to time when requested in writing by IPART, the Licensee must provide a report to IPART, in the manner, form and time specified by IPART, from an Insurance Expert certifying that in the Insurance Expert's opinion the type and level of the insurance held by the Licensee is appropriate for the size and nature of the activities authorised under this Licence.

#### **4.5 Sufficient quantities of water supplied by the licensee obtained otherwise than from public water utility**

**We are satisfied that LLRWBS will obtain sufficient quantities of water not from a public water utility.**

We consider that the information submitted by LLRWBS demonstrates that it will obtain sufficient quantities of water otherwise than from a public water utility.

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<sup>38</sup> WIC Act Network Operator's Licence Reporting Manual.

LLRWBS intends to collect an average of 1,050kL/d of sewage<sup>39</sup> from its customers at Barangaroo South. This sewage will be treated to generate recycled water which will be used for dual reticulation, toilet flushing, unrestricted irrigation, cold water connections to washing machines, car washing, process water for the recycled water treatment plant, fire test water and cooling towers. If required, the sewage inflow to the treatment plant will be supplemented by sewer mining from Sydney Water's sewerage network.<sup>40</sup> LLRWBS estimates that, on average, up to 860kL/d of recycled water will be available for reuse by LLRWBS's customers<sup>41</sup> which will be entirely generated by treatment of sewage.

Sydney Water will supply sufficient drinking water to top up the recycled water system and meet customer demand in case of infrastructure failure.<sup>42</sup> LLRWBS has designed its sewage treatment and recycled water infrastructure with sufficient redundancy to limit the likelihood of this occurring.

We consider that LLRWBS should not be subject to any licence conditions in relation to its source water, if a licence is granted.

#### **4.6 Capacity to carry out those activities in a manner that does not present a significant risk of harm to the environment**

**We are satisfied that LLRWBS has the capacity to supply recycled water and provide sewerage services to its customers in a manner that does not present a significant risk of harm to the environment.**

We assessed LLRWBS's capacity to manage the key risks to the environment posed by supplying recycled water and providing sewerage services to the Barangaroo development:

- ▼ **Recycled water end uses:** LLRWBS has, in its application and RSMP, committed to educating its customers about the appropriate and safe use of recycled water; best water management practices for users; and potential colour issues within the recycled water.
- ▼ **Sewerage system:** LLRWBS has, in its application and RSMP, committed to educating its customers about the appropriate use of the sewerage system including appropriate discharges to the sewer; and consequences of illegal discharge to sewer causing damage to the recycled water treatment plant.

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<sup>39</sup> Peak daily flow of sewage that will be treated is estimated to be 1,250kL/d, as explained in LLRWBS's retail supplier's licence application form.

<sup>40</sup> Email to IPART, Ms Danielle Franics, Sydney Water, 19 June 2015, Sydney Water has agreed to allow LLRWBS to extract up to 367kL/d of sewage from its network in a Sewer Mining Agreement attached to its Utility Services Agreement, executed in June 2015.

<sup>41</sup> Peak daily flow of recycled water that will be generated by the treatment plant is estimated to be 1,030kL/d, as explained in LLRWBS's retail supplier's licence application form and confirmed in LLRWBS's Response to IPART Request for Information, dated 6 May 2014.

<sup>42</sup> Email to IPART, Ms Danielle Francis, Sydney Water, 19 June 2015.

We consider that LLRWBS should not be subject to any licence conditions in relation to its capacity to carry out their activities in a manner that does not present a significant risk of harm to the environment, if a licence is granted.

#### **4.7 Public interest considerations**

**We have not identified any additional matters with regard to the public interest in relation to LLRWBS supplying recycled water and providing sewerage services to customers at the Barangaroo South development.**

#### **4.8 Licensing principles**

We have had regard to each of following licensing principles in making a recommendation as to whether or not the retail supplier's licence should be granted, and if so, what conditions to impose.

##### **4.8.1 Protection of public health**

We have had regard to protection of public health through our assessment of LLRWBS's capacity to supply recycled water and provide sewerage services in a manner that does not present a risk to public health. As outlined in section 4.3 of this report, we have assessed LLRWBS's capacity to manage the key risks posed to public health by the activities to be licensed.

If the Minister grants a retail supplier's licence to LLRWBS, we consider that public health will be protected in relation to the activities licensed.

##### **4.8.2 Protection of the environment**

We have had regard to protection of the environment through our assessment of LLRWBS's capacity to supply recycled water and provide sewerage services to customers at the Barangaroo South development in a manner that does not present a significant risk of harm to the environment.

If the Minister approves this licence, we consider that the environment will continue to be protected in relation to the activities licensed.

##### **4.8.3 Protection of public safety**

We have had regard to the protection of public safety through our assessment of LLRWBS's technical capacity to supply recycled water or provide sewerage services. As outlined in section 4.2.1 of this report, we have assessed LLRWBS's capacity to manage key risks to public safety by the activities to be licensed.



If the Minister grants a retail supplier's licence to LLRWBS, we consider that public safety will be protected in relation to the activities licensed.

#### **4.8.4 Protection of consumers generally**

We have had regard to the protection of consumers through our assessment of LLRWBS's technical capacity to supply recycled water and provide sewerage services. As outlined in section 4.2.1 of this report, we have assessed LLRWBS's capacity to protect consumers through its RSMP, Supply Agreement and risk assessment.

If the Minister approves this licence, we consider that consumers generally will continue to be protected in relation to the activities licensed.

#### **4.8.5 Encouragement of competition**

The Barangaroo South development site is located within Sydney Water's area of operations. This licence would enable a new entity to supply recycled water and sewerage services to residential, retail and commercial customers at the Barangaroo South development, thus encouraging competition in the provision of these services.

#### **4.8.6 Ensuring sustainability of water resources**

LLRWBS will supply recycled water to its customers at the Barangaroo South development. This water will be sourced by treating sewage which would have otherwise been discharged to Sydney Water's sewerage network.

The supply of recycled water also replaces the use of drinking water, contributing to the sustainability of water resources.

#### **4.8.7 Promotion of production and use of recycled water**

LLRWBS will supply recycled water to its customers at the Barangaroo South development. LLRWBS is also committed to promoting the use of recycled water in the community through provision of information on its website, brochures and letters.

#### **4.8.8 Promotion of policies set out in any prescribed water policy document**

The Metropolitan Water Plan is the only prescribed water policy document in the WIC Regulation. The Metropolitan Water Plan outlines strategies to secure greater Sydney's water supply now and in the future.



The supply of recycled water to the Barangaroo South development is consistent with the key initiatives of the Metropolitan Water Plan, including in relation to water recycling, water efficiency and innovation.

#### **4.8.9 Potential for adverse financial implications for small retail customers**

We have had regard to the potential for adverse financial implications for small retail customers through our assessment of LLRWBS's technical capacity to supply recycled water and provide sewerage services to its customers. As outlined in section 4.2.1, we have assessed LLRWBS's capacity to manage financial hardship. Further, in its application, LLRWBS has indicated that its recycled water and sewerage prices for the Barangaroo South development will reflect the charges published by IPART for equivalent supply by Sydney Water.

#### **4.8.10 Promotion of equitable sharing of the costs of water industry infrastructure that significantly contributes to water security**

LLRWBS will source drinking water to top up its recycled network and supplement its sewage source by sewer mining from Sydney Water's networks. The price that LLRWBS will pay Sydney Water should incorporate a share of the cost of any infrastructure that significantly contributes to water security in the Sydney metropolitan region.

### **4.9 Additional matters considered**

In addition to assessing the application against the licensing criteria and principles of the WIC Act, we also considered whether the applicant's services should be subject to price regulation, at this time.

#### **4.9.1 Monopoly supply and price regulation**

**We recommend that the Minister does not declare LLRWBS to be a monopoly supplier in relation to supplying recycled water and providing sewerage services to customers in the area of operations specified in its network operator's licence (licence number 15\_029).<sup>43</sup>**

**Should the Minister declare any monopoly services in relation to the supply of recycled water and provision of sewerage services at this area, we recommend that the Minister does not refer these services to IPART for a determination of pricing or a periodic review of pricing policies, at this time.**

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<sup>43</sup> Lend Lease Recycled Water (Barangaroo South) network operator's licence.

The Minister *may* declare a licensed retail supplier or licensed network operator to be a monopoly supplier in relation to a specified water supply or sewerage service in a specified area to a specified class of customers.<sup>44</sup>

The Minister can declare a monopoly supplier at any time. This declaration does not have to link to the grant or variation of a licence or a change in licence conditions. If the Minister declares a monopoly supplier, the Minister may then refer the monopoly services to IPART for price regulation.<sup>45</sup>

A monopoly declaration may only be made in relation to a service, if the Minister is satisfied that it is a service:

1. for which there are no other suppliers to provide competition in the part of the market concerned
2. for which there is no contestable market by potential suppliers in the short term in that part of the market, and
3. in the case of a water supply service for recycled water, that connection of land to that service is required by or under some other Act.<sup>46</sup>

We have considered the market for the supply of recycled water and provision of sewerage services within the Barangaroo South development (the specified area) for all classes of customer. Sydney Water has noted in its submission that it may not be able to provide alternate services to LLRWBS's proposed recycled water and sewerage services, at the Barangaroo South development, as a standard offering.<sup>47</sup> However, the development is within Sydney Water's area of operations and there is no legislative requirement to be connected to the LLRWBS recycled water scheme. We therefore consider that these are not monopoly services.

We note that, in its Supply Agreement, LLRWBS has indicated that it would ensure that its recycled water and wastewater usage and service charges will reflect the charges published by IPART for equivalent supply by Sydney Water. We consider this to be reasonable, and for this reason, should the Minister declare any monopoly retail services, we recommend that the Minister does not refer these monopoly services to IPART for price regulation, at this time.

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<sup>44</sup> WIC Act, section 51.

<sup>45</sup> Determination of the pricing and/or periodic review of the pricing policies. WIC Act, section 52(1).

<sup>46</sup> WIC Act, section 51(2).

<sup>47</sup> Letter, Sydney Water, 28 February 2014, available from our website at [www.ipart.nsw.gov.au](http://www.ipart.nsw.gov.au).

## 5 Recommendations

We recommend that the Minister:

- ▼ grants a retail supplier's licence (licence number 15\_034R) to LLRWBS, with LLD named as an authorised third party, subject to the conditions as set out in the attached draft licence (licence number 15\_034R), and
- ▼ does not declare LLRWBS to be a monopoly supplier in relation to the supply of recycled water and sewerage services to the Barangaroo South development. Should the Minister declare any monopoly retail services at the Barangaroo South development, we recommend that the Minister does not refer these services to IPART for a determination of pricing or a periodic review of pricing policies, at this time.

The Minister must consider, but is not bound to accept, any advice or recommendation in this report in determining the licence application. The Minister may, if circumstances so require, seek further advice from us in relation to the licence application.<sup>48</sup>

The Minister is required to provide us with a notice of the decision and of the reasons for the decision on making a decision whether or not to grant the licence.<sup>49</sup> We will then make the information in the notice available to the public on our website, in accordance with the requirements of the WIC Act.<sup>50</sup>

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<sup>48</sup> WIC Act, section 10(2).

<sup>49</sup> WIC Act, section 10(5).

<sup>50</sup> WIC Act, section 10(6).

## A Draft licence

Superseded



**NEW SOUTH WALES  
GOVERNMENT**

***WATER INDUSTRY COMPETITION ACT 2006  
(NSW)***

**RETAIL SUPPLIER'S LICENCE**

**Lend Lease Recycled Water (Barangaroo  
South) Pty Ltd**

**(ACN 158 168 686)**

## **SCHEDULE A - SPECIAL MINISTERIALLY-IMPOSED LICENCE CONDITIONS FOR LEND LEASE RECYCLED WATER (BARANGAROO SOUTH) PTY LTD'S RETAIL SUPPLIER'S LICENCE**

This schedule sets out the conditions which the Minister imposes pursuant to section 13(1)(b) of the Act. In addition to these special Ministerially-imposed conditions, the Licensee is subject to obligations imposed by the Act, the Regulation and the standard Ministerially-imposed licence conditions set out in Schedule B. The Minister may vary the conditions in this schedule or impose new conditions, provided there is no inconsistency with the conditions imposed on the Licensee by the Act or the Regulation.

### **A1 Activities authorised - non-potable water**

A1.1 This Licence authorises the Licensee and any authorised persons specified in Table 1.1:

- a) to supply water by means of the water industry infrastructure specified in Table 1.2;
  - b) for the authorised purposes specified in Table 1.3;
  - c) to the persons or classes of persons specified in Table 1.4; and
  - d) within the area of operations specified in Table 1.5,
- subject to the conditions imposed by or under the Act, the Regulation and this Licence.

#### **Table 1.1 Authorised persons**

Lend Lease Development Pty Ltd (ACN 000 311 277)

#### **Table 1.2 Water industry infrastructure**

The water industry infrastructure specified in Schedule A, Table 1.2A and Table 1.2B of the Licensee's Network Operator's Licence.

#### **Table 1.3 Authorised purposes**

The authorised purposes specified in Schedule A, Table 1.3 of the Licensee's Network Operator's Licence.

#### **Table 1.4 Persons or classes of persons**

Persons within the areas of operations specified in Table 1.5 of this Schedule A.

#### **Table 1.5 Area of operations**

The areas of operations specified in Schedule A, Table 1.4 of the Licensee's Network Operator's Licence.

### **A2 [Not applicable]**

### A3 Activities authorised – sewerage services

A3.1 This Licence authorises the Licensee and any authorised persons specified in Table 3.1:

- a) to provide sewerage services by means of the water industry infrastructure specified in Table 3.2;
  - b) for the authorised purposes specified in Table 3.3;
  - c) to the persons or classes of persons specified in Table 3.4;
  - d) within the area of operations specified in Table 3.5,
- subject to the conditions imposed by or under the Act, the Regulation and this Licence.

#### Table 3.1 Authorised persons

Lend Lease Development Pty Ltd (ACN 000 311 277)

#### Table 3.2 Water industry infrastructure

The water industry infrastructure specified in Schedule A, Table 3.2A and Table 3.2B of the Licensee's Network Operator's Licence.

#### Table 3.3 Authorised purposes

The authorised purposes specified in Schedule A, Table 3.3 of the Licensee's Network Operator's Licence.

#### Table 3.4 Persons or classes of persons

Persons within the areas of operations specified in Table 3.5 of this Schedule A.

#### Table 3.5 Area of operations

The areas of operations specified in Schedule A, Table 3.4 of the Licensee's Network Operator's Licence.

### A4 Ongoing capacity to operate

#### A4.1

- a) The Licensee must have the technical, financial and organisational capacity to carry out the activities authorised by this Licence.
- b) If a party to an Agreement proposes to:
  - i) terminate the Agreement;
  - ii) novate the Agreement;
  - iii) assign or transfer any of its rights or obligations under such an Agreement to any other person;
  - iv) discontinue a service provided under the Agreement; or
  - v) alter the Agreement in any way that materially reduces the Licensee's technical, financial or organisational capacity to carry out the activities authorised by the Licence,

the Licensee must provide IPART with written notice of that fact as soon as practicable, but no later than 3 months prior to the date that the proposed action is to occur. A written notice provided under clause A4.1b) i) – iii) or v) must provide details of how the services provided under the Agreement will be provided subsequent to the proposed termination, novation, assignment, transfer or alteration.

(c) The Licensee will also provide IPART with written notice as soon as practicable but no later than 3 months prior to reaching the Sunset Date, as defined in the Deed of Undertaking between Lend Lease Development Pty Ltd and Lend Lease Recycled Water (Barangaroo South) Pty Limited.

## INTERPRETATION AND DEFINITIONS

### Interpretation

In this Schedule A, unless the context requires otherwise:

- (i) the singular includes the plural and vice versa;
- (ii) headings are used for convenience only and do not affect the interpretation of this Schedule A;
- (iii) a reference to a document includes the document as modified from time to time and any document replacing it;
- (iv) a reference to a “person” includes a natural person and any body or entity whether incorporated or not;
- (v) a reference to a clause is to a clause in this Schedule A;
- (vi) a reference to a schedule is to a schedule to this Licence;
- (vii) a reference to a law or statute includes regulations, rules, codes and other instruments under it, and consolidations, amendments, re-enactments or replacements of them; and
- (viii) explanatory notes do not form part of this Licence, but in the case of uncertainty may be relied on for interpretation purposes.

### Definitions

Expressions used in this Schedule A that are defined in the Act or the Regulation have the meanings set out in the Act or the Regulation.

In this Schedule A:

Act	means the <i>Water Industry Competition Act 2006</i> (NSW).
Agreement	means any agreement or deed provided to IPART in connection with the Licensee’s application for this Licence
IPART	means the Independent Pricing and Regulatory Tribunal of New South Wales established under the <i>Independent Pricing and Regulatory Tribunal Act 1992</i> (NSW)
Licence	means this retail supplier’s licence granted under section 10 of the Act.



Licensee	means the person to whom this Licence is granted under section 10 of the Act.
Licensee's Network Operator's Licence	means the network operator's licence (Licence no. 15_029) granted to the Licensee under section 10 of the Act (as varied from time to time).
Minister	means the Minister responsible for Part 2 the Act.
Regulation	means the <i>Water Industry Competition (General) Regulation 2008</i> (NSW).

Superseded

## **SCHEDULE B - STANDARD MINISTERIALLY-IMPOSED LICENCE CONDITIONS FOR ALL LICENSED RETAIL SUPPLIERS**

This schedule sets out the standard conditions which the Minister imposes on the Licensee and all other licensed retail suppliers pursuant to section 13(1)(b) of the Act. In addition to these standard Ministerially-imposed conditions, the Licensee is subject to obligations imposed by the Act, the Regulation and the special Ministerially-imposed licence conditions set out in Schedule A. The Minister may vary the conditions in this schedule or impose new conditions, provided there is no inconsistency with the conditions imposed on the Licensee by the Act or the Regulation.

### **B1 Ongoing capacity to operate**

- B1.1 The Licensee must have the technical, financial and organisational capacity to carry out the activities authorised by this Licence. If the Licensee ceases to have this capacity, it must report this to IPART immediately in accordance with the Reporting Manual.

### **B2 Obtaining appropriate insurance**

B2.1 *[Not applicable]*

B2.2 *[Not applicable]*

B2.3 *[Not applicable]*

B2.4 *[Not applicable]*

B2.5 Before commencing to supply water and provide sewerage services through the Specified Water Industry Infrastructure under this Licence, the Licensee must:

- a) obtain insurance that is appropriate for the size and nature of the activities authorised under this Licence;
- a) provide a copy of each certificate of currency of the insurance obtained to IPART; and
- b) demonstrate that the insurance obtained is appropriate for the size and nature of the activities authorised under this Licence by providing a report to IPART from an Insurance Expert that:
  - a) certifies that in the Insurance Expert's opinion, the type and level of the insurance obtained by the Licensee is appropriate for the size and nature of the activities authorised under the Licence; and
  - a) is in the form prescribed by the Reporting Manual.

B2.6 *[Not applicable]*

### **B3 Maintaining appropriate insurance**

B3.1 The Licensee must maintain insurance that is appropriate for the size and nature of the activities authorised under this Licence.

B3.2 The Licensee must provide a copy of each certificate of currency of the insurance maintained by the Licensee to IPART in accordance with the Reporting Manual.

B3.3 If there is to be a change in:

- a) the insurer or underwriting panel in respect of an insurance policy held by the Licensee; or
- b) the type, scope or limit on the amount of insurance held by the Licensee,

in relation to the activities authorised under this Licence, the Licensee must provide a report to IPART in accordance with the Reporting Manual.

- B3.4** From time to time when requested in writing by IPART, the Licensee must provide a report to IPART, in the manner, form and time specified by IPART, from an Insurance Expert certifying that in the Insurance Expert's opinion the type and level of the insurance held by the Licensee is appropriate for the size and nature of the activities authorised under this Licence.

*[Note: The situations in which IPART may request a report under clause B3.4 include (but are not limited to) the following:*

- *when IPART has reason to believe that there may be a change in the type or level of insurance held by the Licensee in relation to activities authorised under this Licence;*
- *where there is a change in the type or extent of activities authorised under this Licence; or*
- *when IPART or an approved auditor has reason to believe that the type or level of insurance held by the Licensee may not be appropriate for the size and nature of the activities authorised under this Licence.]*

#### **B4 Complying with NSW Health requirements**

- B4.1** The Licensee must carry out the activities authorised by this Licence in compliance with any requirements of NSW Health that:

- a) IPART has agreed to; and
- b) are notified from time to time to the Licensee by IPART in writing.

#### **B5 Complying with Audit Guidelines from IPART**

- B5.1** The Licensee must comply with any Audit Guidelines issued by IPART.

#### **B6 Reporting in accordance with the Reporting Manual**

- B6.1** The Licensee must prepare and submit reports in accordance with the Reporting Manual.

#### **B7 Reporting information in relation to the Register of Licences**

- B7.1** Within 14 days of any change in relation to the following, the Licensee must notify IPART, and provide IPART with details, of the change in accordance with the Reporting Manual:
- a) any licensed network operator or public water utility from whose water industry infrastructure the Licensee supplies water to its customers;
  - b) any source from which the water handled by the water industry infrastructure referred to in paragraph (a) is derived;
  - c) whether or not any of the Licensee's customers are small retail customers;
  - d) any order under section 54 of the Act by which the Licensee is declared to be a retailer of last resort;

- e) any licensed network operator or public water utility by means of whose sewerage infrastructure the Licensee provides sewerage services to its customers;
- f) *[Not applicable]*
- g) *[Not applicable]*

## **B8 Provision of copy of Plan**

- B8.1 Whenever the Licensee makes a significant amendment to a Plan, the Licensee must provide a copy of the amended Plan to IPART at the same time that it provides a copy to the approved auditor engaged to prepare a report as to the adequacy of the amended Plan, as required under the Regulation.

## **B9 Delineating responsibilities**

- B9.1 If a code of conduct has not been established under clause 25 of the Regulation, the Licensee must (by a date specified by IPART) establish a code of conduct (**Licensee's Code of Conduct**) in accordance with this clause B9.
- B9.2 The Licensee's Code of Conduct must set out the respective responsibilities of:
- a) the Licensee; and
  - b) each licensed network operator, licensed retail supplier and/or public water utility that:
    - i) supplies water or provides sewerage services by means of; or
    - ii) constructs, maintains or operates,any water industry infrastructure that is connected to the Specified Water Industry Infrastructure,
- by, at a minimum, providing for:
- c) who is responsible for repairing, replacing or maintaining any pipes, pumps, valves, storages or other infrastructure connecting the Specified Water Industry Infrastructure to the other water industry infrastructure;
  - d) who is responsible for water quality;
  - e) who is liable in the event of the unavailability of water;
  - f) who is liable in the event of failure of the Specified Water Industry Infrastructure;
  - g) the fees and charges payable in respect of the use of the Specified Water Industry Infrastructure; and
  - h) who is responsible for handling customer complaints.
- B9.3 Before commencing to supply water or provide sewerage services through the Specified Water Industry Infrastructure under this Licence or by a later date specified by IPART (if any), the Licensee's Code of Conduct must be agreed in writing between the Licensee and the other licensed network operators, licensed retail suppliers and/or public water utilities referred to in clause B9.2.
- B9.4 *[Not applicable]*
- B9.5 The Licensee must not contravene the Licensee's Code of Conduct to the extent that it makes the Licensee responsible or liable for the matters set out in it.

## **B10 Notification of changes to Authorised Person**

- B10.1 If an Authorised Person ceases, proposes to cease, or receives notification to cease providing any of the services relating to the activities authorised by this Licence, the Licensee must provide IPART with written notice as soon as practicable but no later than 28 days before the date of cessation of the services. The written notice must include details of how the services previously undertaken by the Authorised Person will continue to be undertaken.

## **B11 Infrastructure to be used**

- B11.1 The Licensee must only source and supply water by means of water industry infrastructure maintained and operated by a licensed network operator or public water utility.
- B11.2 The Licensee must only provide sewerage services by means of water industry infrastructure maintained and operated by a licensed network operator or public water utility.

## **B12 Notification of operation**

- B12.1 This clause B12 applies each time the Licensee has commenced to supply water or provide sewerage services through any of the Specified Water Industry Infrastructure under this Licence.
- B12.2 The Licensee must:
- a) notify IPART in accordance with the Reporting Manual that it has commenced to supply water through the relevant Specified Water Industry Infrastructure; and
  - b) provide such notification within 10 days after such commencement.
- B12.3 The Licensee must:
- a) notify IPART in accordance with the Reporting Manual that it has commenced to provide sewerage services through the relevant Specified Water Industry Infrastructure; and
  - b) provide such notification within 10 days after such commencement.

## **INTERPRETATION AND DEFINITIONS**

### **Interpretation**

In this Schedule B, unless the context requires otherwise:

- (i) the singular includes the plural and vice versa;
- (ii) headings are used for convenience only and do not affect the interpretation of this Schedule B;
- (iii) a reference to a document includes the document as modified from time to time and any document replacing it;
- (iv) a reference to a "person" includes a natural person and any body or entity whether incorporated or not;
- (v) a reference to a clause is to a clause in this Schedule B;
- (vi) a reference to a schedule is to a schedule to this Licence;

- (vii) a reference to a law or statute includes regulations, rules, codes and other instruments under it, and consolidations, amendments, re-enactments or replacements of them; and
- (viii) explanatory notes do not form part of this Licence, but in the case of uncertainty may be relied on for interpretation purposes.

## Definitions

Expressions used in this Schedule B that are defined in the Act or the Regulation have the meanings set out in the Act or the Regulation.

In this Schedule B:

Act	means the <i>Water Industry Competition Act 2006</i> (NSW).
Audit Guidelines	means the document entitled “Audit Guideline – Water Industry Competition Act 2006” which is prepared by IPART and is available on IPART’s website at <a href="http://www.ipart.nsw.gov.au">www.ipart.nsw.gov.au</a> , and any other guidelines issued by IPART in relation to audits under the Act.
Authorised Person	means the authorised persons specified in, as applicable: <ul style="list-style-type: none"><li>(i) Schedule A, clause A1, Table 1.1;</li><li>(ii) Schedule A, clause A2, Table 2.1; and</li><li>(iii) Schedule A, clause A3, Table 3.1.;</li></ul>
Authorised Purposes	means the authorised purposes specified in, as applicable: <ul style="list-style-type: none"><li>(i) Schedule A, clause A1, Table 1.3;</li><li>(ii) Schedule A, clause A2, Table 2.3; and</li><li>(iii) Schedule A, clause A3, Table 3.3.</li></ul>
Insurance Expert	means an insurance broker which holds an Australian financial services licence under Part 7.6 of the <i>Corporations Act 2001 (Cth)</i> that authorises the broker to provide financial product advice for, and deal in, contracts of insurance within the meaning of Chapter 7 of that Act.
IPART	means the Independent Pricing and Regulatory Tribunal of New South Wales established under the <i>Independent Pricing and Regulatory Tribunal Act 1992</i> (NSW).
Licence	means this retail supplier’s licence granted under section 10 of the Act.
Licensee	means the person to whom this Licence is granted under section 10 of the Act.
Licensee’s Code of Conduct	has the meaning given in clause B9.1.

Minister	means the Minister responsible for Part 2 of the Act.
NSW Health	means the Water Unit of NSW Ministry of Health and any of the local health districts as defined by the NSW Ministry of Health.
Plan	means the retail supply management plan that the Licensee is required to prepare under the Regulation.
Regulation	means the <i>Water Industry Competition (General) Regulation 2008</i> (NSW).
Reporting Manual	means the document entitled "Retail Supplier's Reporting Manual," which is prepared by IPART and is available on IPART's website at <a href="http://www.ipart.nsw.gov.au">www.ipart.nsw.gov.au</a> .
Specified Area of Operations	means the area of operations specified in, as applicable: <ul style="list-style-type: none"> <li>(i) Schedule A, clause A1, Table 1.5;</li> <li>(ii) Schedule A, clause A2, Table 2.5; and</li> <li>(iii) Schedule A, clause A3, Table 3.5.</li> </ul>
Specified Water Industry Infrastructure	means the water industry infrastructure specified in, as applicable: <ul style="list-style-type: none"> <li>(i) Schedule A, clause A1, Table 1.2;</li> <li>(ii) Schedule A, clause A2, Table 2.2; and</li> <li>(iii) Schedule A, clause A3, Table 3.2.</li> </ul>