



Independent Pricing and Regulatory Tribunal

# **Application for a network operator's licence from Central Park Water Factory Pty Ltd**

**IPART's report to the Minister**

**Water — Ministerial report**  
December 2012



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## 1 Background

On 10 February 2012 IPART received a licence application for a network operator's licence and a retail supplier's licence under the *Water Industry Competition Act 2006* (the Act) from Central Park Water Factory Pty Ltd (CPWF). The application for a network operator's licence is to construct, maintain and operate water industry infrastructure within the Central Park development including:

- ▼ a drinking water supply network
- ▼ a sewerage network
- ▼ a recycled water treatment plant located in the basement of a residential apartment block
- ▼ a non-potable water supply network.

CPWF proposes to source drinking water from Sydney Water's network at the boundary of the site, and supply this to almost 2,000 residential apartments and around 100,000 square metres of commercial/retail space at Central Park.

CPWF also proposes to construct, operate and maintain infrastructure to provide sewerage services to these same customers. The sewage generated will be treated to a standard suitable for the following applications within the development site:

- ▼ toilet flushing
- ▼ cold water clothes washing
- ▼ cooling tower make-up
- ▼ irrigation
- ▼ car washing
- ▼ vertical garden irrigation.

Waste from the recycled water treatment plant, and excess sewage in emergency situations, will be discharged into the Sydney Water sewerage network.

The application for a retail supplier's licence has been superseded. Instead the applicant's parent company, Water Factory Company Pty Ltd (WFC), has applied for a separate retail supplier's licence. Our recommendation on WFC's application should be provided to the Minister in early 2013.

In accordance with the Act, this report sets out our consideration of CPWF's network operator's licence application and submissions, in particular in relation to whether the licensing criteria has been satisfied and the licensing principles have been considered. This report concludes with a recommendation to grant a network operator's licence. This report also proposes the conditions to which the licence should be subject.

## 2 Submissions

We must provide the application to, and invite submissions from, the following Ministers:

- ▼ Minister administering the *Public Health Act 1991* (Minister for Health)
- ▼ Minister administering Chapter 2 of the *Water Management Act 2000* (Minister for Primary Industries)
- ▼ Minister administering the *Protection of the Environment Operations Act 1997* (Minister for the Environment and Minister for Heritage)
- ▼ Minister administering the *Environmental Planning and Assessment Act 1979* (Minister for Planning and Infrastructure).<sup>1</sup>

On 14 March 2012, we provided the application to the Ministers and their departments and requested submissions by 18 April 2012. A copy of the application was also provided to the Minister for Finance and Services, the Minister administering the Act.

We received submissions from NSW Ministry of Health, the Minister for the Environment and Minister for Heritage, the Department of Planning and Infrastructure (DP&I) and the Minister for Primary Industries.

The contents of the submissions were generally supportive of the proposed scheme and the application. The Minister for Primary Industries, NSW Ministry of Health and DP&I raised some minor matters for consideration and these are addressed in sections 3.1.5 and 3.1.6 of this report.

Sydney Water was also notified that we had received the licence application<sup>2</sup>. Sydney Water made a submission that outlined a number of issues for consideration and these are addressed in section 3.1.8 of this report.

IPART must also call for submissions on the application from the public.<sup>3</sup> On 21 March 2012 we advertised in the Sydney Morning Herald and Daily Telegraph for public submissions. The closing date for submissions was 18 April 2012.

No public submissions were received.

## 3 Assessment of application

The Minister is required to determine an application for a licence by granting the licence or refusing the application, and determining the conditions to which the

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<sup>1</sup> *Water Industry Competition Act 2006*, section 9(1)(b)

<sup>2</sup> *Water Industry Competition (General) Regulation 2008*, section 17(2)

<sup>3</sup> *Water Industry Competition Act 2006*, section 9(1)(c).

licence (if granted) should be subject.<sup>4</sup> The Minister may not grant the licence unless satisfied of certain licensing criteria, namely that the applicant:

- ▼ is not a disqualified corporation (i.e. 'fit and proper' criteria)
- ▼ has, and will continue to have, the technical, financial and organisational capacity to carry out the activities to be authorised by the licence
- ▼ has the capacity to carry out its activities in a manner that does not present a risk to public health or a significant risk of harm to the environment
- ▼ has, and will continue to maintain, appropriate insurance arrangements
- ▼ in the case of a licence to supply water, will supply sufficient quantities of water that have not be obtained from a public water utility
- ▼ such other matters as the Minister considers relevant, having regard to the public interest.<sup>5</sup>

In considering whether or not to grant the licence, and what conditions (if any) to impose on the licence, the Minister must also have regard to the following licensing principles:

- ▼ the protection of public health, the environment, public safety and consumers
- ▼ 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
- ▼ 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>6</sup>

The following sections address the licensing criteria and principles outlined above.

### 3.1 Licensing criteria

#### 3.1.1 Disqualified corporation

The applicant corporation, CPWF, its related entities, directors and persons concerned in its and its related entities' management are not disqualified pursuant to

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<sup>4</sup> *Water Industry Competition Act 2006*, section 10(1).

<sup>5</sup> *Water Industry Competition Act 2006*, sections 10(3) & (4).

<sup>6</sup> *Water Industry Competition Act 2006*, section 7.

the Act. In making the assessment of the standing of CPWF and its related entities, directors and persons concerned in its management, we gave regard to:

- ▼ the statutory declaration made by the Chief Executive Officer and Director
- ▼ results of the ASIC and ITSA searches provided in the Dun & Bradstreet report obtained by IPART
- ▼ results of IPART's search of the *Water Industry Competition Act* licence database<sup>7</sup>.

**IPART considers that CPWF has satisfactorily met this criterion.**

### 3.1.2 Technical capacity

We assessed CPWF's technical capacity (current and ongoing) to construct, operate and maintain water industry infrastructure for the purpose of providing sewerage services, supplying drinking water and supplying non-potable water in a manner that would protect public health and the environment.

The assessment was based on the information provided as part of CPWF's application. In particular, we considered:

- ▼ The technical experience of specific personnel nominated on CPWF's project team.
- ▼ Preliminary and draft reports and plans for the Central Park project.
- ▼ Examples of final reports and plans prepared for a similar project (Pitt Town).
- ▼ Technical details of the proposed water industry infrastructure including the preliminary design and the operating and maintenance plans and procedures.
- ▼ CPWF's responses to our specific questions regarding the application in the form of an updated application and supplementary information.

We also considered the submissions provided by other regulatory authorities consulted, none of which raised any concerns over CPWF's technical capacity.

CPWF is a start-up company and therefore has no historical operating experience as a corporation. CPWF is undertaking the project primarily through the engagement and management of suitably qualified third party expert consultants and suppliers. In particular, CPWF will rely on WFC and Permeate Partners Pty Ltd (Permeate Partners) to provide the technical capacity required to deliver the licensed activities.

WFC is a private water utility set up in response to the Act. It established CPWF as its project-specific subsidiary to deliver the Central Park project. WFC will provide operational personnel, and administrative, commercial, financial and management services to CPWF. CPWF will rely on WFC to provide the technical capacity required to deliver sewerage services, and supply non-potable water and drinking water. Another of WFC's subsidiary companies, Pitt Town Water Factory Pty Ltd,

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<sup>7</sup> There are currently no disqualified corporations or individuals on the register pursuant to the *Water Industry Competition Act 2006*, section 16(e) and 16(f), this being the second application.

holds a network operator's licence to construct, operate and maintain water industry infrastructure (sewerage and non-potable water) in the Pitt Town residential release area. CPWF provided CVs of WFC's key personnel on the Central Park project team, demonstrating their experience in the operation and management of water industry infrastructure.

CPWF will also rely on Permeate Partners to provide the technical capacity required to deliver sewerage services and supply non-potable water. Permeate Partners will provide operational and technical management advice and expertise during design, procurement, commissioning and operation of the recycled water plant. Key personnel from Permeate Partners were involved in a number of similar projects in NSW including the sewer mining plants in the Sydney Water building and at Pennant Hills Golf Club, and the recycled water plant at Pitt Town.

We made a technical assessment of the proposed water industry infrastructure for the Central Park development, the associated health and environmental risks and the measures intended to manage any such risks. This assessment was based on the site specific preliminary risk assessment and the proposed treatment train provided by CPWF.

Infrastructure for the drinking water, non-potable water and sewage reticulation networks will be constructed by the developers in liaison with CPWF.

We also requested additional information to address other minor technical issues relating mainly to inconsistencies in the application and information supplied. We consider CPWF's detailed response adequately addresses the technical issues raised, at this stage in the licence application process.

However we note that the applicant (if granted a licence) will need to provide further details on the management of risks (particularly the management of risks to the business and the reticulation networks). Typically we would anticipate such risks to be identified and managed as part of their water quality, sewage management and infrastructure operating plans which are audited prior to the commencement of commercial operation.

**IPART considers that CPWF has satisfactorily met this criterion subject to Permeate Partners Pty Ltd and Water Factory Company Pty Ltd being named within the licence.**

### **3.1.3 Financial capacity**

Vincents Chartered Accountants (Vincents) (an external financial consultant), assessed the financial viability of CPWF. This assessment was completed to satisfy the Minister that CPWF has and will continue to have the financial capacity to carry out the activities under the licence.

CPWF was incorporated on 24 May 2011 and therefore has limited financial history. Vincents assessed CPWF's capacity to fund the proposed activities and found that this is reliant on the parent company, WFC. As such, Vincents also assessed WFC's financial viability. WFC was incorporated on 27 March 2009 and provided a trading history from 2009 to 2012 financial years. Vincents found that both CPWF and WFC can access appropriately qualified professionals such as accountants and registered tax agents. Based on the current information available and a number of assumptions<sup>8</sup>, Vincents was satisfied CPWF adequately demonstrated it has the ongoing financial capacity to carry out the activities to be licensed.

We would like to emphasise that a financial assessment of this type is limited to a point in time, and the granting of a licence should not be viewed as endorsement of the future viability of the company. The assessment is based on a combination of information sources, none of which is to be regarded as individually determinative. This assessment is done for IPART's own purpose and the conclusion is not to be relied upon for any other purpose by any other person.

**IPART considers that CPWF has satisfactorily met this criterion.**

#### 3.1.4 Organisational capacity

We assessed CPWF's organisational capacity (current and ongoing) to construct, operate and maintain water industry infrastructure for the purpose of providing sewerage services, supplying drinking water and supplying non-potable water in a manner that would protect public health and the environment.

We based our assessment wholly on the information provided in CPWF's application. It included reviews of CPWF's organisational structure, resourcing plan, previous experience and CVs of the specific personnel nominated on the project, and contracts and agreements with other parties.

As described in section 3.1.2, CPWF is a start-up company created as a subsidiary company to WFC to deliver the Central Park project.

CPWF will rely on WFC to provide the organisational capacity required to deliver sewerage services, and supply non-potable water and drinking water. CPWF entered into a corporate services agreement with WFC to access the required personnel and services. We viewed the signed copy of this agreement, as well as CVs of key personnel and evidence of corporate experience as a network operator (Pitt Town Water Factory Pty Ltd).

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<sup>8</sup> Key assumptions and limitations include: the financial and other information provided by CPWF was true and accurate; the cash flows were prepared on a reasonable basis; Vincents offers no assurance the projected cash flows include adequate allowance for the construction, operation or maintenance of the water industry infrastructure; Vincents could not assess the major risks that would impact the cash flow for the project such as default of suppliers or the developer, and the rate of development sales.

CPWF will also rely on Permeate Partners to provide the organisational capacity required to deliver sewerage services and supply non-potable water. CPWF entered into a consultancy contract with Permeate Partners to provide operational and technical management advice and expertise. Permeate Partners has been operating since 2008 and is a consultancy that specialises in water and sewage treatment infrastructure. As described in section 3.1.2, Permeate Partners has the required technical experience to support CPWF in providing sewerage services and supplying non-potable water.

**IPART considers that CPWF has satisfactorily met this criterion subject to Permeate Partners Pty Ltd and Water Factory Company Pty Ltd being named within the licence.**

### 3.1.5 Public health

We considered CPWF's capacity to construct, operate and maintain water industry infrastructure in a manner that protects public health as part of the technical, financial and organisational capacity assessments.

NSW Ministry of Health supported the application provided a number of conditions are met by CPWF:

- ▼ A drinking water health risk assessment is conducted in consultation with stakeholders and NSW Health.
- ▼ A Drinking Water Management Plan, as required by the *Public Health Act 2010*, is developed in consultation with NSW Health.
- ▼ NSW Health are consulted during the technology assessment stage and following the final compliance audit, before commercial production to ensure all relevant health matters have been addressed.
- ▼ NSW Health is involved in the development of the final drinking water and recycled water management plans, including the development of incident notification and management procedures. The plans should be submitted to NSW Health for review prior to operation of the drinking water and recycled water systems.

NSW Ministry of Health also provided additional comments on the preliminary risk assessment. These provide further information for CPWF to consider in its final risk assessment for the project. We consider this information will be required as part of the final water quality plans which will be audited prior to the commencement of commercial operation.

We will advise CPWF of NSW Ministry of Health's comments and our subsequent audit process should verify that the matters raised are addressed prior to commercial operation of the scheme.

**IPART is satisfied that CPWF has satisfactorily met this criterion and licensing principle.**

### **3.1.6 Environment**

We considered CPWF's capacity to construct, operate and maintain water industry infrastructure in a manner that does not present a significant risk of harm to the environment as part of the technical, financial and organisational capacity assessments.

The Minister for the Environment and Minister for Heritage made a submission that stated the Environmental Protection Authority (EPA) has not initiated any prosecutions against CPWF, WFC or the developer. The Minister also advised us that an environmental protection licence is required under the *Protection of the Environment Operation Act 1997* to undertake sewage treatment works where the activity has a processing capacity that exceeds 750 kilolitres per day, if the system involves the discharge or likely discharge to land or waters. The Central Park water recycling plant will exceed this processing capacity, but given all waste will be discharged to the Sydney Water sewerage network, it is not a scheduled activity and will not require an environmental protection licence.

The Minister for the Environment and Minister for Heritage's submission also stated that she was unable to provide significant comment on the adequacy of CPWF's proposed measures to protect the environment from any significant harm, as an environmental assessment was not provided with the application. However, the Minister noted that it would appear that the risk of harm to the environment will be mitigated by the arrangements with Sydney Water to accept waste from the recycled water plant, as well as untreated sewage from the entire development in emergency situations, into the existing sewerage system.

DP&I made a submission on 11 April 2012 that confirmed that it has approved space for a recycled water treatment plant in the basement area of Block 2 of the Central Park site, under Major Project MP 09\_0042 (as amended). It also advised us that the details of the recycled water treatment plant are yet to be submitted for assessment and approval. On 31 October 2012, CPWF provided us with the application the developer submitted to DP&I for modification to MP 09\_0042 to fit out, commission and operate the recycled water treatment plant. DP&I are currently assessing this application. We noted that the City of Sydney Council made a submission on the approval modification highlighting its concern over the risk of odour and suggesting a number of conditions of approval in relation to this. CPWF identified odour as a risk in the preliminary risk assessment which was provided in its licence application and proposed odour control equipment to mitigate this risk. We consider the conditions of approval suggested by City of Sydney Council should satisfactorily reduce the risk of harm to the environment from odour.

The Minister for Primary Industries made a submission requesting further information to determine whether a water extraction licence would be required

under the *Water Management Act 2000* for the collection of rainwater and groundwater. We discussed this issue with CPWF and NSW Office of Water, and confirmed that CPWF will not require a water extraction licence as it will not be responsible for pumping groundwater from the basement. CPWF advised us that Frasers (the developers of the Central Park) are responsible for the pumping of groundwater, and are in discussions with NSW Office of Water around licensing requirements.

We reviewed the preliminary risk assessment provided in CPWF's application which included a number of environmental risks such as discharge to the environment through irrigation, overflows, chemical spills and odour. CPWF will need to document actions to mitigate environmental risks in its water quality and sewage management plans. These plans will be audited prior to the commencement of commercial operation.

**IPART is satisfied that CPWF has satisfactorily met this criterion.**

### **3.1.7 Insurance**

We assessed CPWF's existing arrangements with respect to insurance. We based this assessment wholly on the information provided as part of CPWF's application including the certificates of currency. We are satisfied that the information provided by CPWF demonstrates it has made, and will continue to maintain, appropriate arrangements in respect to insurance, subject to the licence conditions described below.

CPWF will be subject to standard licence conditions B2 and B3 (approved by the Minister and imposed on all licences issued under the Act). Condition B2 requires CPWF to provide a report from an insurance expert certifying that in their opinion the type and level of insurance obtained by CPWF is appropriate for the size and nature of the activities authorised under the licence. This must be provided before the commencement of commercial operation. Condition B3 requires CPWF to maintain appropriate insurance sufficient for the size and nature of the activities authorised by the licence. It also requires CPWF to notify IPART of any change in the type, level or period of insurance held and provide a copy of the certificate of currency within 10 days of the change being made. This condition also allows IPART to request further insurance expert reports from CPWF in the future, should we consider it necessary.

**IPART is satisfied that CPWF has satisfactorily met this criterion and notes that standard conditions B2 and B3 will apply.**

### **3.1.8 Additional public interest considerations**

Sydney Water made a submission that outlined a number of issues for consideration around the relationships between Sydney Water, CPWF and their customers, and the

regulatory environment within which the scheme sits. We held a meeting with Sydney Water and CPWF to address these issues. We agreed that CPWF will enter into a commercial agreement with Sydney Water that covers drinking water supply, sewer mining and trade waste discharge.

Central Park is a high profile development located on the edge of Sydney's central business district. We support Central Park's vision to be a sustainable development and the implementation of initiatives such as replacing drinking water with non-potable water for a number of end uses.

If granted a licence, CPWF will be the first private water utility to provide sewerage services, supply drinking water and supply non-potable water.

**IPART is satisfied that CPWF has satisfactorily met this criterion.**

### 3.2 Licensing principles

We considered each of the licensing principles in making a recommendation as to whether or not the licence should be granted and what licence conditions to impose:

- ▼ Protection of public health, environment, public safety and consumers was considered as part of the technical assessment. We consider that CPWF has the technical capacity and experience to undertake the activities in a way that will manage risks, subject to Permeate Partners and WFC being named within the licence. If the scheme were to fail, there is capacity for sewage to be discharged into the Sydney Water sewerage network, and for drinking water to be supplied directly by Sydney Water (also replacing non-potable water).
- ▼ Encouragement of competition. The scheme proposes to provide sewerage services and supply non-potable water to the individual customers within the Central Park development. Historically Sydney Water had a monopoly on sewerage services and drinking water supply in the Sydney area. This project will enable a new entity to provide drinking water, sewerage services and non-potable water in competition to Sydney Water.
- ▼ Ensuring sustainability of water resources. The non-potable water will be sourced from sewage that would have otherwise been treated and discharged to the environment. It will replace drinking water for toilet flushing, cold water clothes washing, cooling tower make-up, irrigation, car washing and vertical garden irrigation.
- ▼ Promotion of production and use of recycled water. The supply of non-potable water to the Central Park development promotes the uses of recycled water as a substitute for drinking water.
- ▼ Promotion of policies set out in any prescribed water policy document. The supply of non-potable water by CPWF to the Central Park development is consistent with the objectives of the NSW Metropolitan Water Plan.

- ▼ Potential for adverse financial implications for small retail customers generally arising from the activities proposed to be covered by the licence. This is not applicable for a network operator's licence but it will be considered as part of the retail licence application by the applicant's parent company.
- ▼ Promotion of the equitable sharing amongst participants in the drinking water market of the cost of water industry infrastructure that significantly contributes to water security. CPWF will buy drinking water from Sydney Water at the regulated price determined by IPART. This price takes into account the cost of infrastructure that significantly contributes to water security.

**IPART is satisfied that the granting of a network operator's licence to CPWF is consistent with the licensing principles.**

### 3.3 Other issues- area of operation

The area of operation requested by CPWF in the application covered several local government areas. The amount of water which the recycled water plant has the capacity to produce is greater than the requirements of the Central Park development. CPWF requested the wide area of operations to allow for construction of infrastructure beyond the boundaries of Central Park, with the subsequent supply of recycled water to other customers. CPWF did not have any other specific customers signed up at the time of the application. Therefore, our recommended licence limits the area of operation to the Central Park development and the small block directly to the east of the site. CPWF has the ability to request a licence variation to extend that area once it has agreements in place with additional customers.

## 4 Recommendations

In determining the licence application the Minister must consider, but is not bound to accept, any advice or recommendation in this report and may, if circumstances so require, seek further advice from IPART in relation to the application.<sup>9</sup>

**IPART is satisfied that CPWF has satisfactorily met the licensing criteria under section 10 of the Act, having regard to the licence application, submissions made, and the licensing principles under section 7 of the Act.**

**IPART therefore recommends that the Minister grants grant a network operator's licence to CPWF subject to the conditions as set out in licence number 12\_022.**

The Minister must make a decision on whether or not to grant the licence and provide IPART with a notice of this decision (including the reasons for the

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<sup>9</sup> *Water Industry Competition Act 2006*, section 10(2).

decision).<sup>10</sup> We will then make this information available to the public on our internet website in accordance with the requirements of the Act.<sup>11</sup>

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<sup>10</sup> *Water Industry Competition Act 2006*, section 10(5).

<sup>11</sup> *Water Industry Competition Act 2006*, section 10(6).