

# **5-yearly review and assessment of Veolia Water Solutions & Technologies (Australia) network operator's licence (no. 10\_012) variation application**

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

**Water — Report to the Minister**  
November 2016



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# 1 Summary

The Independent Pricing and Regulatory Tribunal of NSW (IPART) has conducted a licence variation assessment and concurrently completed the 5-yearly review of Veolia Water Solutions & Technologies (Australia) Pty Ltd's (VWS&T) network operator's licence (no. 10\_012) for the Bingara Gorge Scheme under the *Water Industry Competition Act 2006* (WIC Act).

Subject to VWS&T providing the Minister with a bank guarantee executed in the NSW Government's favour for \$2.5 million, issued from a financial institution regulated by the Australian Prudential Regulatory Authority (APRA) before the licence variation is granted; we recommend that the Minister grants a variation to change the scope of VWS&T network operator's licence (NOL) to:

- ▼ remove the condition limiting the treatment of sewage to a maximum volume of 400 kL/day from the current licence
- ▼ authorise the treatment of recycled water for additional purposes.

In assessing VWS&T's NOL variation 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 considering the application for a variation we have also concurrently conducted the 5-yearly review of the existing NOL and combined both of our recommendations in the report and the recommended draft licence.

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>1</sup>

## 2 Background

### 2.1 The applicant

On 26 June 2015, we received an application from VWS&T for a variation to its existing NOL. The existing NOL limits the volume of sewage that can be treated by the scheme to 400 kL /day, and only allows treatment of recycled water for irrigation of the Bingara golf course.

This licence variation is to remove the limit on the volume of sewage that can be treated by the scheme; and to allow recycled water produced by the plant to be

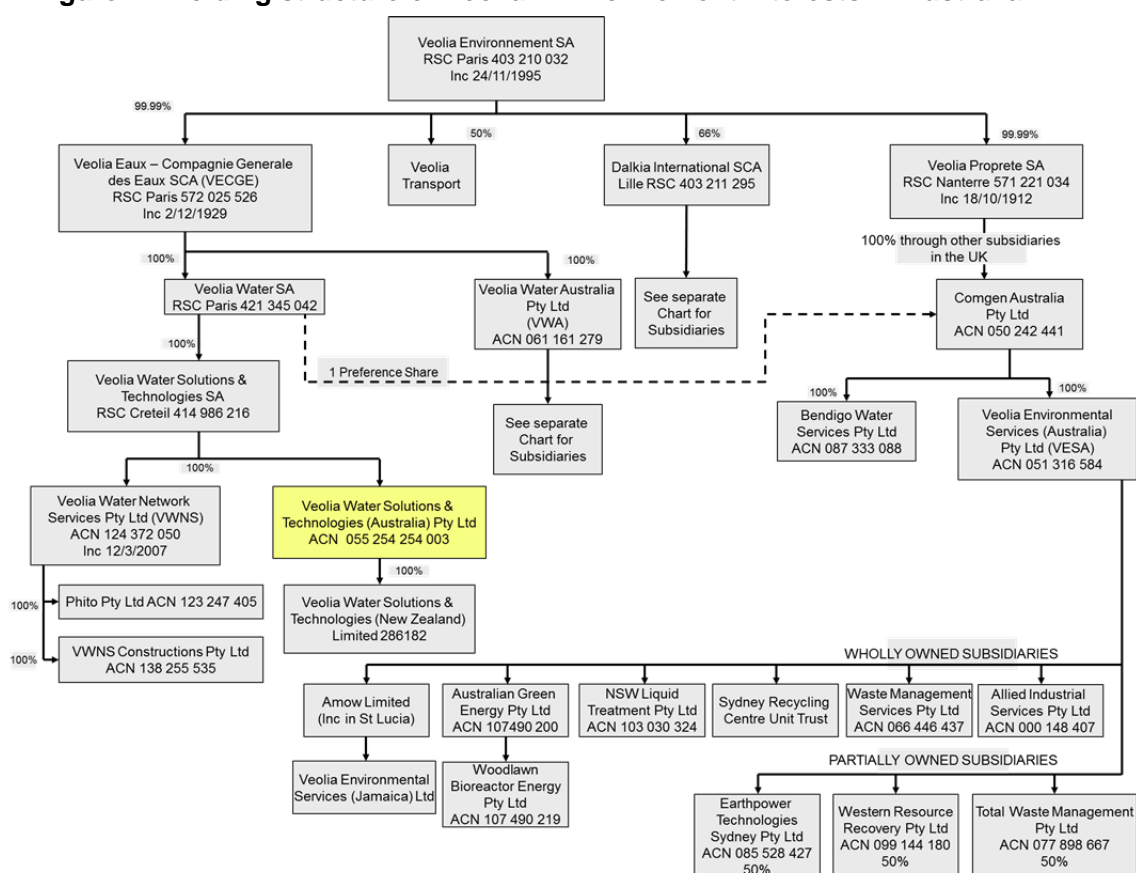
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<sup>1</sup> WIC Act, section 10(2).

used for the purposes of toilet flushing, garden irrigation and laundry washing (cold tap only).

VWS&T has a NOL and a RSL for the Bingara Gorge residential development scheme. The Bingara Gorge's NOL was granted on 9 December 2010, and the scheme has been in operation since late 2011. Figure 1 outlines VWS&T's corporate structure, including its parent companies overseas. VWS&T's immediate parent company (ie, Veolia Water Solutions & Technologies SA) is based in France and there are three parent companies overseas between VWS&T and its ultimate parent company (Veolia Environnement SA).

**Figure 1 - Holding structure of Veolia Environnement interests in Australia<sup>2</sup>**



Lendlease Communities (Wilton) Pty Ltd (Lendlease, formerly Lend Lease) the developer at Bingara Gorge, is also the owner of the water infrastructure and is an authorised person on the existing NOL and RSL.

<sup>2</sup> Figure amended from information provided by VWS&T as part of its licence variation application



## 2.2 The scheme

The current NOL and RSL authorise VWS&T to construct, operate and maintain non-potable water and sewerage infrastructure and to provide non-potable water and sewerage services at Bingara Gorge. Both the NOL and the RSL limit the capacity of the sewage treatment infrastructure to 400kL / day. The temporary treatment plant has a maximum capacity of 300kL / day and is currently operating near its limit.

The temporary recycled water plant produces non-potable water that is used to irrigate the golf course. The quality of this water is not suitable for internal household use. The existing recycled water network (purple pipe) which services the development is charged with potable water from the Sydney Water network.

A variation to the licences will allow VWS&T to provide water and sewerage services by means of a permanent recycled water treatment plant. The recycled water treatment plant will enable the licensee to provide sewerage and recycled water services to the future stages of the Bingara Gorge residential development via the recycled water network as well as continuing to provide recycled water to the golf course for irrigation. This will include 240 existing nearby Sydney Water customers of Wilton Village and allows for the provision of services to up to a total of 284 households in Wilton Village<sup>3</sup>.

The permanent treatment plant will have treatment capacity of approximately 1 ML of sewage per day from 1,540 Equivalent Tenements (ET). Subject to any planning approvals, any future development that occurs within Bingara Gorge, up to 2,300 ET including a total of 1,820 residential lots, will be accommodated by future amplification of the permanent treatment plant in a third duplicate stage of equal capacity. This will be considered in the future by Lendlease, the developer, subject to approval by planning authorities.

## 3 Consultation and submissions

On 6 October 2015, we provided the licence application to, and invited submissions from, the following Ministers and their relevant departments:

- ▼ Minister administering the *Public Health Act 2010* (NSW) (Minister for Health)
- ▼ Minister administering Chapter 2 of the *Water Management Act 2000* (NSW) (Minister for Lands and Water)
- ▼ Minister administering the *Protection of the Environment Operations Act 1997* (NSW) (Minister for Environment), and

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<sup>3</sup> Information provided as part of the application process by email 15 April 2016

- ▼ Ministers jointly administering the *Environmental Planning and Assessment Act 1979* (NSW) (Minister for Planning and the Assistant Minister for Planning).<sup>4</sup>

At the same time, we also provided a copy of the licence application to you as the Minister administering the WIC Act.<sup>5</sup>

We invited Sydney Water Corporation to make a submission on the licence application because VWS&T is proposing to connect to, or use, Sydney Water Corporation's water industry infrastructure (as defined in the WIC Act).<sup>6</sup>

We invited Wollondilly Shire Council to make a submission<sup>7</sup> as the local council and the appropriate regulatory authority under the POEO Act.

We also called for submissions on the application from the public.<sup>8</sup> We advertised in the Sydney Morning Herald, Daily Telegraph and the MacArthur Chronicle on 7 October 2015 for public submissions. The closing date for submissions was 4 November 2015.

We received three submissions in total. These submissions were from the Environment Protection Authority (EPA), NSW Health and Sydney Water Corporation. They are available on our website and are discussed below.

The Minister for Lands and Water also provided a letter advising no approvals or water access licences are required as the scheme will not be extracting water from a water source.<sup>9</sup>

The EPA made a submission regarding the scheme's environmental regulations.<sup>10</sup> The EPA has confirmed that the scheme will be operating under an environment protection licence (EPL) in accordance with the *Protection of the Environment Operations Act 1997*. The EPA does not consider a need to duplicate similar conditions in the network operator's licence.

NSW Health supports the application, and has requested consultation during the detailed non-potable water risk assessments before retail supply commences to ensure that all relevant public health matters have been considered.<sup>11</sup>

Sydney Water clarified technical and commercial parameters of the proposed and existing contractual relationships between Sydney Water and Lendlease.<sup>12</sup>

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<sup>4</sup> WIC Act, section 9(1)(b) and *Water Industry Competition (General) Regulation 2008*, clause 17(1).

<sup>5</sup> WIC Act, section 9(1)(a).

<sup>6</sup> WIC Act, section 9(1)(b)(iii) and WIC Regulation, clause 17(2).

<sup>7</sup> Letter to Wollondilly Shire Council, IPART, 6 October 2015.

<sup>8</sup> WIC Act, section 9(1)(c).

<sup>9</sup> Letter from the Minister for Lands and Water, 24 November 2015

<sup>10</sup> Letter from NSW EPA, 2 November 2015

<sup>11</sup> Letter from NSW Health, 16 November 2015

<sup>12</sup> Letter from Sydney Water Corporation, 4 November 2015

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

- ▼ An independent financial consultant Corporate Scorecard Pty Ltd (Corporate Scorecard) to inform our financial assessment (see section 4.2.2), and
- ▼ Insurance & Care NSW (icare, formerly SICorp) to inform our assessment of appropriate insurance arrangements (see section 4.4).

As part of the 5-yearly review we prepared a draft licence and consulted with the Licensee on our proposed changes on 1 March 2016, with no objections based on the draft licence sent at that time.<sup>13</sup>

## 4 Assessment of application

This section of the report contains our assessment of VWS&T's application for a licence variation and our recommendations.

In assessing VWS&T's application to vary the licence conditions, we considered the relevant licensing criteria set out in sections 10(3)-(4) of the WIC Act, and had regard to the licensing principles in section 7(1)(a) of the WIC Act.

### 4.1 Disqualified corporation and related entity checks

**We consider that VWS&T is neither a disqualified corporation nor a corporation that is a related entity of a relevant<sup>14</sup> disqualified corporation.**

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

- ▼ A statutory declaration signed by the Chief Financial Officer stating that:
  - neither VWS&T, nor any director or person concerned in the management of VWS&T is, or would be, a disqualified corporation or a disqualified individual within the meaning of the WIC Act, and
  - VWS&T 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 VWS&T regarding details of the:
  - trustees (past and current) of any trusts in relation to which VWS&T is a beneficiary
  - current beneficiaries of any trusts in relation to which VWS&T is a trustee
  - relevant related entities,<sup>15</sup> and

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<sup>13</sup> Letter to VWS&T, IPART, 1 March 2016

<sup>14</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>15</sup> VWS&T identified the following relevant related entity: Veolia Water Network Services Pty Ltd, ACN 124 372 050.

- names of the Chief Financial Officer and Chief Executive Officer for VWS&T and each of VWS&T relevant related entities.
- ▼ Results of ASIC and Dun & Bradstreet reports that we have obtained in relation to VWS&T, and for the relevant related entity, which evidenced that these companies are not disqualified nor are their directors or persons concerned in the management disqualified individuals.<sup>16</sup>
- ▼ Results of our search of the WIC Act licence database,<sup>17</sup> confirming in part the above.

We consider that VWS&T should not be subject to any additional licence conditions in relation to disqualified corporations, if a licence variation is approved.

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

VWS&T has applied for a variation to its network operator's licence to authorise construction, operation and maintenance of sewerage and non-potable infrastructure for the Bingara Gorge scheme.

We assessed VWS&T's technical, financial and organisational capacity to carry out activities to be licensed. Our assessment was based on VWS&T's capacity to provide the additional services that the variation would authorise, at this point in time.

### 4.2.1 Technical capacity

**We are satisfied that VWS&T has the technical capacity to construct, operate and maintain sewerage and non-potable infrastructure for the Bingara Gorge scheme.**

We assessed VWS&T's technical capacity to construct, operate and maintain sewerage and non-potable infrastructure. In this assessment, we considered:

- ▼ **Previous assessment of technical capacity** – VWS&T has WIC Act NOLs for Bingara Gorge (no.10\_012) and Darling Quarter (no.10\_008) schemes. VWS&T's technical capacity was considered satisfactory when these licence applications were assessed. Both schemes are similar to the activities proposed in this licence variation application and demonstrate VWS&T's technical capacity and experience with WICA licences.

<sup>16</sup> The relevant searches were completed on 19 October 2016. We note six directors/persons concerned in the management of the applicant and its relevant related entity are based overseas, therefore we have not conducted searches.

<sup>17</sup> There are currently no disqualified corporations or individuals on the register pursuant to the WIC Act, sections 16(e) and 16(f).

- ▼ **Water industry experience of the proposed licence activities** – The Bingara Gorge and Darling Quarter schemes are operational and treat sewage to produce recycled water. This is similar to the activities proposed in this licence variation application and demonstrates VWS&T's capacity and experience in the proposed licence activity.
- ▼ **Licence plans** – VWS&T has existing, audited licence plans in place for the current Bingara Gorge and Darling Quarter schemes. It has also provided a draft infrastructure operating plan, extracts of a draft sewage management plan and recycled water quality plan for the proposed variation with its application. These documents demonstrate VWS&T's technical understanding of operation and maintenance of non-potable water and sewerage infrastructure.
- ▼ **Process flow diagram and design plans** – These are for the permanent treatment plant and demonstrate VWS&T's technical capacity to design and construct non-potable and sewerage infrastructure.
- ▼ **Human resources capability** – We reviewed the Curriculum Vitae of key personnel from VWS&T and profiles of key personnel from Lendlease (the proposed authorised third party) relating to licensed activities. We also reviewed position descriptions for Project Manager, Senior Process Engineer, Electrical Project Engineer, Mechanical Engineering Manager, Senior Service Engineer and Technical Specialist. These contained role requirements and responsibilities that were relevant to the activities the licence variation would authorise.
- ▼ **Demonstrate capacity to comply with regulations** – As outlined in section 4.5 of this report, VWS&T has demonstrated its capacity to comply with environmental regulations (ie, the EP&A Act and the POEO Act) on its existing schemes.
- ▼ **Compliance history** – the Bingara Gorge scheme was audited in 2015 and 2016, after the previous licence variation was granted. In the past, the auditors have identified insignificant non-compliances, some of them more than once. In November 2015 we sought voluntary undertakings in relation to identified non-compliances. The auditors have found that VWS&T have made significant progress towards rectifying the remaining issues. Some of previous non-compliances relate to issues in the construction of the non-potable water reticulation network. In this regard, the most recent audit<sup>18</sup> found that the state of the network is acceptable, based on what is practically achievable and accepted industry practice. Therefore, we consider that VWS&T has executed these voluntary undertakings accordingly.

We received no submissions regarding VWS&T's technical capacity.

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<sup>18</sup> Audit conducted on August 2016. Draft report on the licence plans audit of the Bingara Gorge recycled water scheme October 2016.

We consider that the information submitted by VWS&T demonstrates that it has the technical capacity to treat sewage to a capacity greater than 400 kL/day, and produce recycled water to a quality suitable for non-potable residential end-uses of toilet flushing, garden irrigation and laundry (cold tap only) in addition to golf course irrigation.

We do not consider that VWS&T should not be subject to any additional licence conditions in relation to technical capacity, if a licence variation is approved.

#### 4.2.2 Financial capacity

**We are satisfied that VWS&T has the financial capacity to construct, operate and maintain sewerage and non-potable infrastructure for the Bingara Gorge scheme** but only if VWS&T provides a bank guarantee executed in the NSW Government's favour for \$2.5 million before granting the licence.<sup>19</sup>

In making our assessment of VWS&T's financial capacity we have considered the following information:

- ▼ Reports from our expert consultants, Corporate Scorecard,
- ▼ Summarised profit and loss statements, balance sheets and cashflow statements,
- ▼ Summarised income tax returns,
- ▼ Key financial ratios,
- ▼ Forecast cashflows relating to the scheme,
- ▼ VWS&T's organisational corporate structure,
- ▼ Work on hand and in the pipeline,
- ▼ Financial position,
- ▼ A review of VWS&T's working capital
- ▼ Developer subsidy to cover the difference between the O&M contract and customer charges, and
- ▼ Documentation of a Deed of Novation and an operation and maintenance agreement between VWS&T and Lendlease Communities (Wilton) Pty Ltd (formerly Lend Lease).

To assist us we engaged an independent financial consultant, Corporate Scorecard to assess the financial capacity of VWS&T and the viability of the scheme. Since VWS&T is a 100% owned subsidiary of the international parent company Veolia Environnement SA, Corporate Scorecard assessed both companies.<sup>20</sup>

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<sup>19</sup> The bank guarantee must be issued from a financial institution regulated by the APRA.

<sup>20</sup> Corporate Scorecard, *Comprehensive Financial Capacity Assessment Veolia Environnement SA*, August 2016.

Corporate Scorecard concluded that the applicant has the financial capacity subject to obtaining an enforceable cross-company guarantee to ensure the support of the ultimate parent company. In making its conclusion, Corporate Scorecard identified that VWS&T's ongoing financial capacity is highly dependent upon the continued support from its ultimate parent company (Veolia Environnement SA). The report recommended a cross company guarantee be obtained.

In our assessment of VWS&T's financial capacity to carry out the activities of the licence we considered Corporate Scorecard's financial assessments conducted on VWS&T and its parent company. When reviewing the applicant's financial capacity, we also considered the risk profile of the activities the licence would authorise. In the case of the network operator's application to vary the licence, the activities are the construction, maintenance and operation of non-potable and sewerage infrastructure.

We consider that VWS&T has the financial capacity to carry out the activities the licence variation would authorise. We are satisfied because VWS&T obtains revenue to cover the operation and maintenance (O&M) costs for the Bingara Gorge scheme. The revenue is guaranteed from Lendlease, the developer, under an O&M contract for the Bingara Gorge scheme.

However, we consider that there is a risk to the ongoing financial capacity of the applicant if the developer fails to honour the O&M contract. This is because VWS&T would be unable to immediately recoup the full costs for operating and maintaining the scheme direct from its customers, as Lendlease is subsidising these costs.

To satisfy us that the scheme will remain viable and that VWS&T will continue to have the financial capacity to construct, operate and maintain the scheme, the applicant has proposed to provide us with a \$2.5 million bank guarantee. We consider that \$2.5 million will be enough to cover the subsidy for the Bingara Gorge scheme for 5 years and enable a mechanism to manage bill increases for customers.

We identified a risk that the parent company would cease support for VWS&T which would increase the likelihood that the licensee would not continue to have the financial capacity to carry out the licensed activities. However, we consider that this risk is controlled because VWS&T is part of a large multi-national group which has the financial capacity to support VWS&T in its activities. We further note that VWS&T has a history of successfully managing, and holds licences for, another WICA scheme (ie, Darling Walk scheme).

We further consider that both the Veolia group and the developer (ie, Lendlease) have incentives to honour scheme arrangements and carry out licensed activities for business and reputational reasons.

We have considered the risk controls described above and have concluded that the residual risk related to the application is sufficiently low to consider VWS&T has the financial capacity to carry out the retail activities that a licence variation would authorise.

We are satisfied that VWS&T has and will continue to have the capacity to carry out the activities that the licence, (if varied) would authorise, if a security provided from VWS&T in the form of a bank guarantee for \$2.5 million executed in the favour of the NSW Government is provided prior to granting the licence.

If required to be called on, we recommend that the funds from the bank guarantee be directed to smooth bill shock to the customers of the scheme until the charges reflect the full cost recovery of operating and maintaining the scheme. In the long-term this would allow the scheme to become viable in and of its own right.

We consider a cross company guarantee does not need to be obtained to be satisfied that VWS&T has and will continue to have the financial capacity.

We emphasise that our financial assessment represents the applicant's financial capacity at a point in time. Our recommendation to grant VWS&T a licence variation should not be viewed as an endorsement of the future ongoing viability of the corporation. 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 our own purposes and for the Minister's purposes in assessing the application. The conclusion is not to be relied upon for any other purpose by any other person.

We recommend that VWS&T should be subject to the following special licence conditions in relation to financial capacity, if a variation is granted:

#### **A1 Requirement to notify**

- A1.1 The Licensee must notify the Minister if the Licensee does not receive any part of the Fee by the Payment Date. Such notice must be in writing, provided to the Minister within 7 days of the Payment Date and specify:
- a) the total Fee that the Licensee was entitled to receive from Lendlease for the relevant period;
  - b) the amount of the Fee (if any) that the Licensee received from Lendlease for the relevant period; and
  - c) the amount (if any) that the Licensee received from its customers for the supply of water supply and/or sewerage services authorised under the Retail Supplier's Licence for the relevant period.



- A1.2 If the Licensee or Lendlease proposes to:
- a) terminate the O&M Agreement;
  - b) novate the O&M Agreement;
  - c) assign or transfer any of its rights or obligations under the O&M Agreement to any other person; or
  - d) alter the O&M Agreement in any way that materially reduces the Licensee's financial capacity to carry out the activities authorised by this Licence,

the Licensee must provide the Minister with written notice as soon as practicable, but no later than 3 months before the date that the proposed action is to occur.

## **A2 Bank guarantee**

- A2.1 Where the Minister receives a notice under clause A1.1, the Minister may claim payment under the Bank Guarantee of an amount up to the Shortfall Amount.
- A2.2 The Minister may make a claim under clause A2.1 at any time and the claim may be made in multiple instalments.
- A2.3 The Minister may only direct any payment claimed under clause A2.1 for the construction, maintenance and operation of water industry infrastructure authorised by this Licence and in accordance with any written direction issued by the Minister, and the Licensee must comply with any such direction.

### **4.2.3 Organisational capacity**

**We are satisfied that VWS&T has the organisational capacity to construct, operate and maintain sewerage and non-potable water infrastructure for the Bingara Gorge scheme.**

In our assessment of VWS&T's organisational capacity, we considered the following:

- ▼ **Evidence of VWS&T's previous experience constructing, maintain and operating** – VWS&T currently holds WICA NOLs for Bingara Gorge (no. 10\_012) and Darling Quarter (no. 10\_008). VWS&T's organisational capacity was considered satisfactory during the assessment of these licence applications.
- ▼ **Organisation Chart** – VWS&T has an appropriate structure for corporate management as outlined in the organisation chart. The information provided indicates that the applicant has adequate personnel and structures for the expanded operation of the Bingara Gorge scheme.

- ▼ **Curriculum Vitae (CV)** – CVs of key personnel from VWS&T and profiles of key personnel from Lendlease relating to licensed activities were reviewed. VWS&T has access to key personnel with significant relevant water industry experience.
- ▼ **Position descriptions** – We reviewed position descriptions for Project Manager, Senior Process Engineer, Electrical Project Engineer, Mechanical Engineering Manager, Senior Service Engineer and Technical Specialist. These contained role requirements and responsibilities that were adequate for the activities the licence variation would authorise.
- ▼ **Operation & maintenance agreement** – This describes the formal relationship between VWS&T and Lendlease and defines the roles and responsibilities in relation to the scheme.
- ▼ **Business risk assessments** – VWS&T has provided a risk assessment that demonstrates that VWS&T has identified risks to business and prepared appropriate risk mitigation measures in relation to the construction and operation of water industry infrastructure.

We received no submissions regarding VWS&T's organisational capacity.

We consider that the information submitted by VWS&T, and our previous assessments, demonstrates that it has the organisational capacity to construct, operate, and maintain sewerage and non-potable water infrastructure.

We recommend that VWS&T should not be subject to any additional licence conditions in relation to organisational capacity, if a licence variation is granted.

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

**We are satisfied that VWS&T has the capacity to construct, operate and maintain sewerage and non-potable infrastructure for the Bingara Gorge scheme, in a manner that does not present a risk to public health.**

We assessed VWS&T's capacity to manage the following key risks to public health, posed by construction, operation and maintenance of water industry infrastructure in the Bingara Gorge Development:

- ▼ **Water supply interruption:** Sydney Water is supplying potable water directly to the recycled water network on a temporary basis. Lendlease will be extending the potable water network to provide a permanent potable water top-up to the recycled water storage tank. This potable water top-up will be provided under an Additional Services Agreement with Sydney Water.<sup>21</sup>

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<sup>21</sup> Letter from Sydney Water Corporation, 4 November 2015

- ▼ **Providing non-potable water quality fit for purpose:** VWS&T has demonstrated its capacity to treat and provide non-potable water to the appropriate quality for the intended end-uses. We consider VWS&T's proposed sewage and water recycling treatment systems to be robust and generally consistent with the *Australian Guidelines for Water Recycling 2006*. These have been audited and a report confirming the adequacy of the plans will be sent to the Minister from the auditor consistent with the obligations of Schedule 1 of the WIC (General) Regulation.
- ▼ **Potential for inappropriate water use:** to mitigate risks VWS&T will undertake construction and plumbing inspections to ensure that appropriate identification and signage is installed by plumbing contractors.
- ▼ **Potential for cross-connections:** VWS&T has outlined technical controls to ensure risks of cross-connections are minimised. This includes lower pressure in the recycled water network relative to the drinking water network, and ongoing monitoring of water pressure and electrical conductivity in both networks. There will also be quality assurance, inspection and pressure testing during construction. A new infrastructure audit have been conducted to confirm compliance of the infrastructure with the requirements of the Regulation, licence conditions and is capable of operating safely and in accordance with the plans, consistent with the obligations of Schedule 1 of the WIC (General) regulation.
- ▼ **Sewerage service interruption:** VWS&T will apply contingency measures including storage and tankering. VWS&T has tankered sewage from Wilton Village, prior to the construction of the sewer rising main connecting Wilton Village to the treatment plant. We consider VWS&T has experience in organising and implementing contingency plans for sewerage service interruption.

We received one submission from NSW Health regarding VWS&T's capacity to protect public health.

NSW Health expressed support for the application to vary the licence and did not identify any specific issues in regard to VWS&T's capacity to protect public health.<sup>22</sup>

We consider that the information submitted by VWS&T demonstrates that it has the capacity to construct, operate, and maintain sewerage and non-potable water infrastructure, in a manner that does not present a risk to public health.

We recommend that VWS&T should not be subject to any additional licence conditions, in relation to its capacity to protect public health, if a licence variation is granted.

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<sup>22</sup> NSW Health, letter received by IPART on 16 November 2015.

#### 4.4 Appropriate arrangements with respect to insurance

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

In making our assessment of VWS&T's insurance arrangements, we have considered VWS&T's:

- ▼ **Current certificates of currency** – This included construction, public and products liability, professional indemnity, environmental impairment liability, motor vehicle and workers compensation insurances.
- ▼ **Risk and insurance review report** – This was prepared on 30 June 2015 by Marsh Risk Consulting (Marsh) as an independent insurance expert. Upon review of the key risks against the current insurance arrangements of VWS&T, Marsh was of the opinion that the current types and levels of insurances are appropriate for the size and nature of the activities authorised under the relevant WIC Act licences.

We received no submissions regarding VWS&T's insurance arrangements.

We requested advice from icare self-insurance on the appropriateness of VWS&T's insurance arrangements, with respect to the activities for which it is seeking a variation. Icare has advised that it considers the relevant insurances are adequate for VWS&T's activities in the proposed variation<sup>23</sup>.

We consider that the information submitted by VWS&T and icare's advice demonstrates that it has made, and will continue to maintain, appropriate insurance arrangements.

We recommend that VWS&T should not be subject to any changes to licence, in relation to its insurance arrangements, if a licence variation is granted.

#### 4.5 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 VWS&T has the capacity construct, operate and maintain sewerage and non-potable infrastructure, in a manner that does not present a significant risk of harm to the environment.**

In making our assessment of VWS&T's capacity to manage key risks to the environment posed by construction, operation and maintenance of sewerage and non-potable infrastructure, we have considered VWS&T's:

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<sup>23</sup> D15/28564 - Email from icare (formerly SICorp), 10 November 2015

- ▼ **Capacity to comply with environmental regulations on existing schemes:** VWS&T has demonstrated its capacity to comply with environmental regulations, through its previous experience (within Australia) in preparing environmental assessments and implementing mitigation measures for the construction, operation and maintenance of sewerage and non-potable infrastructure.
- ▼ **Understanding of environmental regulations in NSW:** VWS&T has demonstrated its understanding of regulatory approval requirements. The developer obtained development consent under Part 4 of the EP&A Act for the proposed variation. VWS&T obtained and amended its EPL for this scheme, to incorporate the changes to design of the treatment plant. VWS&T was issued with a formal warning letter under the POEO Act 1997 on 9 October 2015. This breach was administrative in nature and it was resolved in a timely manner by VWS&T when brought to their attention.<sup>24</sup> Further, overflow incidents reported to us this year were reported to appropriate regulatory bodies, including EPA and IPART and were managed according to management plans.
- ▼ **Capacity to implement environmental management processes in relation to the activities to be licensed:** VWS&T has demonstrated its capacity to implement environmental management processes, through its risk assessments for sewerage and non-potable water activities, environmental impact study and certification to ISO 14000 (Environmental management systems) as part of its certified Integrated Management Systems.

We received a submission from the EPA regarding whether the VWS&T has the capacity to carry out to construct, operate and maintain of sewerage and non-potable infrastructure, in a manner that does not present a significant risk of harm to the environment.<sup>25</sup> The EPA considers that the activities proposed do not pose any unacceptable risks to the environment, and that no additional conditions in regards to the protection of the environment is required in the NOL as the scheme is already operating under an EPL.

We consider that the information submitted by VWS&T demonstrates that it has the capacity to construct, operate and maintain of sewerage and non-potable infrastructure, in a manner that does not present a significant risk of harm to the environment.

We consider that VWS&T should not be subject to any additional licence conditions in relation to its capacity to protect the environment, if a variation is granted.

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<sup>24</sup> Making a Pollution Incident Response breaching section 1530 of the POEO Management Plan for the plant where the activity takes place publicly available.

<sup>25</sup> EPA submission, letter received by IPART on 4 November 2015.

## 4.6 Public interest considerations

In the interest of the public we have had regard to each of following licensing principles. Our recommendation in relation to the public interest criteria also includes our consideration as to whether or not the retail supplier's licence should be granted, and if so, what conditions to impose.

### 4.6.1 Protection of public health

We have had regard to protection of public health through our assessment of VWS&T's capacity to construct, operate and maintain non-potable water treatment infrastructure in a manner that does not present a risk to public health. As outlined in section 4.3 of this report, we assessed VWS&T's capacity to manage the key risks posed to public health by the activities to be licensed.

NSW Health expressed support for the application to grant VWS&T's licence variation and did not identify any specific risks to public health.<sup>26</sup>

If the Minister grants the request to vary the network operator's licence to VWS&T, we consider that public health will continue to be protected in relation to the activities licensed.

### 4.6.2 Protection of the environment

We have had regard to protection of the environment in considering the approvals obtained/required under the *Environmental Planning and Assessment Act 1979* (EP&A Act) for construction, operation and maintenance for the activities the subject of the licence variation. The EP&A Act is the central legislation that controls planning and development in NSW.

We understand that all of the activities to be licensed under this variation have obtained approval under the EP&A Act are as follows. The proposed water recycling treatment plant has development consent (2014SYW037 by the Joint Regional Planning Panel)<sup>27</sup> under Part 4 of the EP&A Act. This was originally obtained by Solo Water and Lendlease as deferred commencement consent subject to specific conditions. We understand that the development consent runs with the land and there are no issues with VWS&T using this development consent. Wollondilly Shire Council has formally advised VWS&T by letter dated 27 October 2014 that all conditions in the deferred commencement consent have been met and the development consent is now valid.<sup>28</sup> The Treatment plant site

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<sup>26</sup> NSW Health, letter received by IPART on 16 November 2015.

<sup>27</sup> Sydney West Joint Regional Planning Panel meeting minutes Determination and Statement of reasons, 8 October 2014, available online at <http://www.jrpp.nsw.gov.au/DesktopModules/JRPP/getdocument.aspx?docid=12128>.

<sup>28</sup> E. Westin, Wollondilly Shire Council to Solo Water Pty Ltd, 27 October, pg 91 of D15/14708

(DP 1108927) is zoned IN2.<sup>29</sup> This means that any further development for the purpose of sewage treatment plants or water recycled facilities is not allowed without consent on this site.<sup>30</sup>

This was confirmed by the Determination and Statement of Reasons published on the Joint Regional Planning Panel website.<sup>31</sup>

In having regard to protection of the environment, we also considered the following information:

- ▼ **VWS&T's Site Analysis Report for variation to the Environment Protection Licence** assessed the environmental impacts of construction, operation and maintenance of Advanced Water Recycling Plant. This study concluded that the proposal was unlikely to significantly affect the environment.
- ▼ **Environmental Protection Licence (EPL):** VWS&T has an EPL (no. 20335) for the Bingara Gorge Scheme. This licence was varied to permit the increased capacity proposed for the treatment plant.
- ▼ **VWS&T's risk assessment for recycled water:** VWS&T identified several environmental risks in its risk assessment included contamination of groundwater, odour and excessive nutrient loading. VWS&T proposed appropriate controls that mitigated risks to low and moderate ratings. We did not identify any unacceptable risks to the environment.
- ▼ **VWS&T's risk assessment for sewerage:** VWS&T identified several environmental risks in its risk assessment included breakage or blockage of odour and sewage overflows. VWS&T proposed appropriate controls that mitigated risks to low and moderate ratings. We did not identify any unacceptable risks to the environment.
- ▼ **VWS&T's management of incidents** - including reporting and corrective actions taken after overflow incidents following heavy rain events.

This was confirmed by Environment Protection Authority (EPA) in its submission on the licence variation application. The EPA advises that this licence contains legally enforceable conditions in regards to protection of the environment and public health, and does not consider a need for similar conditions to be duplicated in the network operator's licence.

In having regard to protection of the environment, we recommend that the area of operation for the recycled water plant should be limited to DP 1108927. This is to ensure that any future development for the purpose of sewage treatment plants or water recycling facilities by VWS&T, cannot be carried out without any

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<sup>29</sup> See Planning and Environmental website screenshot. D16/27482. Accessed by IPART on 17 October 2016.

<sup>30</sup> This is because land zoning IN2 is not a prescribed zone for the purpose of cl 106 of the *State Environmental Planning Policy (Infrastructure) 2007* (ISEPP).

<sup>31</sup> Accessed by IPART on 7 December 2015

assessment under the EP&A Act,<sup>32</sup> we consider this relevant to ensuring protection of the environment.

We consider that VWS&T should not be subject to any additional licence conditions in relation to protection of the environment, if a variation is granted.

#### 4.6.3 Protection of public safety

We have had regard to the protection of public safety through our assessment of VWS&T's technical capacity to construct, operate and maintain water industry infrastructure for the Bingara Gorge Development. As outlined in section 4.2.1 of this report, we assessed VWS&T's capacity to manage key risks to public safety by the activities to be licensed.

We did not receive any submissions regarding protection of public safety. VWS&T has a site specific Emergency Preparedness and Response Plan for the Bingara Gorge Scheme. This plan outlines how incidents and emergencies will be managed at the Scheme.

If the Minister grants a variation to the network operator's licence to VWS&T, we consider that public safety will continue to be protected in relation to the activities licensed.

#### 4.6.4 Protection of consumers generally

We have had regard to the protection of consumers through our assessment of VWS&T's technical capacity to construct, operate and maintain water industry infrastructure for the Bingara Gorge Development. As outlined in section 4.2.1 of this report, we assessed VWS&T's capacity to protect consumers through its technical expertise in constructing, operating and maintaining water infrastructure and other processes and procedures in place.

We note that 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>33</sup>

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<sup>32</sup> Clause 106 of ISEPP allows licensed network operator's to carry out development for the purpose of sewage treatment plants and water recycling facilities without consent on land of a prescribed zone. Therefore, if the licence included an area of operation for such development that included land of a prescribed zone, VWS&T could carry out development without consent. We understand that if no further approvals were required from a public authority (to trigger environmental assessment under Part 5 of the EP&A Act), VW&ST could carry out the development without any assessment under the EP&A Act.

<sup>33</sup> WIC Act, section 51.



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>34</sup> We note that the Minister has not made any such declaration or referral to date.

We note that, in its application, VWS&T has indicated that it would maintain usage charges in line with Sydney Water's pricing for these services. For this reason, should the Minister declare any monopoly services, we are of the view that there is no need for the Minister to refer these monopoly services to IPART for price regulation at this point in time.

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

#### **4.6.5 Encouragement of competition**

Historically, Sydney Water has provided monopoly sewerage services in the Wollondilly Shire LGA. However, Sydney Water's sewerage services are not available for connection at Bingara Gorge. This licence variation enables a private utility to continue providing sewerage services and supply non-potable water to the Bingara Gorge Development, thus encouraging competition in the provision of these services.

We received a submission from Sydney Water, stating that this application supports Sydney Water's ongoing claim that the WICA promotes competition for the market rather than in the market in ensuring the provision of services. Sydney Water's position is that these types of servicing options act as 'mini-monopolies'. Individual customers in Bingara Gorge do not have a choice between Sydney Water services and VWS&T's services, as it would be uneconomical for Sydney Water to service an individual customer that did not want VWS&T's services.

Sydney Water entered into an agreement with Lendlease that provided wastewater services to the nearby Wilton Village from July 2014 as part of the Priority Sewerage Program. This wastewater is treated at the Bingara Gorge scheme. We consider that this scheme has provided an alternative option for Sydney Water in meeting its obligations, and therefore encourages competition.

#### **4.6.6 Ensuring sustainability of water resources**

VWS&T will supply non-potable water to its customers in the Bingara Gorge development. This water will be sourced from wastewater that would have

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<sup>34</sup> Determination of the pricing and/or periodic review of the pricing policies. WIC Act, section 52(1).

otherwise been treated and discharged to the environment. Currently the recycled water network supplies drinking water supplied by Sydney Water. The supply of non-potable water reduces the use of drinking water, and contributes to the conservation of drinking water resources.

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

VWS&T will continue to provide non-potable water (including recycled water) to Bingara Gorge housing development, commercial premises and the golf course and promote use of non-potable water as a substitute for potable water. This licence variation will enable increased production and uses of recycled water.

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

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

VWS&T is seeking to increase its production of recycled water and end-use applications at the Bingara Gorge scheme. The increased use of non-potable water (including recycled water) is consistent with the key initiatives of the MWP including in relation to water recycling, water efficiency and innovation.

#### **4.6.9 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 VWS&T's financial and technical capacity to supply non-potable water and sewerage services to its customers. In its application, VWS&T has indicated that sewerage service and non-potable water supply charges will be in line with Sydney Water pricing for the equivalent services.

As discussed in section 4.2.2 above the costs to operate and maintain the scheme exceed the money recovered from the customers, therefore Lendlease, the developer, subsidises the scheme. The developer has taken this position so that customers of the scheme are charged for the services at the same tariff as Sydney Water's customers are charged.

To allow price parity with Sydney Water prices, the developer cross subsidises the scheme. If the developer were to cease the cross-subsidy, VWS&T would need to raise customer bills to recover the full costs for operating and maintaining the scheme.

VWS&T has proposed to provide the NSW Government with a \$2.5 million bank guarantee. We consider that \$2.5 million will be enough to cover the cross-subsidy costs for the Bingara Gorge scheme for up to 5 years. We strongly

recommend that this bank guarantee be executed in the favour of the NSW Government so that the funds are directed under the terms and conditions of the licence.

If required to be called on, we recommend that the funds from the bank guarantee be directed to smooth bill shock to the customers of the scheme until the charges reflected the full cost recovery of operating and maintaining the scheme. In the long-term this would allow the scheme to become viable in and of its own right.

We have recommended licence conditions outlining how the funds would be directed to minimise the potential for adverse financial implications for small retail customers in section 4.2.2 above.

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

This licensing principle is not applicable as this scheme does not produce drinking water. The residents will continue to be supplied their drinking water from Sydney Water.

#### **4.6.11 Other matters in the public interest**

**We did not identify any additional matters with regard to the public interest in relation to VWS&T constructing, operating and maintaining water industry infrastructure for the Bingara Gorge Development.**

We consider that VWS&T should not be subject to any licence conditions in relation to public interest, if a licence variation is granted.

## **5 5-yearly licence review**

### **5.1 Background**

In accordance with the WIC Act, IPART is to review each licence at intervals of not more than five years, with the first review commencing on the fifth anniversary of the granting of the licence.<sup>35</sup> The Minister granted VWS&T a network operator's licence on 9 December 2010. We commenced our 5-yearly review of the licence on 9 December 2015.

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<sup>35</sup> WIC Act, section 85(2)

This section of the report outlines our recommendations to vary the existing licence conditions, including the revocation of existing licence conditions and imposition of new licence conditions.<sup>36</sup>

### 5.1.1 Scope of the review

The primary purpose of the 5-yearly WIC Act licence review is for IPART to consider the appropriateness of existing licence conditions in our efficient regulation of licensees. In line with good regulatory practice, the licence conditions should direct the licensee to achieve the desired outcomes, without imposing unnecessary compliance and administrative costs.

The 5-yearly licence review also allows us to reconsider licence conditions in light of emerging risks to the scheme. We consider amending or adding new licence conditions where new risks are realised since a licence is granted or varied. Our 5-yearly review generally consists of applying the standard licence conditions where we are confident that there are no new or increased risks compared to the previous licence grant or variation date. The standard licence conditions change as a result of:

- ▼ outcomes of our assessments
- ▼ changes made by the Minister
- ▼ stakeholder submissions, and
- ▼ improvements to our compliance approach.

The standard licence conditions were developed and implemented after VWS&T's NOL was issued. They form the basis for all new WIC Act licences, and licence variations. We consider that applying the standard licence conditions will:

- ▼ address any gaps in the licence
- ▼ clarify licence conditions to the licensee, and
- ▼ improve the efficiency of administering licences until the new licensing regime, under the amended WIC Act, comes into effect.

### 5.1.2 The WIC Act review and the new licensing regime

The *Water Industry Competition Amendment (Review) Act 2014* will result in significant changes to the WICA Act licensing framework and conditions of consent. The amended WIC Act includes provisions to transition schemes to the new framework where appropriate.

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<sup>36</sup> WIC Act, section 85(3)

All existing licences will transition to the amended legislation, which we understand from the Metropolitan Water Directorate, will come into force in mid-2017.

At this time we recommend minimal changes to bring VWS&T's proposed licence in line with the current standard licence conditions. We consider this is appropriate given the impending changes to the WIC Act and licensing regime.

The standard licence conditions have been developed and implemented after VWS&T's licence was granted, and are used as the base template for all new WIC Act licences and variations to licences.

Applying the standard licence template will address gaps in the licences, provide clarification for the licensee, and improve the efficiency of administering the licences in this transitional period before the licensing regime is changed under the amended WIC Act.

### **5.1.3 The standard licence template for WIC Act licences**

In 2013, IPART made the decision to apply the standard licence template for all new WIC Act licences. Since then, the template has been used for all new licence applications and variations. From time to time the template conditions are changed to reflect outcomes of assessments and, where broadly applicable, changes to licences made by the Minister.

IPART has decided that as part of the 5-yearly review process, the standard IPART template will be applied to licences.

## **5.2 Variation to licence conditions**

The proposed licence aims to clarify the intent of licence conditions and improve efficient regulation by ensuring a consistent approach across network operator's licences.

As a result of our combined five year review and assessment of the application for a variation we recommend changes to VWS&T's licence with respect to the following licence conditions if a variation is granted (see also the recommended licence in Appendix A). The rationale and outcomes of our 5-yearly review are detailed in the sections below.

### **Consistent terminology, language and structure**

We have amended the terminology, language and structure of WWS&T's NOL to align it with the standard Ministerial network operator's licence template. The changes are:

*Recommendations as a result of the five year review:*

- ▼ Include a separate licence 'scope' at the front of the licence. This replaces clauses A1, A2 and A3 of VWS&T's existing licence.
- ▼ Update the interpretations and definitions sections at the end of Schedule A and Schedule B in the current licence. We have incorporated the interpretation and definitions sections in a section at the end of the licence, consistent with the standard licence template.
- ▼ Fix minor typographical errors (eg, capitalisation where it was not warranted).
- ▼ Delete clauses A1.1 (a), (b) and (c) and replace with the standard wording of the recommended licence (S1.1) which is duplicative of the obligation of Schedule 3 of the WIC (general) regulation which requires non-potable water to be fit for purpose.

## Insurance

*Insurance licence conditions are prescribed in schedule B, clauses B2 and B3 of the varied VWS&T network operator's licence.*

We have reworded licence condition B3.3 to the standard licence condition wording to improve the clarity of the licence condition and improve consistency across network operator' licences. The change refers to the requirement to provide a report to IPART "if there is, or is to be," a change in insurance policy or type, scope or limit in the amount insured by the licensee. The previous licence condition B3.3 reads "if there is to be a change in".

We consider that this condition better captures insurance changes consistently with the level of risk of VWS&T failing to maintain appropriate insurance for its scheme.

## 6 Recommendations

**Subject to VWS&T providing the Minister with a bank guarantee executed in the NSW Government's favour for \$2.5 million, issued from a financial institution regulated by the Australian Prudential Regulatory Authority (APRA) before the licence variation is granted, we recommend that the Minister:**

- ▼ **Varies the VWS&T network operator's licence (licence number 10\_012) and conditions imposed on that licence as set out in the attached recommended licence.**

**The following changes should be made to the scope of VWS&T's NOL:**

### Treatment capacity and authorised purposes

- ▼ Delete Table 3.2 and insert new Table 3.2 to remove cap on treatment of sewage to 400 kL/day.

- ▼ Delete Table 1.3 and insert new Table 1.3 of the recommended licence to include laundry washing (cold tap only) as an additional authorised purpose.
- ▼ Delete Table 1.4 and insert new Table 1.4 to remove Part A and Part B area distinctions (insert Area of Operations in Table 1.5).
- ▼ Delete Table 1.2 and replace with Table 1.2 of the recommended licence using standard description of treatment and network components of the infrastructure.

The Minister must consider, but is not bound to accept, any advice or recommendation in this report in determining the licence variation application. The Minister may, if circumstances so require, seek further advice from us in relation to the licence variation application.<sup>37</sup>

On making a decision whether or not to vary the licence, the Minister must provide us with a notice of the decision, including reasons for the decision.<sup>38</sup> We will make the information in the notice available to the public on our website. We will also notify the licensee of the amended licence.

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<sup>37</sup> WIC Act, section 10(2).

<sup>38</sup> WIC Act, section 10(5).







## Appendices



## **A     Draft licence**