

5-yearly review and assessment of Veolia Water Solutions & Technologies (Australia) retail supplier's licence (no. 10_013R) 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-year review of Veolia Water Solutions & Technologies (Australia) Pty Ltd's (VWS&T) retail supplier's licence (no. 10_013R) for the Bingara Gorge Scheme under the *Water Industry Competition Act 2006* (WIC Act).

We recommend that the Minister grants a variation to change the scope of VWS&T retail supplier's licence to:

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

We have also made recommendations to update the licence structure and align the licence with the IPART current standard licence conditions.

In assessing VWS&T's licence 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 licence 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.¹

2 Background

2.1 The applicant

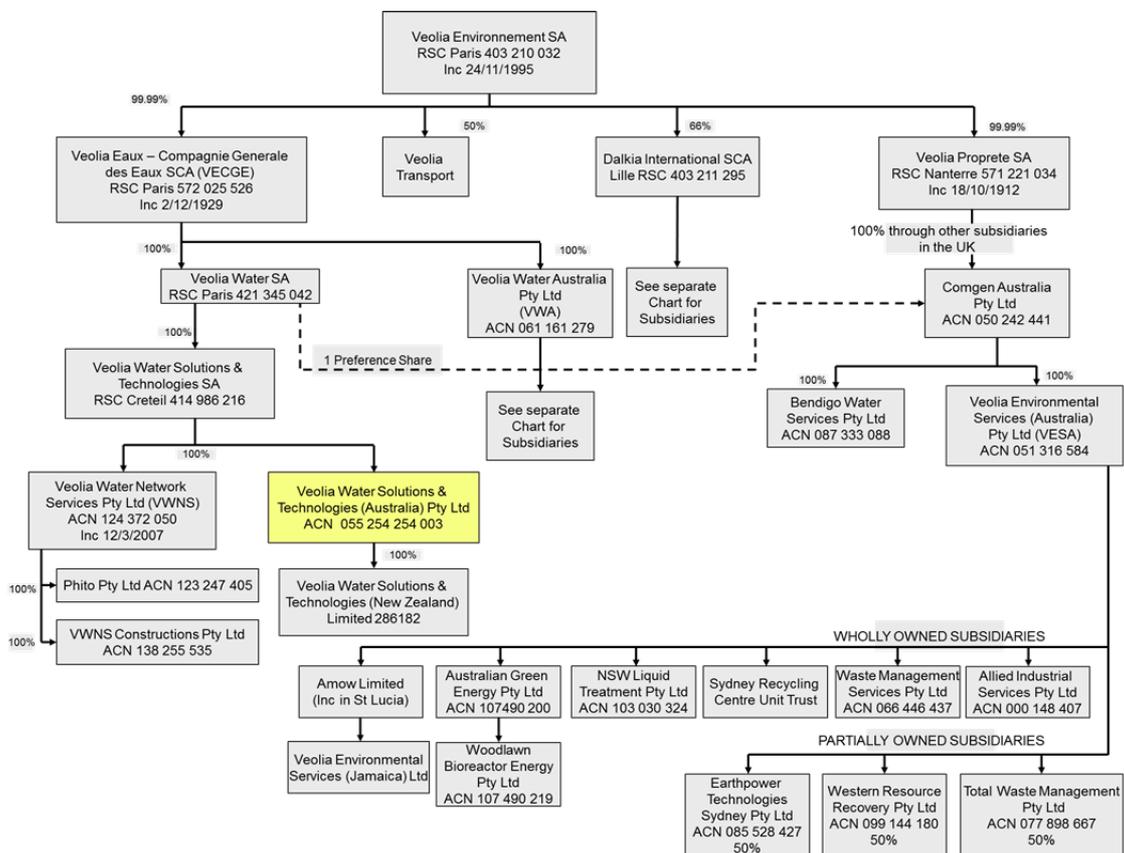
We received an application from VWS&T for a variation to its existing retail supplier's licence (RSL) and network operator's licence (NOL) in June 2015. The existing RSL and NOL limits the volume of sewage that can be treated by the scheme to 400 kL /day, and only allows treatment of recycled water for irrigation of the Bingara golf course.

¹ WIC Act, section 10(2).

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 used for the purposes of toilet flushing, garden irrigation and laundry washing (cold tap only). VWS&T holds two RSL including one for the Bingara Gorge residential development (RSL, no. 10_013R).

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 interest in Australia²



Lend Lease 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. VWS&T is the operator of the Bingara Gorge scheme, and holds the network operator licence. Lendlease holds the contracts with the customers.

² 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.³

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 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

³ Information provided as part of the application process by email 15 April 2016 D16/9946

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

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

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).⁶

We invited Wollondilly Shire Council to make a submission⁷ as the local council and the appropriate regulatory authority under the POEO Act.

We also called for submissions on the application from the public.⁸ 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.⁹

The EPA made a submission regarding the scheme's environmental regulations.¹⁰ 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.¹¹

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

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

⁵ WIC Act, section 9(1)(a).

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

⁷ Letter to Wollondilly Shire Council, IPART, 6 October 2015 D15/23745

⁸ WIC Act, section 9(1)(c).

⁹ Letter from the Minister for Lands and Water, 24 November 2015 D15/29453

¹⁰ Letter from NSW EPA, 2 November 2015 D15/26820

¹¹ Letter from NSW Health, 16 November 2015 D15/29454

¹² Letter from Sydney Water Corporation, 4 November 2015 D15/26779

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

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

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.¹³

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 relevant¹⁴ 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,¹⁵ and

¹³ Letter to VWS&T, IPART, 1 March 2016

¹⁴ 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).

¹⁵ 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.¹⁶
- ▼ Results of our search of the WIC Act licence database,¹⁷ confirming in part the above.

We do not consider that VWS&T should 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 retail supplier's licence to authorise supply of non-potable water for an additional purpose and provide sewerage services by means of additional infrastructure to 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 retail 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 supply non-potable water and provide sewerage services for the Bingara Gorge scheme.

We assessed VWS&T's technical capacity to supply non-potable water and sewerage services. In this assessment, we considered:

- ▼ **Previous assessment of technical capacity** – VWS&T has WIC Act RSLs for Bingara Gorge (no. 10_013R) and Darling Quarter (no. 10_009R) schemes. VWS&T's technical capacity was considered satisfactory when these licence applications were assessed.
- ▼ **Water industry experience of the proposed licence activities** – The Bingara Gorge and Darling Quarter schemes are operational and provide sewerage services and supply recycled water.

¹⁶ 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.

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

- ▼ **Compliance history** – We have reviewed previous audits for the Bingara Gorge Scheme. VWS&T’s RSMP for Bingara Gorge scheme was audited in March 2016. The audit report on the RSMP provided to IPART found that the audited infrastructure substantially complied with the audited requirements of the Regulation and Licence conditions and it was found operating safely, without any non-compliances being identified.¹⁸

Also, in March 2016 an operational audit of VWS&T’s retail supplier’s licence was conducted. Only two insignificant non-compliances were found. Further, the auditors found that VWS&T’s RSMP is fully implemented and kept under regular review and, in particular, that all of its activities are carried out in accordance with that Plan, amongst other things.¹⁹

- ▼ **Licence plans** – as mentioned above, VWS&T has an audited retail supply management plan (RSMP) in place for Bingara Gorge that addresses the supply of non-potable water supply and provision of sewerage services.²⁰ This document demonstrates VWS&T’s technical understanding relating to supply of non-potable water and sewerage services.
- ▼ **Human resources capability** – VWS&T provided the position descriptions for service engineer and key accounts administrator. These contained role requirements and responsibilities that were relevant to the retail activities.

Retail activities arrangements – Lendlease is an authorised person in the existing licence (formerly Lend Lease), and it holds the contracts with the customers at the Bingara Gorge scheme. We consider the arrangements between VWS&T, Lendlease and its customers to conduct retail activities are operating adequately and contribute positively to the applicant’s technical capacity to undertake retail activities to a larger small retail customer base. We used the above information to assess VWS&T’s technical capacity to undertake the following retail supply activities at the Bingara Gorge development:

- ▼ **Billing:** The billing system addresses the responsibilities of VWS&T and its customers in relation to: account payment; invoicing arrangements; under and over charging; payment disputes; costs and charges; pricing determination; managing financial hardship; discounts and rebates; restriction of supply for non-payment; and meter reading, installation and maintenance.

¹⁸ Report on the Retail Supply Management Plan WICA Audit of Retail Supplier’s Licence No. 10_013R (Bingara Gorge). Water Futures. 28 April 2016 D16/11703

¹⁹ Report on the Operational Audit of Retail Supplier’s Licence No. 10_013R (Bingara Gorge) under WICA. Water Futures and iq-AM. 28 April 2016 D16/11704

²⁰ VWS&T’s RSMP was audited in March 2016. Report on the Retail Supply Management Plan Audit of the Bingara Gorge Recycled Water Scheme. Water Futures. Final Report. 28 April 2016.

- ▼ **Complaints handling:** VWS&T's Code of Practice for Customer Complaints has been developed following the Australian Standard, AS ISO 10002-2006. The Code of Practice addresses complaints handling, including: receipt; tracking; acknowledgement; assessment and investigation; response; communicating the outcome of complaint investigation; escalation to the Energy and Water Ombudsman NSW (EWON); and closing the complaint. Both the Code of Practice and VWS&T's RSMP include the process for evaluation and audits of the Code of Practice.
- ▼ **Debt recovery:** VWS&T's Code of Practice for debt recovery addresses how VWS&T would respond when customers have missed one or more payments, including reminder and warning notification; and actions for debt recovery.
- ▼ **Financial hardship:** VWS&T's Code of Practice for debt recovery addresses VWS&T's approach to customers who are having difficulty paying, or are concerned about not being able to pay on time. The Code of Practice outlines VWS&T's approach to reaching an agreement with a customer facing financial hardship. VWS&T's Code of Practice states that in cases of financial hardship, a customer will not be disconnected from services.
- ▼ **Continuity of service:** VWS&T's RSMP addresses continuity of service during interruption due to incidents or operational problems, including: interruptions to sewage service, and interruptions to non-potable water supply. VWS&T's RSMP provides information on incident identification and responses.

We also considered VWS&T's risk assessment for the retail services to be provided at the Bingara Gorge development. This demonstrated VWS&T's technical capacity to identify risks across a number of areas including billing, water quality, and supply outages, and to develop control measures to manage these risks to an acceptable level. We consider the control measures identified to mitigate risks result in reduced residual risks.

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

We consider that the information submitted by VWS&T demonstrates that it has the technical capacity to provide water and sewerage services, to a larger small retail customer base and to ensure that customers are appropriately informed of the correct and authorised uses of the recycled water.

We do not consider that VWS&T should 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 supply non-potable water and provide sewerage services for the Bingara Gorge scheme.

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 pipeline,
- ▼ Financial position,
- ▼ A review of VWS&T's working capital, and
- ▼ Documentation of a Deed of Novation and an operation and maintenance agreement between VWS&T and Lend Lease Communities (Wilton) Pty Ltd (currently Lendlease).

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.²¹

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 viability 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 will authorise. In the case of the retail supplier's application to vary the licence, the activities are to supply non-potable water and provide sewerage services.

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

²¹ Corporate Scorecard, *Comprehensive Financial Capacity Assessment Veolia Environnement SA*, August 2016.
Corporate Scorecard, *Basic Financial Capacity Assessment Veolia Water Solutions & Technologies (Australia) Pty Ltd*, August 2016.

guaranteed revenue to cover the costs of undertaking the retail services (for example billing customers and handling complaints) from the developer under a contract.

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 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 consider that VWS&T's RSL should not be subject to any additional licence conditions in relation to financial capacity, if a licence variation is approved.

4.2.3 Organisational capacity

We are satisfied that VWS&T has the organisational capacity to supply non-potable water and provide sewerage services 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 providing retail services to customers** – VWS&T currently holds WICA RSLs for Bingara Gorge (no. 10_013R) and Darling Quarter (no. 10_009R). VWS&T's organisational capacity was considered satisfactory during the assessment of these licence applications. We are aware that IPART, EWON and VWS&T have in the past received complaints from residents of the Bingara Gorge scheme. We acknowledge that the number of water and sewerage complaints have decreased considerably during the last three years, although the number of customers have increased yearly. That provides an indication of the capacity of the applicant to address issues providing retail services.
- ▼ **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 retail activities at the Bingara Gorge scheme.
- ▼ **Position descriptions** – We reviewed position descriptions for service engineer and key accounts administrator. 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 retail activities.

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 supply non-potable water and provide sewerage services.

We recommend that VWS&T should not be subjected to any changes to 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 supply non-potable water and provide sewerage services 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, in supplying water and sewerage services to the Bingara Gorge Development:

- ▼ **Customer exposure through end-use:** VWS&T has proposed control strategies for unintended or inappropriate use of recycled water that will be implemented through the retail service processes. These include residential customer supply contracts, water use agreements, and ongoing awareness and information provided at each billing cycle and on VWS&T and Lendlease’s websites.
- ▼ **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.
- ▼ **Risk assessment:** the risk assessment provided by VWS&T identifies potential impacts to public health and proposes control strategies to mitigate such risks to an adequate residual risk.

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.²²

We consider that the information submitted by VWS&T demonstrates that it has the capacity to supply non-potable water and provide sewerage services 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.

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.

²² NSW Health, letter received by IPART on 16 November 2015 D15/29454

- ▼ **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 variation²³.

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

We are satisfied that VWS&T will obtain sufficient quantities of water to supply its customers otherwise than from public water utility.

This application for a licence variation is in relation to increasing the capacity of the water industry infrastructure. Nonetheless, the applicant will be treating sewerage to produce recycled water for supply to residents in Bingara Gorge. A potable water top-up from Sydney Water’s potable supply is available as a contingency measure only. The majority of water supplied by the licensee will be obtained otherwise than from a public water utility.

We received no submissions regarding whether the VWS&T will obtain sufficient quantities of water.

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

²³ Email from icare (formerly SICorp), 10 November 2015 D15/28564

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 VWS&T has the capacity to supply non-potable water and provide sewerage services, in a manner that does not present a significant risk of harm to the environment.

We assessed VWS&T's capacity to manage key risks to the environment posed by the supply of non-potable water and the provision of sewerage services to the Bingara Gorge development:

- ▼ **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.
- ▼ **Non-potable water end uses:** VWS&T has control measures in its risk assessment to mitigate risks from non-potable water end-use. This includes educating customers on end-use. The Scheme is operated under an EPL and contains conditions that monitor environmental impacts of the Scheme.
- ▼ **Sewerage system:** VWS&T has control measures in its risk assessment to mitigate risks from misuse of the sewerage system. This includes educating customers on what can be disposed in the system. The EPL and contains conditions on emergency discharges as well as other environmental impacts from the operation of the Scheme.

We received a submission from the EPA regarding whether the VWS&T has the capacity to supply non-potable water and provide sewerage services in a manner that does not present a significant risk of harm to the environment.²⁴ 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 licence 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 supply non-potable water and provide sewerage services 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 licence variation is granted.

²⁴ EPA submission, letter received by IPART on 4 November 2015.

4.7 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.

4.7.1 Protection of public health

We have had regard to protection of public health through our assessment of VWS&T's capacity to supply non-potable 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 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.²⁵

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

4.7.2 Protection of the environment

We have had regard to protection of the environment through our assessment of VWS&T's capacity to supply non-potable water and provide sewerage services to customers at the Bingara Gorge development in a manner that does not present a significant risk of harm to the environment. As outlined in section 4.6 of this report, we assessed VWS&T's capacity to manage the key risks posed to the environment by the additional activities to be licensed.

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

4.7.3 Protection of public safety

We have had regard to the protection of public safety through our assessment of VWS&T's capacity to supply non-potable water and provide sewerage services 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

²⁵ D15/29454 - NSW Health, letter received by IPART on 16 November 2015.

Bingara Gorge Scheme. This plan outlines how incidents and emergencies will be managed at the Scheme.

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

4.7.4 Protection of consumers generally

We have had regard to the protection of consumers through our assessment of VWS&T's technical capacity supply non-potable water and sewerage services 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, its RSMP 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.²⁶

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.²⁷ We note that the Minister has not made any such declaration or referral to date.

We are aware that IPART, EWON and VWS&T have in the past received complaints from residents of the Bingara Gorge scheme relating to the higher prices for connection and sewerage service charges in comparison with Sydney Water. The scheme has since reduced its prices and has reported that it is charging customers in line with Sydney Water prices. 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, for the reasons above we consider that consumers generally will continue to be protected in relation to the activities licensed.

4.7.5 Encouragement of competition

Historically, Sydney Water has provided monopoly sewerage services in the Wollondilly Shire LGA. However, Sydney Water's sewerage services are not

²⁶ WIC Act, section 51.

²⁷ Determination of the pricing and/or periodic review of the pricing policies. WIC Act, section 52(1).

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.

4.7.6 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 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.

4.7.7 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.

4.7.8 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.

4.7.9 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 mentioned in section 4.2.1, VWS&T's RSMP for Bingara Gorge was audited in March 2016, and no non-compliances were identified. It included the arrangements that VWS&T has made to ensure that it complies with its code of practice for customer complaints and its code of practice for debt recovery, of small retail customers.²⁸

If the Minister approves this licence variation, for the reasons above we consider that the potential risks for adverse financial implications for small retail customers will continue to be adequately mitigated in relation to the activities licensed.

4.7.10 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.

4.7.11 Other matters in the public interest

We did not identify any additional matters with regard to the public interest in relation to VWS&T supplying non-potable water and providing sewerage services to 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.

²⁸ Report on the Retail Supply Management Plan WICA Audit of Retail Supplier's Licence No. 10_013R (Bingara Gorge). Water Futures. 28 April 2016.

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.²⁹ The Minister granted VWS&T a retail supplier's licence on 1 March 2011. We commenced our 5-yearly review of the licence on 1 March 2016.

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.³⁰

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 RSL 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

²⁹ WIC Act, section 85(2)

³⁰ WIC Act, section 85(3)

- ▼ 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.

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 retail supplier'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-year review are detailed in the sections below.

Consistent terminology, language and structure

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

Recommendations as a result of the five yearly 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.
- ▼ Delete Tables 1.1 and 2.1 and replace with new Tables 1.1 and 3.1 to reflect the authorised person's name change (Lendlease Communities (Wilton) Pty Ltd).³¹
- ▼ Amended the licence structure to bring the numbering of licence conditions in line with the standard licence template.
- ▼ Reviewed the terminology and language in the licence to bring it in line with the standard licence conditions.
- ▼ Fixed minor typographical errors (eg, capitalisation where it was not warranted, licence conditions numbering, etc.)
- ▼ Updated 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.
- ▼ Combine conditions in sections A2 and A3 into section S1.
- ▼ Delete Tables 1.5, 2.5 and 3.5 and replace with new Tables 1.5 and 3.5 to update the current area of operations.

Insurance:

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

We have changed the structure and reworded licence conditions B2.1 and B3 to bring VWS&T's proposed licence in line with the standard licence conditions and other retail supplier's licences.

³¹ The ACN of the authorised person remains the same.

As noted in section 4.4, we consider are satisfied that VWS&T has made, and will continue to maintain appropriate insurance arrangements, therefore recommendations below are result of the five yearly review.

- ▼ We have renumbered and reworded the licence condition B2.1 in the current licence and have aligned with our current standard licence conditions to improve clarity of the licence condition and improve consistency across retail suppliers' licences, including reference to the Reporting Manual.
- ▼ We have removed the second³² condition B2.1 on the proposed licence, as the provisions related to the insurance expert report are covered under the Reporting Manual, which is referred in the proposed condition B2.1.
- ▼ We have added the standard licence condition B3.2 to VWS&T's proposed licence. This condition allows us to monitor if the licensee as and will continue to have insurance as required under section 10(4)(c) of the WIC Act.
- ▼ 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 Retail Suppliers' licences. Changes in insurer or underwriting panel and scope of insurance held by the Licensee are new triggers for providing a report to us, in accordance with the Reporting Manual.
- ▼ We have renumbered the existing licence condition B3.2 (proposed licence condition B3.4) and we have added the standard licence notes to this condition to align VWS&T's proposed licence with our standard licence conditions. The notes intend to remove ambiguity, to the licensee and IPART, around when we may request an Insurance Expert's report from the licensee.

We consider that the clarification of these insurance requirements reduces the risks of adverse impacts to the licensee, customers and the Government.

Compliance with audit guidelines

Compliance with audit guidelines licence conditions are prescribed in schedule B, clause B5 of the varied VWS&T retail supplier's licence.

We have added licence condition B5 to bring VWS&T's proposed licence in line with our standard licence conditions. VWS&T's current licence does not include a relevant requirement. We consider that the inclusion of this condition clarifies which auditing framework the licensee must comply with, to both the licensee and IPART.

Reporting of information in relation to the Register of Licenses

Notification obligations in relation to the Register of Licences are prescribed in schedule B, clause B7 of the varied VWS&T retail supplier's licence.

³² Note the current retail supplier's licence no. 10_013R incorrectly have two licence conditions numbered B2.1.

We are required to maintain a register of licences in accordance with section 20 of the WIC Act and clause 18 of the WIC Regulation. The WIC Regulation outlines the details we are required to keep. VWS&T's current licence requires VWS&T to provide us with information, within 14 days, where there is a certain change which may affect the register of licences.³³

We have restructured, reworded and added to licence condition B7 to bring VWS&T's proposed licence in line with the standard licence conditions. In particular, we have:

- ▼ added a reference to report in accordance to the Reporting Manual,
- ▼ reworded existing licence conditions B6(a), (b) and (c), and
- ▼ added B7.1(e), as per our standard licence conditions.

We consider that these changes clarify the intent of licence conditions related to the reporting requirements related to IPART's register of licences. The amended licence conditions also provide the licensee with certainty regarding the changes they must notify us of, and the manner and form of their notification.

Provision of a Plan

The Provision of a Plan licence condition is prescribed in schedule B, clause B8 of the varied VWS&T retail supplier's licence.

VWS&T's licence currently requires VWS&T to provide a copy of its amended plan to IPART whenever the licensee makes any change to its plan. We have removed such requirement, in accordance with our standard licence condition.³⁴

We consider that this licence condition continues to appropriately mitigate risks related to operation of the Bingara Gorge scheme.

Delineating responsibilities - interconnections

Requirements of Codes of Conduct and delineation of responsibilities are prescribed in schedule B, clause B9 of the varied VWS&T retail supplier's licence.

We are including licence condition B9 to bring VWS&T's proposed licence in line with the standard retail supplier's licence conditions. We consider that the standard licence condition clarifies the responsibilities of the licensee and any other connected entity. This minimises the chance of adverse impacts to VWS&T, other connected entities and consumers.

³³ Condition B6 in existing licence.

³⁴ Condition B7 in existing licence.

Sufficient quantities

We have removed the existing licence condition B8, in accordance with our standard retail supplier's licence conditions.

Notification of changes to Authorised Person

Notification of changes to Authorised Person licence conditions are prescribed in schedule B, clause B10 of the varied VWS&T retail supplier's licence.

We have added the standard licence condition B10 to VWS&T's proposed licence. This condition requires VWS&T to notify IPART if an Authorised Person cease or proposes to cease providing any of the services relating to the activities authorised by this Licence. It also require to specify how the services previously undertaken by the Authorised Person will continue to be undertaken.

We consider that the inclusion of this licence condition reduces risks of adverse impacts to the licensee, customers and the Government. It also brings VWS&T's proposed licence in line with other retail supplier's licences.

Infrastructure to be used

Conditions to provide water and sewerage services by means of certain water industry infrastructure are prescribed in clause B11 of the varied VWS&T retail supplier's licence.

We have added the standard condition B11 to VWS&T's proposed licence. This condition requires VWS&T to source and provide water, also to provide sewerage services by means of water industry infrastructure maintained and operated by a licenced network operator or public water utility.

We consider that the standard licence condition reduces the risks of adverse impacts to VWS&T, other connected entities and consumers.

Notification of operation

Notification of operation licence conditions are prescribed in schedule B, clause B12 of the varied VWS&T retail supplier's licence.

We have added the standard licence condition B12 to VWS&T's proposed licence. This condition requires VWS&T to notify IPART within 10 days of bringing any Specified Water Industry Infrastructure into operation. VWS&T's current licence does not include a relevant requirement.

We consider that the inclusion of this licence condition reduces the risks of adverse impacts to the licensee, customers and the Government. It also brings VWS&T's proposed licence in line with other retail supplier's licences.

6 Recommendations

We recommend that the Minister:

- ▼ **Varies the VWS&T retail supplier's licence (licence number 10_013R) and conditions imposed on that licence as set out in attached recommended licence.**

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

Treatment capacity and authorised purposes

- ▼ Delete Tables 1.2, 2.2 and 3.2 and insert new Tables 1.2 and 3.2 of the recommended licence using the standard description of water industry infrastructure. Also remove cap in treatment of sewage to 400 kL/day.
- ▼ Delete Tables 2.3 and 3.3 and insert new Table 1.3 of the recommended licence to include laundry washing (cold tap only) as an additional purpose.

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.³⁵

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.³⁶ 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.

³⁵ WIC Act, section 10(2).

³⁶ WIC Act, section 10(5).



Appendices

A Draft licence