

Assessment of SUEZ Water and Treatment Solutions' retail supplier's licence application

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

Water — Report to the Minister
November 2016

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Contents

1	Summary	1
2	Background	1
2.1	The applicant	1
2.2	The scheme	2
3	Consultation and submissions	3
4	Assessment of application	5
4.1	Disqualified corporation and related entity checks	5
4.2	Capacity (including technical, financial and organisational capacity) to carry out the activities	6
4.3	Capacity to carry out those activities in a manner that does not present a risk to public health	10
4.4	Appropriate arrangements with respect to insurance	11
4.5	Sufficient quantities of water supplied by the licensee obtained otherwise than from public water utility	13
4.6	Public interest considerations	13
4.7	Other matters in the public interest	17
5	Recommendations	17
	Appendices	19
A	Draft licence	21

1 Summary

We recommend that the Minister grant SUEZ Water and Treatment Solutions Pty Ltd (SUEZ) a retail supplier's licence (licence number 16_039R, see Appendix A) and name Kooragang Water Pty Ltd (Kooragang Water) as an authorised person on the licence. The licence will authorise SUEZ (and the authorised person) to supply non-potable water¹ and potable water in the City of Newcastle Council Local Government Area.

If the licence is granted, SUEZ will be able to retail non-potable water and potable water to Orica's industrial site at Kooragang Island, an activity that is currently being undertaken by Hunter Water Corporation (Hunter Water).² This is consistent with the application SUEZ provided to us. This report is for the assessment of the application for the retail supplier's licence only.

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

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.³

2 Background

2.1 The applicant

We received an application for a network operator's and a retail supplier's licence from SUEZ in February 2016. SUEZ applied for a network operator's licence to construct, operate and maintain non-potable water infrastructure and a retail supplier's licence to supply potable and non-potable water.

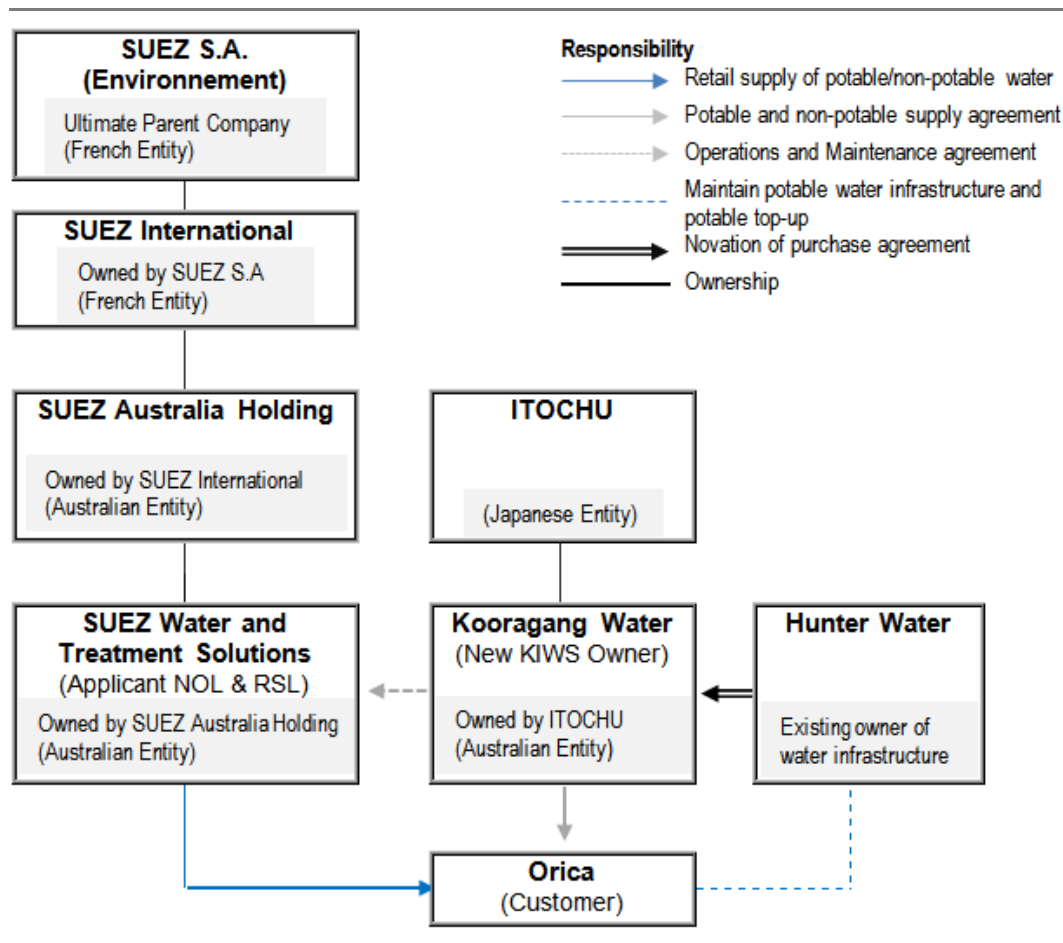
The applicant corporation, SUEZ, is a wholly owned subsidiary company of SUEZ Australia Holding Pty Ltd. SUEZ S.A. (formerly SUEZ (Environnement)), a French entity, is the ultimate parent company. Kooragang Water Pty Ltd, as owner of the facilities, has contracted SUEZ to undertake retail functions and operate and maintain the water industry infrastructure (see Figure 2.1).

¹ In the *Water Industry Competition (General) Regulation 2008* (NSW), non-potable water means water that is not drinking water. SUEZ seeks this licence to supply recycled water.

² Hunter Water will continue to own and operate the drinking water infrastructure.

³ WIC Act, section 10(2).

Figure 2.1 KIWS ownership and responsibilities



SUEZ has applied for a retail supplier's licence to supply potable and non-potable water to Orica, at Kooragang Island. SUEZ will operate the recycled water industrial scheme facilities owned by Kooragang Water, if the Minister approves its application for a network operator's licence. The area of operations that SUEZ proposes to service under its network operator's licence is confined to the existing treatment and the associated pipe infrastructure. The area of operations for the retail supplier's licence is proposed to be defined as the City of Newcastle Council area.

2.2 The scheme

The Advanced Water Treatment Plant at Mayfield West (KIWS) will supply up to 9 ML/day of non-potable water to Orica on Kooragang Island.

The scheme which was completed in October 2014 is currently owned by Hunter Water and operated by Veolia Water Australia.

Secondary treated effluent is sourced from Hunter Water's Shortland Wastewater treatment plant and further treated to provide non-potable water for use by

Orica. The intended uses at the Orica site are for cooling towers and boilers. SUEZ will also use the water onsite at the treatment plant. The potable water, for consumption and top up, will be sourced from Hunter Water's network as required. Hunter Water has confirmed it can provide potable water to meet Orica's needs.⁴

SUEZ will not be operating or maintaining potable water infrastructure for the supply of drinking water directly to Orica as this will be done by Hunter Water. SUEZ will provide the customer billing associated retail services for its single industrial customer.

3 Consultation and submissions

On 28 April 2016, 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 the Environment), and
- ▼ Minister administering the *Environmental Planning and Assessment Act 1979* (NSW) (Minister for Planning).⁵

At the same time, we also provided a copy of the licence application to you as the Minister administering the WIC Act.⁶

We invited Hunter Water to make a submission on the licence application⁷ as SUEZ is proposing to connect to, or use, Hunter Water's water industry infrastructure (as defined in the WIC Act).⁸

We invited the City of Newcastle Council to make a submission as the local council.⁹

We also called for submissions on both the network operator's and retail supplier's licence applications from the public.¹⁰ We advertised in the Newcastle Herald on 27 April 2016. The closing date for submissions was 25 May 2016.

⁴ Letter from Hunter Water, 25 May 2016.

⁵ WIC Act, section 9(1)(b) and *Water Industry Competition (General) Regulation 2008*, clause 17(1).

⁶ WIC Act, section 9(1)(a).

⁷ Letter to Hunter Water, IPART, 26 April 2016.

⁸ WIC Act, section 9(1)(b)(iii) and WIC Regulation, clause 17(2).

⁹ Letter to City of Newcastle, IPART, 26 April 2016.

¹⁰ WIC Act, section 9(1)(c).

We received six submissions from:

- ▼ The Minister for Lands and Water
- ▼ NSW Health
- ▼ Minister for the Environment
- ▼ Hunter Water
- ▼ The City of Newcastle Council
- ▼ NSW Department of Planning and Environment (DPE).

These submissions are available on our website and are summarised and discussed below.¹¹

We received one submission relevant to our assessment of SUEZ's retail supplier's licence application. This submission was from Hunter Water. In their letter, Hunter Water noted that it is able to provide back-up water to SUEZ's proposed recycled water in the event that non-potable water is not available. While Hunter Water owns and operates the potable water supply to Orica, the novation associated with the purchase agreement requires Kooragang Water through its contracted entity, SUEZ, to perform the retail responsibilities for the potable water.

The Minister for the Environment and the City of Newcastle Council raised no concerns in relation to the information contained in the applications.

The remaining submissions we received were primarily regarding SUEZ's network operator's licence application and are addressed in the report for that licence.

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) to inform our assessment of appropriate insurance arrangements (see section 4.4).

¹¹ www.ipart.nsw.gov.au

4 Assessment of application

This section of the report contains our assessment of SUEZ's licence application and our recommendations.

In assessing SUEZ's application to vary the licence conditions, we considered the 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 SUEZ is neither a disqualified corporation nor a corporation that is a related entity of a relevant¹² disqualified corporation.

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

- ▼ A statutory declaration signed by SUEZ's CEO and Director stating that:
 - neither SUEZ, nor any director or person concerned in the management of SUEZ is, or would be, a disqualified corporation or a disqualified individual within the meaning of the WIC Act, and
 - SUEZ 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 SUEZ, regarding details of the:
 - trustees (past and current) of any trusts in relation to which SUEZ is a beneficiary
 - current beneficiaries of any trusts in relation to which SUEZ is a trustee, and
 - relevant related entities,¹³ and
- ▼ Results of ASIC and Dun & Bradstreet reports that we have obtained for SUEZ, and for the relevant related entities, confirmed that these companies are not disqualified nor are their directors or persons concerned in the management disqualified individuals.¹⁴
- ▼ Results of our search of the WIC Act licence database,¹⁵ confirming in part the above.

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

¹² 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).

¹³ Email to IPART, Peter Segura, SUEZ 8 April 2016, indicating that SUEZ does not have any entities that are either trustees, beneficiaries of any trusts or relevant related entities.

¹⁴ The relevant searches were completed October 2016.

¹⁵ There are currently no disqualified corporations or individuals on the register pursuant to the WIC Act, sections 16(e) and 16(f).

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

We assessed SUEZ's technical, financial and organisational capacity to carry out activities to be licensed for the supply of recycled water and potable water. Our assessment was based on SUEZ's capacity at the time of making the application.

4.2.1 Technical capacity

We are satisfied that SUEZ has the technical capacity to supply recycled water and potable water services to its customer at Kooragang Island.

Our analysis included a review of:

- ▼ KIWS draft Retail Supply Management Plan (**RSMP**), provided in response to a request for further information, which addresses the retail of potable and non-potable water.
- ▼ Customer Complaint Handling procedure - which describes the process SUEZ will use to respond to complaints by Customers about services.
- ▼ Debt Recovery procedure - information on SUEZ's process to manage late payments by customers.
- ▼ Operations and Maintenance Services Agreement (**O&M Agreement**), which provides the terms by which SUEZ under contract with Kooragang Water will supply potable and non-potable water to its customers.
- ▼ The draft Potable Water Agreement between Kooragang Water and Orica.
- ▼ The draft Agreement for the Supply of Treated Effluent and Potable Water between Hunter Water and Kooragang Water.
- ▼ The operational services conducted by SUEZ's support team for the provision of billing and accounts functions between Orica and Kooragang Water.
- ▼ SUEZ's previous retail experience in Australia, and the specific experience of personnel who will be recruited for the project, as shown in the information provided to us in the position descriptions and SUEZ's application form.

We used the above information to assess SUEZ's technical capacity to undertake the following retail supply activities for the KIWS scheme:

- ▼ **Billing:** SUEZ explains in its application that it will use the SAP software system and support to manage its financial functions. SUEZ's RSMP addresses payment disputes; managing financial hardship; (limited) restriction of flow for non-payment and complaint handling.

- ▼ **Complaints handling:** SUEZ's procedures in relation to customer complaint handling have been developed to be consistent with the Australian Standard for complaints handling, AS ISO 10002-2006. SUEZ's established business practices and management systems define its communications techniques for addressing customer and complaints. SUEZ commits to regularly reviewing the adequacy of its management systems through continuous evaluation of performance to meet expectations of interested parties.
- ▼ **Providing an appropriate level of service:** SUEZ's application addresses the level of service for delivery of recycled water services and potable water services to customers, including information on water quality and flow rate. The level of service is outlined in the current Non-Potable Water Supply Agreement between Hunter Water and Orica and in the Potable Water Agreement between Kooragang Water and Orica. SUEZ will initially take over the level of service in the existing Orica-Hunter Water supply agreement.
- ▼ **Continuity of service:** SUEZ's RSMP addresses continuity of service during interruption due to an incident, failure or unscheduled outage of the recycled water infrastructure in the supply of recycled water to its customer. The RSMP also addresses the approach SUEZ will use to communicate any service disruptions with its stakeholders.

We received no submissions regarding SUEZ's technical capacity.

We consider that the information submitted by SUEZ demonstrates that it has the technical capacity to supply recycled water and potable water services to its customer, other than small retail customers, for the scheme.

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

- B1.1 The Licensee must have the technical, financial and organisational capacity to carry out the activities authorised by this Licence. If the Licensee ceases to have this capacity, it must report this to IPART immediately in accordance with the Reporting Manual.¹⁶

We recommend that the scope of the licence be limited to any person other than Small Retail Customers.

4.2.2 Financial capacity

We are satisfied that SUEZ has the financial capacity to supply recycled water and potable water services to its customer at Kooragang Island.

¹⁶ IPART, *Retail Supplier's Reporting Manual under the Water Industry Competition Act 2006 (NSW) - Reporting Manual*, June 2016.

In making our assessment of SUEZ's financial capacity we have considered the following information:

- ▼ Reports from our expert consultants, Corporate Scorecard
- ▼ SUEZ's summarised profit and loss statements
- ▼ SUEZ's summarised balance sheets
- ▼ SUEZ's key financial ratios
- ▼ SUEZ's corporate structure, and
- ▼ The risk profile of the scheme.

To assist us we engaged an independent financial consultant, Corporate Scorecard to assess the financial capacity of SUEZ and the viability of the scheme. Since SUEZ is a 100% owned subsidiary of the international parent company SUEZ (Environnement), Corporate Scorecard assessed both companies.¹⁷

Corporate Scorecard's assessment of SUEZ notes the company has strong financial liquidity, good levels of working capital and positive operating cash flows and that SUEZ is expected to recognise a profit on the scheme in the first year. It also notes that the overall company's financial capacity is dependent on the support of its corporate group. Corporate Scorecard concluded SUEZ has financial capacity and a low level of financial risk, but that this is heavily dependent on continued support of its parent corporate group. The report recommended a number of risk mitigating strategies including that a cross company guarantee be obtained.

In our assessment of SUEZ financial capacity to carry out the activities of the licence we considered Corporate Scorecard's financial assessments conducted on SUEZ and its ultimate 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 retail supplier's licence, the activities are retailing of potable and non-potable water.

We consider that SUEZ has the financial capacity to carry out the activities the licence would authorise. We are satisfied because SUEZ obtains revenue to cover the operation and maintenance (O&M) costs. The revenue is guaranteed from Koorangang Water under the O&M Agreement.

However, consistent with Corporate Scorecard's assessment, we consider there is a risk to the ongoing financial capacity of the applicant, to carry out the activities a licence would authorise, if the parent company ceases financial support to SUEZ.

¹⁷ Corporate Scorecard, *Comprehensive Financial Capacity Assessment Suez Water & Treatment Solutions Pty Ltd*, August 2016.
Corporate Scorecard, *Advanced Financial Assessment (AFA) Suez Environnement SA*, August 2016.

However, we consider that the risk is adequately controlled by:

- ▼ SUEZ being part of a large multi-national group which has the financial capacity to support SUEZ in its activities, as assessed by Corporate Scorecard.
- ▼ SUEZ (Environnement) corporate group having a strong incentive to ensure the other schemes operated by SUEZ continue; such as Prospect Water Filtration Plant, Allwater Alliance and Aroona Alliance. All of these projects are for state government water utilities. The failure of these projects would have significant reputational impact on the SUEZ (Environnement) group.

We also consider that the consequences if there is a loss of financial capacity are minor as there is only one large industrial customer. The scheme is not an essential service and supply could be met by Hunter Water.

We have considered the risk controls described above and have concluded that the residual risk related to the application is sufficiently low to consider SUEZ has the financial capacity to carry out the retail activities that a licence would authorise. We consider a cross company guarantee does not need to be obtained to be satisfied that SUEZ has and will continue to have the financial capacity.

Our financial assessment represents the applicant's financial capacity at a point in time. Our recommendation to grant SUEZ a licence 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 SUEZ should be subject to the following standard licence condition (see draft licence in Appendix A), in relation to financial capacity, if a licence is granted:

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

4.2.3 Organisational capacity

We are satisfied that SUEZ has the organisational capacity to supply recycled water and potable water services to its customer at Kooragang Island.

In our assessment of SUEZ's organisational capacity, we considered the following:

- ▼ evidence of SUEZ's corporate experience with providing retail services to customers, and

- ▼ SUEZ's business management, environmental management and quality assurance systems are aligned with appropriate standards, incorporating stakeholder and customer focused elements.

In considering the proposed customer contract we note that the customer contract is between Kooragang Water and Orica. We are satisfied that the appropriate organisational structure exists to manage the supply of recycled water and potable water through the O&M Agreement between the Principal (Kooragang Water) and contractor (SUEZ) to ensure the customer contract obligations can be maintained. The agreement is a binding agreement for the provision of services by SUEZ to Kooragang Water including for the customer supply functions.

We consider that the information submitted by SUEZ demonstrates that it has the organisational capacity to supply potable and non-potable water to large retail customers (Orica) on Kooragang Island.

We recommend that the licence scope:

- ▼ Specify that the class of persons to be supplied as other than small retail customers, if a licence is granted (Tables 1.2 and 2.2 of the draft Retail Supplier's Licence).
- ▼ Name Kooragang Water Pty as an authorised person given the proposed contractual arrangement.

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

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

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

We are satisfied that SUEZ has the capacity, to supply recycled water and potable water services at Kooragang Island in a manner that does not present a risk to public health.

We assessed SUEZ's capacity to manage the following key risks to public health, posed by supplying recycled water and potable water:

- ▼ **Source water quality:** SUEZ has demonstrated its capacity to supply recycled water of an appropriate quality to meet its customer's needs at Kooragang Island. SUEZ would source all of its potable water from Hunter Water and its non-potable water from the KIWS treatment plant (operated by itself under the authority of a network operator's licence, if granted). We reviewed SUEZ's application which states that it will treat effluent to the quality required under the Australian Guidelines for Recycled Water (2006) for the intended end-uses. SUEZ will address any incidents related to the recycled water quality in accordance with its emergency response plan and communication protocols. SUEZ's customer complaint handling procedures address the process for handling complaints received from customers.
- ▼ **Customer exposure through end-use:** SUEZ will supply high quality non-potable water to one industrial customer, Orica at Kooragang Island. We consider this is highly unlikely to present a risk to public health. SUEZ has demonstrated capacity to mitigate public health risks with its experience in implementing control measures in the operation of other recycled water schemes.

NSW Health supported SUEZ's application for a retail supplier's licence and has not identified any issues in regard to SUEZ's capacity to protect public health in undertaking retail activities.

We consider that the information submitted by SUEZ demonstrates that it has the capacity to supply recycled water, in a manner that does not present a risk to public health.

4.4 Appropriate arrangements with respect to insurance

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

In making our assessment of SUEZ's insurance arrangements, we have considered SUEZ's

- ▼ Combined Business Liability Insurance, including Public Liability, Sudden and Accidental Pollution Products Liability and Professional Indemnity (financial loss arising from a wrongful act) insurance policy
- ▼ Workers Compensation insurance policy, and
- ▼ Specific information on the activities proposed to be undertaken, such as the containment of potential spillages, long term pollution control measures and methods and risk management.

We requested advice from icare self-insurance on the appropriateness of SUEZ's insurance arrangements with respect to the activities to be licensed.

As part of the assessment, icare self-insurance examined SUEZ's proposed scope of work, the risk assessment, insurance coverage in the areas of professional indemnity, pollution and public liability and product liability, as shown in the applicant's insurance certificates. In addition it reviewed the product disclosure statements for each insurance certificate.

The assessment from icare self insurance found the insurances held by SUEZ to be adequate for the purposes of its retail supplier's licence application.

We received no submission regarding SUEZ's insurance arrangements.

We consider that the information submitted by SUEZ demonstrates that it has made, and will continue to maintain, appropriate insurance arrangements.

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

B2 Obtaining appropriate insurance

B2.2 The Licensee must:

- a) on the date on which this Licence is granted for the Specified Water Industry Infrastructure under this Licence:
 - i) hold insurance that is appropriate for the size and nature of the activities authorised under this Licence; and
 - ii) provide a copy of each certificate of currency of the insurance obtained to IPART; and
- b) within 6 months of the date on which this Licence is granted or by a later date specified by IPART (if any), demonstrate that the insurance held is appropriate for the size and nature of the activities authorised under this Licence by providing a report to IPART from an Insurance Expert that:
 - i) certifies that in the Insurance Expert's opinion, the type and level of the insurance held by the Licensee is appropriate for the size and nature of the activities authorised under the Licence; and
 - ii) is in the form prescribed by the Reporting Manual.

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

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

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

- a) the insurer or underwriting panel in respect of an insurance policy held by the Licensee; or
 - b) the type, scope or limit on the amount of insurance held by the Licensee, in relation to the activities authorised under this Licence, the Licensee must provide a report to IPART in accordance with the Reporting Manual.
- B3.4 From time to time when requested in writing by IPART, the Licensee must provide a report to IPART, in the manner, form and time specified by IPART, from an Insurance Expert certifying that in the Insurance Expert's opinion the type, scope or limit on the amount of the insurance held by the Licensee is appropriate for the size and nature of the activities authorised under this Licence.

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

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

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

SUEZ can access 12.6 ML/day of treated effluent from Hunter Water. This treated effluent will be further treated to generate recycled water which will be used onsite, in cooling towers, and for industrial process water.

Hunter Water will supply sufficient drinking water to top up the recycled water system and meet customer demand in case of infrastructure failure. The existing KIWS facilities have with sufficient redundancy to limit the likelihood of this occurring.

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

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 SUEZ's capacity to supply recycled water in a manner that does not present a

risk to public health. As outlined in section 4.3 of this report, we assessed SUEZ's capacity to manage the key risks posed to public health by the activities to be licensed.

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

4.6.2 Protection of the environment

We had regard to the protection of the environment by assessing SUEZ's capacity to manage the key risks to the environment posed by the supply of non-potable water and potable water services to the Kooragang Island. We consider that there are minimal risks to the environment posed by supplying recycled water to Orica. The water to be supplied is of high quality and will be used specifically for industrial applications..

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

4.6.3 Protection of public safety

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

If the Minister grants a retail supplier's licence to SUEZ, we consider that public safety will 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 SUEZ's technical capacity to supply recycled water and potable water services. As outlined in section 4.2.1 and 4.2.3 of this report, we have assessed SUEZ's capacity to protect consumers through its RSMP, risk assessment and the customer supply agreement with Orica.

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.¹⁸

¹⁸ 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.¹⁹

We note that, in its application, SUEZ has indicated that it would maintain usage charges in line with Hunter Water's original 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, we consider that SUEZ's customers will continue to be protected in relation to the activities licensed.

We recommend that the licence scope specify that the class of persons to be supplied as other than small retail customers, if a licence is granted (Tables 1.2 and 2.2 of the draft Retail Supplier's Licence).

4.6.5 Encouragement of competition

This licence would enable a new entity to supply recycled water and potable water, providing an alternative to Hunter Water

4.6.6 Ensuring sustainability of water resources

SUEZ will supply recycled water to Orica at Kooragang Island. This water will be sourced by further treating secondary effluent which would have otherwise been discharged to Hunter Water's wastewater network. The supply of recycled water also replaces the use of drinking water, contributing to the sustainability of water resources.

4.6.7 Promotion of production and use of recycled water

SUEZ will supply recycled water to Orica at Kooragang Island. SUEZ is also able to promote the use of recycled water in the community through provision of information and its on-site educational facilities. Orica has an active program of promoting the use of recycled water on their site.²⁰

¹⁹ Determination of the pricing and/or periodic review of the pricing policies. WIC Act, section 52(1).

²⁰ At <http://www.orica.com/Locations/Asia-Pacific/Australia/Kooragang-Island/Community#.WBur8027rGg>, Accessed September 2016.

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

The Metropolitan Water Plan is the only prescribed water policy document in the WIC Regulation. The Metropolitan Water Plan outlines strategies to secure Greater Sydney's water supply now and in the future. The KIWS facility is not within the Greater Sydney area; therefore the policies set out in the Metropolitan Water Plan do not apply.

However, the NSW Government released the Lower Hunter Water Plan in 2014 which is a package of water supply and demand management measures to ensure the region can withstand extreme drought. Although this is not a prescribed water policy document, we considered whether SUEZ's provision of services to its customer on Kooragang Island is consistent with the document. The Lower Hunter Water Plan includes actions to supply, save and substitute water. In relation to recycled water and notes that there are continuing actions, including:

...private sector suppliers are likely to play a bigger role in providing water supply, wastewater and recycled water services to new developments, particularly in areas remote from urban centres.²¹

SUEZ's supply of recycled water is consistent with this Plan.

4.6.9 Potential for adverse financial implications for small retail customers

Currently the KIWS facilities supply to only one industrial customer. SUEZ does not intend that the KIWS facilities will be used to supply small retail customers.

We recommend that the licence scope specify that the class of persons to be supplied as other than small retails customers, if a licence is granted (Table 1.2 and 2.2 of the draft Retail Supplier's Licence).

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

The Licensee will not be supplying drinking water in the drinking water market by means of water infrastructure. The sharing of a proportion of the cost of the KIWS facilities that contribute to water security, are being recovered through a ministerial direction in the form of a subsidy raised from the water usage charges of the broader Hunter Water customers.²²

The Lower Hunter Water Plan states that the:

²¹ NSW Department of Finance and Services, *Lower Hunter Water Plan*, January 2014, p 3.

²² See IPART, *Review of prices for Hunter Water Corporation from 1 July 2016 to 30 June 2020 - Final Report*, June 2016, p 75-76.

...current water supply system can supply an average of around 75 billion litres of water each year to the people of the lower Hunter. Taking account of forecast population growth of just over 100,000 people, and water consumption trends, there will be enough water to supply the region for around 20 years under typical climate conditions.²³

As a consequence, there is currently no significant expenditure on water infrastructure to improve water security in the region.

4.7 Other matters in the public interest

We did not identify any additional matters with regard to the public interest in relation to SUEZ supplying non-potable and potable water to Kooragang Island.

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

5 Recommendations

We recommend that the Minister grants a retail supplier's licence to SUEZ, subject to the conditions as set out in the attached draft licence (licence number 16_039R).

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.²⁴

The Minister is required to provide us with a notice of the decision and of the reasons for the decision on making a decision whether or not to grant the licence²⁵. We will then make the information in the notice available to the public on our website, in accordance with the requirements of the WIC Act.²⁶

²³ NSW Department of Finance and Services, *Lower Hunter Water Plan*, January 2014, p 10.

²⁴ WIC Act, section 10(2).

²⁵ WIC Act, section 10(5).

²⁶ WIC Act, section 10(6).



Appendices

A Draft licence



**NEW SOUTH WALES
GOVERNMENT**

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

**RETAIL SUPPLIER'S LICENCE
Licence no. 16_039R**

**SUEZ Water and Treatment Solutions Pty
Ltd**

(ACN 051 950 068)

LICENCE SCOPE

ACTIVITIES AUTHORISED UNDER THE LICENCE AND AREA OF OPERATIONS

S1 Activities authorised - non-potable water supply

S1.1 This Licence authorises the Licensee and any authorised persons specified in Table 1.1 to supply non-potable water:

- a) to the persons or classes of persons specified in Table 1.2; and
- b) within the area of operations specified in Table 1.3,

subject to the conditions imposed by or under the Act, the Regulation and Schedules A and B of this Licence.

S1.2 The non-potable water referred to in this section S1 may only be used for one or more of the following authorised purposes:

- a) industrial process water;
- b) cooling towers; and
- c) on-site reuse.

Table 1.1 Authorised persons

Kooragang Water Pty Ltd (ACN 609 789 808)

Table 1.2 Persons or classes of persons

Any person other than a Small Retail Customer.

Table 1.3 Area of operations

Newcastle City Council local government area.

S2 Activities authorised – drinking water supply

S2.1 This Licence authorises the Licensee and any authorised persons specified in Table 2.1 to supply drinking water:

- a) to the persons or classes of persons specified in Table 2.2; and
- b) within the area of operations specified in Table 2.3,

subject to the conditions imposed by or under the Act, the Regulation and Schedules A and B of this Licence.

Table 2.1 Authorised persons

Kooragang Water Pty Ltd (ACN 609 789 808)

Table 2.2 Persons or classes of persons

Any person other than a Small Retail Customer.

Table 2.3 Area of operations

Newcastle City Council local government area.

S3 Activities authorised – sewerage services
[Not applicable]

Table 3.1 Authorised persons

| *[Not Applicable]* |
| |

Table 3.2 Persons or classes of persons

| *[Not Applicable]* |
| |

Table 3.3 Area of operations

| *[Not Applicable]* |
| |

DRAFT

SCHEDULE A - SPECIAL MINISTERIALLY-IMPOSED LICENCE CONDITIONS FOR SUEZ WATER AND TREATMENT SOLUTIONS PTY LTD'S RETAIL SUPPLIER'S LICENCE

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

No conditions apply to this licence.

DRAFT

SCHEDULE B - STANDARD MINISTERIALLY-IMPOSED LICENCE CONDITIONS FOR LICENSED RETAIL SUPPLIERS UNDER THE ACT

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

B1 Ongoing capacity to operate

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

B2 Obtaining appropriate insurance

B2.1 *[Not applicable]*

B2.2 The Licensee must:

- a) on the date on which this Licence is granted for the activities authorised under this Licence:
 - i) hold insurance that is appropriate for the size and nature of the activities authorised under this Licence; and
 - ii) provide a copy of each certificate of currency of the insurance obtained to IPART; and
- b) within 6 months of the date on which this License is granted or by a later date specified by IPART (if any) demonstrate that the insurance held is appropriate for the size and nature of the activities authorised under this Licence by providing a report to IPART from an Insurance Expert that:
 - i) certifies that in the Insurance Expert's opinion, the type and level of the insurance held by the Licensee is appropriate for the size and nature of the activities authorised under the Licence; and
 - ii) is in the form prescribed by the Reporting Manual.

B2.3 *[Not applicable]*

B2.4 *[Not applicable]*

B2.5 *[Not applicable]*

B2.6 *[Not applicable]*

B3 Maintaining appropriate insurance

- B3.1 The Licensee must maintain insurance that is appropriate for the size and nature of the activities authorised under this Licence.
- B3.2 The Licensee must provide a copy of each certificate of currency of the insurance maintained by the Licensee to IPART in accordance with the Reporting Manual.
- B3.3 If there is to be a change in:

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

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

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

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

B4 Complying with NSW Health requirements

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

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

B5 Complying with Audit Guidelines from IPART

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

B6 Reporting in accordance with the Reporting Manual

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

B7 Reporting information in relation to the register of licences

B7.1 The Licensee must notify IPART, and provide IPART with details, of any change in relation to the following, in accordance with the Reporting Manual, within 14 days of the change:

- a) any licensed network operator or public water utility from whose water industry infrastructure the Licensee supplies water to its customers;
- b) any source from which the water handled by the water industry infrastructure referred to in clause B7.1(a) is derived;
- c) whether or not any of the Licensee's customers are Small Retail Customers; and

- d) any order under section 54 of the Act by which the Licensee is declared to be a retailer of last resort
- e) *[Not applicable]*
- f) *[Not applicable]*
- g) *[Not applicable]*

B8 Provision of copy of Plan

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

B9 Delineating responsibilities

- B9.1 If a code of conduct has not been established under clause 25 of the Regulation, the Licensee must establish a code of conduct (**Licensee's Code of Conduct**) in accordance with this clause B9.
- B9.2
- a) The Licensee's Code of Conduct must set out the respective responsibilities of:
 - i) the Licensee; and
 - ii) each licensed network operator, licensed retail supplier and/or public water utility that:
 - A) supplies water, provides sewerage services by means of; or
 - B) constructs, maintains or operates, any Specified Water Industry Infrastructure.
 - b) The Licensee's Code of Conduct must set out the respective responsibilities of the entities specified in clause B9.2(a) by, at a minimum, providing for:
 - i) who is responsible for repairing, replacing or maintaining any pipes, pumps, valves or storages or other infrastructure that is Specified Water Industry Infrastructure;
 - ii) who is responsible for water quality;
 - iii) who is liable in the event of the unavailability of water;
 - iv) who is liable in the event of failure of the Specified Water Industry Infrastructure;
 - v) the fees and charges payable in respect of the use of the Specified Water Industry Infrastructure; and
 - vi) who is responsible for handling customer complaints.
- B9.3 *[Not applicable]*
- B9.4 Within 6 months of the date on which this Licence is granted or by a later date specified by IPART (if any), the Licensee's Code of Conduct must be agreed in writing between the Licensee and the other licensed network operators, licensed retail suppliers and/or public water utilities referred to in clause B9.2.

B9.5 The Licensee must not contravene the Licensee's Code of Conduct to the extent that it makes the Licensee responsible or liable for the matters set out in it.

B10 Notification of changes to Authorised Person

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

B11 Infrastructure to be used

B11.1 The Licensee must only source and supply water by means of water industry infrastructure maintained and operated by or on behalf of a licensed network operator or public water utility.

B11.2 *[Not applicable]*

B12 *[Not applicable]*

INTERPRETATION AND DEFINITIONS

1. Interpretation

1.1 In this Licence, unless the context requires otherwise:

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

2. Definitions

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

2.2 In this Licence:

Act	means the <i>Water Industry Competition Act 2006</i> (NSW).
Audit Guidelines	means the document entitled “Audit Guideline – Water Industry Competition Act 2006” which is prepared by IPART and is available on IPART’s website at www.ipart.nsw.gov.au , and any other guidelines issued by IPART in relation to audits under the Act.
Authorised Person	means the authorised persons specified in, as applicable: <ul style="list-style-type: none">a) clause S1, Table 1.1;b) clause S2, Table 2.1;c) clause S3, Table 3.1.
Insurance Expert	means an insurance broker which holds an Australian financial services licence under Part 7.6 of the <i>Corporations Act 2001</i> (Cth) that authorises the broker to provide financial product advice for, and deal in, contracts of insurance within the meaning of Chapter 7 of that Act.
IPART	means the Independent Pricing and Regulatory Tribunal of New South Wales established under the <i>Independent Pricing and Regulatory Tribunal Act</i>

1992 (NSW).

Licence	means this retail supplier's licence granted under section 10 of the Act.
Licensee	means SUEZ Water and Treatment Solutions Pty Ltd (ACN 051 950 068).
Licensee's Code of Conduct	has the meaning given in Schedule B, clause B9.1.
Minister	means the Minister responsible for Part 2 of the Act.
NSW Health	means the Water Unit of NSW Ministry of Health and any of the local health districts as defined by the NSW Ministry of Health.
Plan	means the retail supply management plan that the Licensee is required to prepare under the Regulation.
Regulation	means the <i>Water Industry Competition (General) Regulation 2008</i> (NSW).
Reporting Manual	means the document entitled "Retail Supplier's Reporting Manual," which is prepared by IPART and is available on IPART's website at www.ipart.nsw.gov.au .
Small Retail Customer	has the meaning given to that term in the Regulation.
Specified Water Industry Infrastructure	means water industry infrastructure through which the non-potable water, drinking water and/or sewerage services under this Licence is supplied.