

Assessment of Wyee Water Pty Ltd's network operator's licence application

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

Water - Report to the Minister
March 2014

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1 Summary

The Independent Pricing and Regulatory Tribunal of NSW (IPART) received and assessed the network operator's licence application from Wye Water Pty Ltd (WW) under the *Water Industry Competition Act 2006* (NSW) (the Act).

WW proposes to construct, operate and maintain a drinking water supply network, a sewerage network, water recycling facility and recycled water network at a new residential development at Wye. The scheme infrastructure is proposed to be constructed in a number of stages:

1. Stage 1: to include drinking water storage tanks, sewage storage tanks, and the first stage of sewage treatment infrastructure, including a Membrane Bioreactor (MBR), ancillary plant and equipment and water recycling plant building.
2. Stage 1A: network reticulation pipework for the development site, to supply drinking water, provide sewerage services and to reticulate recycled water, when available.
3. Stage 2: Installation of remaining plant and equipment for sewage treatment, to store and supply recycled water, and treat and dispose of biosolids.

WW's licence application only covers the scope of work outlined in Stage 1. Additional construction works, including network reticulation, are contingent on the progress of the residential development. The remaining work will require variations to this licence, if granted.

We are satisfied that WW has satisfactorily met the licensing criteria under section 10 of the Act, having regard to the licence application, submissions made, and the licensing principles under section 7 of the Act.

A key issue from the stakeholder submissions was clarification of development consent for the treatment plant works, given the requirements of the State Environmental Planning Policy (Infrastructure) 2007 (ISEPP) and Part 5 of the *Environmental Planning and Assessment Act (1979)* (EP&A Act). Advice from the Department of Planning and Infrastructure (DP&I) indicated that DP&I or the local council would not be the determining authority for the sewerage and recycle water component of the application. Rather, it would be the Minister for Finance and Services, as the Minister administering WICA, who would be the determining authority in deciding whether to grant a WICA licence.

WW has supplied a Review of Environmental Factors (REF) to address requirements under Part 5 of the EP&A Act. We engaged NSW Public Works to assist us in assessing the REF. Based on this assessment, we are satisfied that the proposed activity does not present a significant risk of harm to the environment, and is consistent with Clause 7 of the *Water Industry Competition Regulation (General) 2008* (the Regulation) and Clause 7 of the Act.¹ We also had regard to the matters specified in section 111 of the EP&A Act and recommend that a licence be granted and that no additional environmental conditions are deemed necessary to grant a licence to the applicant.

We recommend that the Minister for Finance and Services (the Minister) grants a network operator's licence to Wyee Water Pty Ltd, subject to the conditions as set out in licence number 14_026.

2 Background

We received WW's amended licence application for a network operator's licence on 10th September 2013.

In accordance with the Act, IPART must consider the licence application and any stakeholder submissions, and provide a report on the application to the Minister. The Minister is required to determine an application for a licence by granting the licence or refusing the application, and determining conditions to which the licence (if granted) should be subject.²

This report summarises our analysis, issues raised by stakeholders through their submissions and our recommendation to grant the licence. It also contains proposed licence conditions to which the applicant should be subject.

The applicant corporation, WW, is a subsidiary company of Flow Systems Pty Ltd (Flow Systems), previously Water Factory Pty Ltd. WW has no direct employees and relies on the support of Flow Systems for operation.

Flow Systems currently operates three other licensed water networks through its subsidiary companies, at Discovery Point, Pitt Town and Central Park. Each network includes the supply and reticulation of recycled water.

¹ *Water Industry Competition Act 2006* (NSW), section 7 notes that in considering whether or not to grant a licence, regard is to be had of public health, the environment, public safety and consumers generally.

Water Industry Competition (General) Regulation 2008, section 7 notes the requirement for the Minister to be satisfied that the applicant can carry out the activities authorised in a manner that does not present a significant risk of harm to the environment.

² *Water Industry Competition Act 2006* (NSW), section 10(1).

WW proposes to construct, maintain and operate water industry infrastructure within the Wyee development, which includes:

- ▼ drinking water supply (accessed from Hunter Water Corporation (HWC))
- ▼ sewerage services
- ▼ a non-potable water treatment plant, and
- ▼ the reticulation of recycled water.

The Wyee site is owned by Wyee Development Fund (WDF), a development company administered by Blaxland Property Pty Ltd, who plan to develop the site in a staged pattern of residential construction. In Stage 1 of the development works, WW proposes to:

- ▼ build storage tanks for drinking water for the new development
- ▼ build storage tanks for sewage from the new development for offsite disposal, and
- ▼ build the preliminary infrastructure necessary to treat sewage and supply recycled water to the entire development.

In Stage 1A, WW will build the network reticulation infrastructure to supply drinking water, collect sewage, and distribute recycled water to the development. In addition, the developer will be required to build a new delivery pipeline to transfer drinking water from HWC to the new storage tanks onsite, as well as reticulation pipework to supply drinking water and remove sewage from the development.

Construction of the network reticulation infrastructure (drinking water, recycled water and sewerage systems) will be undertaken in a staged sequence to meet sales demand. However, due to the timing of funding requirements under the Federal Government's Building Better Regional Cities program, the water recycling plant (Stage 1) will be constructed by WW ahead of any reticulation works necessary to complete the development works. As such, the network reticulation does not form part of this licence application.

In Stage 2, WW has planned to complete installation of plant and equipment to allow full treatment of sewage effluent collected from the development to a standard suitable for the following purposes:

- ▼ toilet flushing
- ▼ clothes washing
- ▼ garden irrigation (unrestricted)
- ▼ general wash down (connection points for hoses)
- ▼ car washing
- ▼ water features (landscape architecture).

Stages 1 and 1A will service the initial 33 lots, and Stage 2 up to 1000 lots, depending on demand. Construction of the additional works necessary for Stages 1A and 2 require variations to the network licence, if granted.

At this stage, the developer has no agreement in place with HWC to offer an alternative connection point for drinking water and sewerage services to HWC assets. All recycled water is expected to be reused or irrigated on site. Drinking water will be sourced from HWC and supplied through a purpose-built supply pipeline to the site. Sewage will initially be trucked offsite for disposal until the Stage 2 treatment plant is licensed and operational. Biosolids and waste from the treatment process will be trucked offsite for disposal. Recycled water will all be used onsite for irrigation and residential use until the development reaches a point where over 700 of the maximum 1000 lots are completed. Alternative uses of the excess recycled water would then need to be found. However, this scenario is expected to be over 10 years away and will be subject to further consideration as part of a future licence variation.

The applicant has provided an REF in support of activities which are the subject of this application. Under the provisions of ISEPP,³ the facility does not require development consent under Part 4 of the EP&A Act by a person licensed under WICA. However, Part 5 of the EP&A Act requires that consideration be given by the determining authority to matters that might affect the environment.⁴ In this case, the Minister responsible for WICA is the determining authority.

3 Stakeholder consultation and submissions

On 26 September and 10 October 2013, 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 Primary Industries)
- ▼ Minister administering the *Protection of the Environment Operations Act 1997* (NSW) (Minister for the Environment)
- ▼ Minister administering the *Environmental Planning and Assessment Act 1979* (NSW) (Minister for Planning and Infrastructure).⁵

We also provided a copy of the licence application to you as the Minister administering the Act, at the same time.

³ *State Environmental Planning Policy (Infrastructure) 2007*, Clause 106 .

⁴ *Environmental Planning and Assessment Act 1979*, Section 111.

⁵ *Water Industry Competition Act 2006*, section 9(1)(b).

The closing date for the submissions was 23 October 2013. We received submissions from:

- ▼ The Minister for Primary Industries – who noted that no water access licence or water supply work approval is required unless construction disturbs the nearby creek.
- ▼ The Environment Protection Authority (EPA) – which indicated WW would not require an Environment Protection Licence, and there were no significant areas of concern in the licence application.
- ▼ The NSW Ministry of Health (NSW Health) – which supported the licence application and requested that they be involved at a later stage. Further details are provided in Section 4.1.5.
- ▼ The Department of Planning and Infrastructure (DP&I) – which raised no objection to the application. DP&I noted that the *State Environmental Planning Policy (Infrastructure) 2007* permits the works under the application (sewage treatment and water recycling works) to proceed without consent under Part 4 of the EP&A Act.⁶

These submissions are available on our website.

HWC was notified of the licence application. It was supportive of the proposed scheme and the licence application. HWC noted that it does not provide or intend to provide competing services or recycled water in Wyee. It has indicated that a drinking water supply is available to the development and WW is progressing negotiations with HWC to finalise quantities and contracts for supply.

We also called for submissions on the application from the public.⁷ We advertised for public submissions in the Sydney Morning Herald, Newcastle Herald and Daily Telegraph on 25 September 2013. Submissions closed on 23 October 2013. No public submissions were received.

⁶ The developer has not made any application for additional water infrastructure works at this time. A development consent under Part 4 of the EP&A Act will be required for the drinking water supply pipeline and network reticulation works, as well as a variation to any licence granted for the scheme, as they are not exempt under ISEPP.

⁷ *Water Industry Competition Act 2006*, section 9(1)(c).

4 Assessment of application

This section of the report contains our assessment of WW's licence application and our recommendations. To assess the adequacy of the applicant's capability as a network operator, we conducted our own analysis on the information that WW provided in its licence application, stakeholder submissions, specialist consultant's findings, and additional information submitted by WW through subsequent requests.

Our assessment is based on each of the licensing criteria and principles outlined in the Act. The Minister may not grant the licence unless satisfied of certain licensing criteria, namely that the applicant:

- ▼ is not a disqualified corporation, or a related entity of a disqualified corporation (ie, meets the 'fit and proper' criteria)
- ▼ has, and will continue to have, the technical, financial and organisational capacity to carry out the activities to be authorised by the licence
- ▼ has the capacity to carry out its activities in a manner that does not present a risk to public health or a significant risk of harm to the environment
- ▼ has made, and will continue to maintain, appropriate insurance arrangements
- ▼ in the case of a licence to supply water, will supply sufficient quantities of water that have not been obtained from a public water utility
- ▼ such matters as required by the regulations
- ▼ such other matters as the Minister considers relevant, having regard to the public interest.⁸

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

- ▼ the protection of public health, the environment, public safety and consumers generally
- ▼ the encouragement of competition in the supply of water and the provision of sewerage services
- ▼ the ensuring of sustainability of water resources
- ▼ the promotion of production and use of recycled water
- ▼ the promotion of policies set out in any prescribed water policy document
- ▼ the potential for adverse financial implications for small retail customers generally arising from the activities proposed to be covered by the licence

⁸ *Water Industry Competition Act 2006* (NSW), sections 10(3) and (4).

- ▼ the promotion of the equitable sharing among participants in the drinking water market of the costs of the water industry infrastructure that significantly contributes to the water security.⁹

4.1 Licensing criteria

4.1.1 Disqualified corporation

Wye Water Pty Ltd is not a disqualified corporation. Its Director and CEO are not disqualified individuals.

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

- ▼ Results of the ASIC and ITSA searches provided in the Dun & Bradstreet report that we have obtained, confirming the above.
- ▼ The statutory declaration made by the Managing Director and Chief Operating Officer of WW, stating that neither WW, nor any director or person concerned in the management of WW, is or would be a disqualified corporation or disqualified individual within the meaning of the Act.
- ▼ Results of our search of the *Water Industry Competition Act 2006* (NSW) licence database,¹⁰ confirming the above.

4.1.2 Technical capacity

We are satisfied that Wye Water Pty Ltd has adequate technical capacity to construct, operate, and maintain water industry infrastructure.

We have reached this finding after reviewing:

- ▼ the reports and plans that Flow Systems developed for Discovery Point and Pitt Town projects, which it operates
- ▼ the results of detailed audits carried out by IPART's accredited auditors on Flow Systems operational schemes eg, Pitt Town
- ▼ WW's preliminary risk assessment and design of its scheme
- ▼ Flow Systems Pty Ltd's previous technical experience (within Australia), evident from a review of the CVs of specific personnel nominated for the project in the application.

WW is a wholly owned subsidiary of Flow Systems Pty Ltd (formerly Water Factory Company Pty Ltd). WW has no direct employees, and will rely on Flow Systems for resourcing and business support.

⁹ *Water Industry Competition Act 2006* (NSW), section 7.

¹⁰ There are currently no disqualified corporations or individuals on the register pursuant to the *Water Industry Competition Act 2006*, sections 16(e) and 16(f).

Discovery Point Water Factory and Pitt Town Water Factory are both subsidiary companies of Flow Systems, and operate similarly to WW. Each of the entities and schemes are managed by the same Flow Systems staff.

We conclude that WW has the required technical capacity to be granted a network operator's licence for this scheme, subject to Flow Systems being specified as an authorised person in the licence. We recommend that the standard Ministerially imposed licence conditions should apply, which includes that the licensee must have the technical capacity to carry out the activities authorised by the licence.

4.1.3 Financial capacity

We are satisfied that Wyee Water Pty Ltd has adequate financial capacity to construct, operate and maintain water industry infrastructure.

We engaged an external financial consultant, Vincents Chartered Accountants (Vincents), to assess the financial capacity of the applicant. Since WW is a newly formed subsidiary of Flow Systems, we asked Vincents to review both companies.

In summary, Vincents reported that it was satisfied that Flow Systems adequately demonstrated its ongoing financial capacity to maintain business operations. Vincents noted that WW will be financially supported by Flow Systems, who in turn, have the backing of Brookfield Multiplex as majority shareholder, following a capital raising.

We would like to emphasise that a financial assessment only represents the applicant's financial capacity at the time the assessment is completed. Our recommendation to grant WW a licence should not be viewed as endorsement of the future viability of the corporation. The assessment is based on a combination of information sources, none of which are to be regarded as individually determinative. This assessment is done for our own purpose and for the Minister's purposes in assessing the applicant's application. The conclusion is not to be relied upon for any other purpose by any other person.

We recommend that the standard Ministerially imposed licence conditions should apply, which includes that the licensee must have the financial capacity to carry out the activities authorised by the licence.

4.1.4 Organisational capacity

We are satisfied that Wyee Water Pty Ltd has adequate organisational capacity (current and ongoing) to construct, operate and maintain water industry infrastructure in a manner that would protect public health and the environment.

Our analysis showed that, through its relationship with Flow Systems Pty Ltd, WW has:

- ▼ previous experience (within Australia) in the water industry, as shown by the biographies of its key personnel (provided in the application)
- ▼ an appropriate organisational structure to manage its nominated third parties to deliver the proposed work, based on contractual arrangements and agreements.

As previously mentioned, WW relies on its parent company, Flow Systems, for business support.

We recommend that the standard Ministerially imposed licence conditions should apply, including that the licensee must have the organisational capacity to carry out the activities authorised by the licence.

4.1.5 Public health

We are satisfied that Wyee Water Pty Ltd is capable of constructing, operating and maintaining water industry in a manner that protects public health

Our analysis showed that WW, through its relationship with Flow Systems, has:

- ▼ demonstrated previous experience (within Australia) in the water industry and sufficient technical and organisational capacities to satisfactorily operate and maintain the proposed system
- ▼ demonstrated sufficient technical capacity to design and construct the proposed water industry infrastructure to minimise risks to public health
- ▼ demonstrated technical capacity to analyse and manage hazards from source to end use, through the risk management plan it provided.

We have also considered NSW Health's submission on WW's capacity to protect public health.

NSW Health supports the licence application, and requested that it be consulted in the following later stages of the regulatory process:

- ▼ during a technology assessment (if completed)
- ▼ during development of the final drinking water and recycled water management plans, specifically with regard to incident notification and management procedures, and
- ▼ following initial audit, prior to commercial operation of the scheme, to ensure all relevant health matters have been addressed.

NSW Health also requested that stormwater management be incorporated in the management plans. However, this is outside the scope of this licence review as no stormwater is to be collected or recycled through the treatment plant. In addition, NSW Health requested a mosquito risk assessment and management plan. This request was based on an assumption that stormwater would be collected and recycled, and is therefore not required.

We recommend that the standard Ministerially imposed licence conditions should apply, including that the licensee must comply with any requirements of NSW Health that we agree to, and that we notify the licensee about, in writing.

4.1.6 Environment

We are satisfied that the proposed activities of Wyee Water Pty Ltd as a network operator at the Wyee development will not present a significant risk of harm to the environment.

WW, in conjunction with Flow Systems, has:

- ▼ Demonstrated previous experience (within Australia) in preparing environmental impact assessments and implementing environmental impact mitigation measures for the construction of recycled water and sewerage infrastructure in urban areas.
- ▼ Demonstrated capacity to identify and manage environmental risks. WW's preliminary risk assessment outlined the controls for managing a number of environmental risks. We will audit the adequacy of these controls prior to WW commencing commercial operation of the scheme.
- ▼ Demonstrated understanding of regulatory approval requirements, as confirmed by our own assessment and advice from the Department of Planning and Industry (DP&I). The developer (WDF) has concurrently obtained an early works development approval under Part 4 of the EP&A Act from Lake Macquarie City Council to begin site preparation works.

- ▼ WW has prepared a Review of Environmental Factors (REF). We have assessed this report assisted by an independent expert (Department of Public Works, DPW). As a result of this review, the REF was slightly amended. DPW subsequently suggested that more detail concerning water quality targets, management of chemicals and dangerous goods, biosolid management and disposal, and detailed process design should also be addressed as part of the overall management of the scheme. We note that this information was identified and addressed in the preliminary risk assessment carried out by the applicant and supplied in the licence application. In addition, these items will be covered in greater detail in WW's Infrastructure and Water Quality Management plans, which will be audited before approval to operate is granted. We have considered the environmental assessment prepared by the proponent as required under Part 5 of the EP&A Act. Having regard for the REF and the matters specified in section 111, we recommend that a licence be granted to WW. We also consider that the proposed activities of WW covered by the network operator's licence do not present a significant risk of harm to the environment, and are consistent with Clause 7 of the Regulation and Section 7 of the Act.

We have limited the area of operations identified within the licence to the area covered by the treatment plant only. At this stage, we do not recommend the inclusion of any specific licence requirements related to the environment.

4.1.7 Insurance

We are satisfied that Wye Water Pty Ltd has made, and will continue to maintain, appropriate insurance arrangements.

Our analysis showed that WW has:

- ▼ Demonstrated appropriate insurance coverage in the areas of professional indemnity, public liability, workers compensation and product liability, as shown in its insurance certificates in its licence application.

We recommend that the standard Ministerially imposed licence conditions should apply, including the requirement that the licensee must obtain and maintain appropriate insurance, as certified by an independent insurance expert.

4.1.8 Additional public interest considerations

No additional matters were raised with regard to public interest during the stakeholder consultation process. We support the Wye Water development's vision to be a sustainable development and the implementation of initiatives such as replacing drinking water with non-potable water for a number of end uses.

4.2 Licensing principles

We are satisfied that granting a network operator's licence to Wyee Water Pty Ltd is consistent with the licensing principles.

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

- ▼ **Protection of public health, environment, public safety and consumers generally** - We consider that WW has the technical capacity and experience to undertake the activities in a way that will manage risks, subject to Flow Systems being named as an authorised person in the licence. The drinking water supply through Hunter Water is subject to rigorous monitoring. Recycled water supply and reticulation has significant redundancy in storage and supply, as well as equipment and power backup. Sewage management is also governed by significant redundancy in storage capacity, as well as equipment and power backup. If the overall scheme were to fail, there are no Operator of Last Resort provisions in place, however drinking water supply can be sourced from HWC, and sewage can be trucked offsite for disposal in emergency situations. We also note that the Government is currently reviewing the last resort provisions within the Act.
- ▼ **Encouragement of competition** - The scheme proposes to provide sewerage services and supply non-potable water to individual customers within the Wyee development. Historically, Hunter Water had a monopoly on sewerage services and drinking water supply in the Newcastle and Hunter regions. This project will enable a new entity to provide drinking water, sewerage services and non-potable water to a discrete development, thus encouraging competition in the provision of these services.
- ▼ **Ensuring sustainability of water resources** - Non-potable water will be sourced from sewage that would have otherwise been treated and discharged to the environment. It will replace drinking water for toilet flushing, cold water clothes washing, irrigation, car washing and general wash-down water.
- ▼ **Promotion of production and use of recycled water** - The supply of non-potable water to the Wyee development promotes the use of recycled water as a substitute for drinking water.
- ▼ **Promotion of policies set out in any prescribed water policy document** - The supply of non-potable water by WW to the Wyee development is consistent with the objectives of the NSW Metropolitan Water Plan.
- ▼ **Potential for adverse financial implications for small retail customers generally arising from the activities proposed to be covered by the licence** - This is not applicable for a network operator's licence, but it will be considered in any future retail licence application by the applicant or its parent company.

- ▼ **Promotion of equitable sharing among participants in the drinking water market of the costs of water industry infrastructure that significantly contributes to water security** – Not applicable. The State Government has not imposed equitable sharing requirements for water industry infrastructure within the Hunter Water area of operations. It only applies in the Sydney Water area of operations.

4.3 Additional matters considered

In assessing the licence application, we also considered the matters outlined below.

4.3.1 Monopoly supplier

We considered that Wyee Water Pty Ltd should not be declared as a monopoly supplier.

Under section 51 of the Act, 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, area and class of customers. Such a declaration would result in the licensee being subject to pricing regulation.

For this type of scheme, we consider that this matter is better considered as part of a retail supplier's licence application or variation (see next section). We therefore propose that consideration of this issue is delayed until such an application is lodged.

4.3.2 Retail supply

We have not received an application for a retail supplier's licence to supply customers connected to WW's networks. Flow Systems currently holds a retail supplier's licence covering its operations in Pitt Town and Central Park. We understand that Flow Systems intends to apply for a variation to this licence in the future to include the WW network. We will assess all relevant retail licensing issues at that time.

5 Recommendations

We are satisfied that Wyee Water Pty Ltd has satisfactorily met the licensing criteria under section 10 of the Act, having regard to the licence application, submissions made, and the licensing principles under section 7 of the Act.

We recommend that the Minister grants a network operator's licence to Wyee Water Pty Ltd, subject to the conditions as set out in licence number 14_026.

We consider that Wyee Water Pty Ltd should not be declared a monopoly supplier.

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.¹¹

The Minister is required to provide us with a notice of the decision and the reasons for the decision on making a decision whether or not to grant the licence.¹² We will then make the information in the notice available to the public on our website, in accordance with the requirements of the Act.¹³

¹¹ *Water Industry Competition Act 2006*, section 10(2).

¹² *Water Industry Competition Act 2006*, section 10(5).

¹³ *Water Industry Competition Act 2006*, section 10(6).