

# **Assessment of Green Square Water's network operator's licence application**

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

**Water - Report to the Minister**  
August 2015



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ISBN 978-1-925340-09-9

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## 1 Summary

**We recommend that the Minister grants a network operator's licence to Green Square Water Pty Ltd (GSW), to authorise GSW to construct, operate and maintain a recycled water (non-potable) treatment plant and reticulation network<sup>1</sup>, subject to the conditions as set out in licence number 15\_031.**

GSW proposes to construct, operate and maintain water industry infrastructure for the purpose of supplying non-potable water to a proposed new residential development called Green Square Town Centre, located in the suburbs of Zetland and Alexandria in Sydney.<sup>2</sup>

The scheme proposes to collect and treat stormwater from the Shea's Creek stormwater culvert that runs through the development precinct of Green Square Town Centre, and supply non-potable water to the development. This recycled water will be used for non-potable uses such as toilet flushing, washing machines, cooling tower top-up, street cleaning, irrigation and water features within the Green Square Town Centre development area. The Green Square Town Centre proposal will service a population of 6,800 people and is the first stage of a Greater Green Square Urban Renewal Precinct being proposed by the City of Sydney Council, which is targeted to be servicing approximately 53,000 people by 2030.<sup>3</sup>

The stormwater channel will undergo an upgrade, as part of an agreed capital expenditure program between the City of Sydney Council (Council) and Sydney Water Corporation (Sydney Water). The works will include construction of a new culvert, incorporating a dedicated offtake structure to collect and divert stormwater to GSW's new treatment plant. Sydney Water will manage the construction of the stormwater channel upgrade works (including the offtake structure), with commissioning expected by 2018. GSW will construct, operate and maintain the rest of the works (treatment plant, collection, conveyance and reticulation pipework, storage tanks, pre-treatment facilities and pump station), under contract to Council.<sup>4</sup>

In assessing GSW'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.

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<sup>1</sup> 'Water industry infrastructure' as defined under the *Water Industry Competition Act 2006* (WIC Act).

<sup>2</sup> Green Square Water network licence application - 2 April 2014. Available at [http://www.ipart.nsw.gov.au/Home/Industries/Water/Private\\_Sector\\_Licensing\\_WICA/Green\\_Square\\_Water\\_Pty\\_Ltd](http://www.ipart.nsw.gov.au/Home/Industries/Water/Private_Sector_Licensing_WICA/Green_Square_Water_Pty_Ltd).

<sup>3</sup> *Green Square Vision*, at <http://www.greensq.com.au/green-square-vision>, accessed 6 August 2015.

<sup>4</sup> Green Square Water network licence application - 2 April 2014. Available at [http://www.ipart.nsw.gov.au/Home/Industries/Water/Private\\_Sector\\_Licensing\\_WICA/Green\\_Square\\_Water\\_Pty\\_Ltd](http://www.ipart.nsw.gov.au/Home/Industries/Water/Private_Sector_Licensing_WICA/Green_Square_Water_Pty_Ltd).

In addition to assessing the application against the licensing criteria and principles of the WIC Act, we also considered whether GSW's services should be declared monopoly services<sup>5</sup> and be subject to price regulation. We also considered whether the Minister should consider referring the matter to IPART for a pricing determination.<sup>6</sup>

The Minister must consider, but is not bound to accept, any advice or recommendation in this report in determining the licence application. The Minister may, if circumstances so require, seek further advice from us in relation to the licence application.<sup>7</sup>

## 2 Background

On 2 April 2014, we received GSW's licence application for a network operator's licence under the WIC Act to supply non-potable water to a proposed new residential development called Green Square Town Centre, located in the suburbs of Zetland and Waterloo in Sydney.

In accordance with the WIC Act, IPART must consider the licence application and any stakeholder submissions, and provide a report on the application to the Minister.<sup>8</sup> The Minister is required to determine an application for a licence by granting the licence or refusing the application,<sup>9</sup> and determining the conditions to which the licence (if granted) should be subject.<sup>10</sup>

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 subjected.

### 2.1 The applicant

GSW is a special-purpose utility, wholly owned by Flow Systems Pty Ltd (Flow Systems), and established for the GSW scheme. It has no employees and relies on the full support of Flow Systems to provide technical, financial and organisational capacity. Flow Systems is a privately owned company, held in majority ownership by Brookfield Water Holdings Pty Ltd. Flow Systems will be named on the network operator's licence as an Authorised Person.

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<sup>5</sup> WIC Act, section 51.

<sup>6</sup> WIC Act, section 52.

<sup>7</sup> WIC Act, section 10(2).

<sup>8</sup> WIC Act, section 9.

<sup>9</sup> WIC Act, section 10(1).

<sup>10</sup> WIC Act, section 13(1)(b).

Flow Systems currently owns at least nine subsidiary corporations, through which it constructs, operates, and maintains water industry networks under existing network operator's licences granted under the WIC Act. Through its subsidiaries, Flow Systems currently holds five network operator's licences, as outlined in Table 2.1. In addition, Flow Systems holds a retail supplier's licence (licence number 13\_001R).

**Table 2.1 Flow Systems' licensed schemes, under its subsidiaries**

Subsidiary	Scheme	Network operator's licence	Licensed for
Pitt Town Water	Pitt Town development, Pitt Town	10_014	Non-potable water Sewage treatment
Central Park Water	Central Park development, Sydney	12_022	Drinking water Non-potable water Sewage treatment
Discovery Point Water	Discovery Point development, Wolli Creek	13_025	Drinking water Non-potable water Sewage treatment
Wyee Water	Wyee residential development, Wyee, Lake Macquarie	14_026	Drinking water, Non-potable water, Sewage treatment
Huntlee Water	Huntlee residential development, North Rothbury, Hunter Valley	15_030	Drinking water supply only

## 2.2 The scheme

GSW proposes to construct, maintain and operate water industry infrastructure within the Green Square Town Centre development to provide a non-potable water supply for use in toilet flushing, washing machines, irrigation, street cleaning, water features and cooling towers.

The scheme involves the following processes:

- ▼ harvesting of stormwater from the Shea's Creek stormwater channel
- ▼ pre-treatment through a gross pollutant trap to remove coarse contaminants from the source water
- ▼ pumping the collected source water through a pump station and rising main to the treatment plant
- ▼ treatment of the collected source water using ultrafiltration membranes as the primary treatment process, followed by disinfection and chlorination prior to reuse as non-potable water within the Green Square Town Centre development, and
- ▼ reverse osmosis membranes will be used intermittently to provide a higher quality product when required, eg, cooling tower requirements.

Council will own the entire scheme infrastructure, including the stormwater connection point at the offtake structure. Council have entered into an agreement with Sydney Water regarding construction of the offtake structure and associated stormwater channel upgrade works. The stormwater culvert and offtake are expected to be operational in 2018. Until this time, potable water will be supplied through the reticulation network in lieu of recycled water. Sydney Water have provided support for this proposal and indicated that sufficient potable water is available in the identified supply main.<sup>11</sup>

The scheme will be primarily servicing small customers, through the supply of non-potable water to up to 20 high-rise residential and commercial buildings to be built within the precinct, servicing a population of approximately 6,800 people.<sup>12</sup>

Flow Systems is the parent company of GSW, and is named as an Authorised Person on the application. Flow Systems have made a separate application to vary its existing retail licence (licence number 13\_001R) to provide retail services to the Green Square Town Centre development. This application will be assessed separately.

Council has also been named as a third party on the application. Council will own the infrastructure, and allow GSW to operate and maintain it under contractual terms. Council is also the consent authority for the works, and will provide access to the ancillary infrastructure within the Green Square Town Centre scheme.

## 2.3 Planning approvals

Approval for the construction of the reticulation network infrastructure and the infrastructure associated with the stormwater offtake was obtained through a development consent obtained under Part 4 of the *Environmental Planning and Assessment Act 1979* (EP&A Act), approved by Council.<sup>13</sup> In addition, a Review of Environmental Factors (REF) was prepared for the water treatment plant and associated infrastructure. The REF was determined under Part 5 of the EP&A Act by Council as the determining authority.<sup>14</sup>

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<sup>11</sup> Letter to GSW, Sydney Water, 11 June 2014.

<sup>12</sup> *Green Square Vision*, at <http://www.greensq.com.au/green-square-vision>, accessed 6 August 2015.

<sup>13</sup> Refer Appendix 3 of Green Square Water's network licence application. Available at [http://www.ipart.nsw.gov.au/Home/Industries/Water/Private\\_Sector\\_Licensing\\_WICA/Green\\_Square\\_Water\\_Pty\\_Ltd](http://www.ipart.nsw.gov.au/Home/Industries/Water/Private_Sector_Licensing_WICA/Green_Square_Water_Pty_Ltd).

<sup>14</sup> We have confirmed that City of Sydney Council is a "determining authority" under Part 5 of the *Environmental Planning and Assessment Act 1979* (NSW) (section 110) because it is a public authority constituted under the *Local Government Act 1993*, and its approval is required for the construction of the facility.



### 3 Stakeholder consultation and submissions

On 7 May 2014, we provided the licence application to, and invited submissions from, the following Ministers and their relevant departments:<sup>15</sup>

- ▼ 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)<sup>16</sup>
- ▼ Minister administering the *Protection of the Environment Operations Act 1997* (NSW) (Minister for the Environment),<sup>17</sup> and
- ▼ Minister administering the *Environmental Planning and Assessment Act 1979* (NSW) (Minister for Planning and Infrastructure).<sup>18</sup>

We also provided a copy of the licence application to the Minister administering the WIC Act<sup>19</sup> at the same time.<sup>20</sup>

The closing date for the submissions was 4 June 2014. We received submissions from NSW Health, Environment Protection Authority (EPA), Department of Planning and Environment, and the then NSW Office of Water (now DPI Water). These submissions are available on our website. The issues raised in the submissions, and how these issues were addressed, are described below.

Both NSW Health and the EPA noted that GSW proposed to discharge the waste by-products of the treatment plant (wastewater produced during filter and membrane cleaning) back into the stormwater channel. The submissions noted the potential for this action to cause water pollution. GSW has confirmed that it will seek a Trade Waste Agreement with Sydney Water to discharge the treatment plant waste by-products to their sewerage network.

Sydney Water was notified of the licence application. They advised that:

- ▼ an overflow structure was located upstream of the proposed stormwater offtake structure, which could compromise raw water quality, and
- ▼ trade waste agreements were required to dispose of waste to their sewerage network.

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<sup>15</sup> WIC Act, section 9(1)(b).

<sup>16</sup> The Minister for Primary Industries was administering the *Water Management Act 2000* at the time of public consultation, the Minister for Lands and Water now administers this Act.

<sup>17</sup> Previously, the Hon Rob Stokes MP.

<sup>18</sup> Previously, the Hon Pru Goward, MP.

<sup>19</sup> Submitted to previous Minister for Natural Resources, Lands and Water, 5 May 2014.

<sup>20</sup> WIC Act, section 9(1)(a).

GSW advised that no adverse water quality data has been recorded to date from monitoring data obtained from the stormwater channel. If levels of faecal coliforms in the source water are higher than can be managed through normal operations of the treatment plant, then the operation of the treatment plant can be managed to reject poor quality source water and switch to either the stored reserves (which will provide no less than 24 hours supply during peak demand periods) or Sydney Water's potable water supply network as required.

As discussed above, GSW also advised that they would negotiate and enter into a Trade Waste Agreement with Sydney Water for discharge of the waste by-products of the treatment plant to their sewerage network.

The then NSW Office of Water (now DPI Water) provided advice that a water access licence or water supply work approval is not required for the extraction of stormwater from a Sydney Water stormwater drain, under current arrangements.

We also called for submissions on the application from the public.<sup>21</sup> We advertised in the Sydney Morning Herald and the Daily Telegraph on 7 May 2014 for public submissions. The closing date for submissions was 4 June 2014. No public submissions were received.

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

- ▼ Vincents Chartered Accountants to inform our financial assessment (see section 4.2.2), and
- ▼ the NSW Self Insurance Corporation (SICorp) to inform our assessment of appropriate insurance arrangements (see section 4.4).

## 4 Assessment of application

This section of the report contains our assessment of GSW's licence application and our recommendations. Our assessment considers each of the following requirements of the WIC Act:

- ▼ A licence must not be granted to:
  - a) a disqualified corporation, or
  - b) a corporation that is a related entity of a relevant disqualified corporation.<sup>22</sup>

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<sup>21</sup> WIC Act, section 9(1)(c).

<sup>22</sup> WIC Act, section 10(3)(b).

- ▼ A licence may not be granted unless the Minister is satisfied as to each of the following:
  - that the applicant has, and will continue to have, the capacity (including technical, financial and organisational capacity) to carry out the activities that the licence (if granted) would authorise
  - that the applicant has the capacity to carry out those activities in a manner that does not present a risk to public health
  - that the applicant has made, and will continue to maintain, appropriate arrangements with respect to insurance
  - in the case of an application for a licence to supply water, that, if such a licence is granted, sufficient quantities of water supplied by the licensee will have been obtained otherwise than from a public water utility
  - in the case of an application for a network operator's licence, that the applicant has the capacity to carry out the activities that the licence (if granted) would authorise in a manner that does not present a significant risk of harm to the environment, and
  - such other matters as the Minister considers relevant, having regard to the public interest.<sup>23</sup>
- ▼ In considering whether or not to grant the licence, and what conditions are to be imposed on such a licence, regard is to be had 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, and
  - 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.<sup>24</sup>

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<sup>23</sup> WIC Act, sections 10(3) and (4).

<sup>24</sup> WIC Act, section 7.

## 4.1 Disqualified corporation and related entity checks

**We consider that GSW is not a disqualified corporation. Its directors and CEO are not disqualified individuals. GSW is not a related entity of a relevant<sup>25</sup> disqualified corporation.**

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

- ▼ The statutory declaration made by the Managing Director and Chief Operating Officer, stating that:
  - neither GSW, nor any director or person concerned in the management of GSW is, or would be, a disqualified corporation or disqualified individual within the meaning of the Act, and
  - GSW 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 GSW regarding details of the:
  - trustees (past and current) of any trusts in relation to which the applicant is a beneficiary
  - current beneficiaries of any trusts in relation to which the applicant is a trustee
  - relevant related entities,<sup>26</sup> and
  - names of the Chief Financial Officer and Chief Executive Officer for each of the applicant's related entities.
- ▼ Results of the ASIC and Dun & Bradstreet reports that we have obtained for GSW, and its eleven relevant related corporations, confirmed that these companies are not disqualified nor are their directors or persons concerned in the management, disqualified individuals.
- ▼ Results of our search of the WIC Act licence register confirmed that GSW and its relevant related entities are not listed on the register as a disqualified corporation<sup>27</sup>.

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<sup>25</sup> A related entity that would have a direct or indirect interest in, or influence on, the carrying out of the activities that the licence authorises. WIC Act, section 10(3)(b).

<sup>26</sup> GSW identified the following relevant related entities: Flow Systems Pty Ltd, Brookfield Water Holdings Pty Ltd, Brookfield Utilities (Australia) Pty Ltd, BPIH Pty Ltd, Cooranbong Water Pty Ltd, Huntlee Water Pty Ltd, Central Park Water Pty Ltd, Discovery Point Water Pty Ltd, Pitt Town Water Pty Ltd, Wyee Water Pty Ltd, Flow Systems Operations Pty Ltd.

<sup>27</sup> There are currently no disqualified corporations or individuals on the register pursuant to the WIC Act, section 16(e) and 16(f).

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

GSW has applied for a network operator's licence to supply non-potable water to a new residential and development precinct being developed by the City of Sydney Council at Green Square in Sydney. The non-potable water is being sourced through the collection and treatment of stormwater.

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

### 4.2.1 Technical capacity

**We are satisfied that GSW, supported by Flow Systems, has the technical capacity to construct, operate, and maintain all of the water industry infrastructure identified in its application.**

GSW relies on the full support of Flow Systems to provide technical capacity. Our analysis included a review of GSW's:

- ▼ Corporate Services Agreement (CSA) and Deed of Guarantee and Indemnity (Deed). Flow Systems commitment to providing technical support to GSW through its CSA and Deed.<sup>28</sup> We are satisfied that the CSA, dated 9 March 2015, adequately commits Flow Systems to provide the required technical support to GSW. Through previous operational audits, Flow Systems has demonstrated that the obligations of similar Corporate Service Agreements have been met with respect to Pitt Town Water Factory, Central Park Water Factory and Discovery Point Water.
- ▼ Reports, plans and procedures that Flow Systems<sup>29</sup> prepared for similar projects. These documents demonstrated their technical understanding of operation and maintenance of drinking water and recycled water reticulation networks, sewerage reticulation systems and recycled water treatment plants. Flow Systems operates Discovery Point Water Factory and Central Park Water, which both have drinking water, non-potable water and sewage infrastructure components. It also operates Pitt Town Water Factory, which manages recycled water and sewage infrastructure. Recycled water for these three existing schemes is for non-potable uses.
- ▼ The audit reports for the licence plan audits carried out for Pitt Town, Discovery Point and Central Park schemes, and the Pitt Town operational audit. The audit reports do not identify any significant non-compliances, which demonstrates Flow Systems' capacity to safely and reliably construct, operate and maintain infrastructure.

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<sup>28</sup> A Deed of Variation has been executed for both the CSA and the Deed of Guarantee and Indemnity to cover the proposed drinking water services.

<sup>29</sup> Flow Systems will be undertaking these activities on behalf of Green Square Water.

- ▼ GSW's preliminary risk assessment. This demonstrated technical capacity to understand and implement the *Australian Guidelines for Water Recycling*
- ▼ GSW's preliminary design of its potable, non-potable reticulation and sewerage networks, and treatment plant. The design demonstrates technical capacity to design, operate and maintain water industry infrastructure. GSW was able to provide a detailed breakdown of its peak and average water treatment and supply calculations
- ▼ Flow Systems' previous technical experience (within Australia), which we assessed by reviewing schemes which are currently being operated by Flow Systems, including the Pitt Town, Discovery Point and Central Park schemes. We consider Flow Systems' previous technical experience is appropriate to provide sufficient technical capacity to GSW.
- ▼ Flow Systems' human resources capability, which we assessed from the position descriptions and professional experience of specific personnel nominated to the project in the application. We consider the personnel and positions nominated by Flow Systems are appropriate to provide technical capacity to GSW.

GSW (with Flow Systems as an Authorised Person) is responsible for design, operation and maintenance of all non-potable water industry infrastructure within the scheme, as well as construction of the recycled water treatment plant.

GSW will rely on Council to manage the construction of the remaining water and sewerage reticulation infrastructure, the stormwater channel upgrade (through Council's agreements with Sydney Water), and connection to Sydney Water's potable water supply main. The non-potable water infrastructure will be operated and maintained by Flow Systems under contract to Council.

We received no submission regarding GSW's technical capacity to operate and maintain a recycled water treatment plant, and reticulation network.

We consider that GSW has the required technical capacity to be granted a network operator's licence for the works specified, subject to Flow Systems and the Council being specified as authorised persons in the licence.

We recommend that GSW should be subject to the following licence condition (see draft licence in Attachment A), in relation to technical 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 Network Operator's Reporting Manual.

Further, we recommend that GSW should be subject to the following special condition, in relation to technical capacity. This condition requires GSW to provide prior notification to IPART when the licensee proposes to modify any agreement in connection with the licence application, including the Deed and CSA:

A4.1 If a party to an Agreement proposes to:

- a) terminate the Agreement;
- b) novate the Agreement;
- c) assign or transfer any of its rights or obligations under the Agreement to any other person; or
- d) alter the Agreement in any way that materially reduces the Licensee's technical, financial or organisational capacity to carry out the activities authorised by this Licence,

the Licensee must provide IPART with written notice as soon as practicable, but no later than 3 months, before the time when the proposed action is to occur. The written notice must include details of how the service provided under the Agreement will be provided subsequent to the proposed termination, novation, assignment, transfer or alteration.

#### **4.2.2 Financial capacity**

**We are satisfied that GSW has the financial capacity to construct, operate and maintain all of the water industry infrastructure identified in its application.**

As mentioned previously, GSW relies on the full support of Flow Systems to provide financial capacity. In making our assessment of the applicant's financial capacity we have considered the following information:

- ▼ Flow Systems' summarised profit and loss statements
- ▼ Flow Systems' summarised balance sheets
- ▼ Flow Systems' summarised income tax returns
- ▼ Flow Systems' key financial ratios
- ▼ The Deed and CSA between GSW and Flow Systems, and
- ▼ GSW's cash flow projections for the scheme.

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

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

The Deed provides the financial guarantee for the subsidiary company, whilst the CSA provides the contractual arrangements between parent and subsidiary regarding the provision of services necessary to complete the works. The Deed has no cap on liability and no sunset date. Under the terms of the agreements, Flow Systems will ensure that GSW will perform and observe the guaranteed obligations necessary to meet any claim during the term and, if required, Flow Systems will perform or observe any guaranteed obligation or otherwise procure its performance. We are satisfied that the contractual agreements between parent and subsidiary were adequate to guarantee any and all liabilities incurred by GSW in carrying out its contractual obligations.

In terms of financial capacity, Vincents reported that Flow Systems has a low to medium risk of financial failure. In terms of financial viability of the project, Vincents considered the project low risk. Vincents considered that the Deed was satisfactory to meet the operational financial requirements of the project. Based on its assessment of Flow Systems and the scheme's projected cash flows, Vincents' considers that GSW does not require any additional conditions to ensure it maintains its financial capacity.<sup>30</sup>

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 GSW 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 received no submissions regarding GSW's financial capacity.

We consider that the information submitted by GSW and the outcome of the assessment conducted by Vincents demonstrates that GSW has the financial capacity to construct, operate and maintain water industry infrastructure to supply recycled water to the Green Square Town Centre development.

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<sup>30</sup> Vincents Chartered Accountants. *Forensic Accountant's Report in the matter of Water Industry Competition Act Financial Capacity Review in respect of the applicants Flow Systems Pty Ltd and Green Square Water Pty Ltd.*, 14 July 2015, pp 9-10, 35.



We recommend that GSW should be subject to the following licence condition (see draft licence in Attachment 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.

Further, we recommend that GSW should be subject to the following special condition, in relation to financial capacity, if a licence is granted, this condition requires GSW to provide prior notification to IPART when the licensee proposes to modify any agreement in connection with the licence application, including the Deed and CSA:

A4.1: If a party to an Agreement proposes to:

- a) terminate the Agreement;
- b) novate the Agreement;
- c) assign or transfer any of its rights or obligations under the Agreement to any other person; or
- d) alter the Agreement in any way that materially reduces the Licensee's technical, financial or organisational capacity to carry out the activities authorised by this Licence,

the Licensee must provide IPART with written notice as soon as practicable, but no later than 3 months, before the time when the proposed action is to occur. The written notice must include details of how the service provided under the Agreement will be provided subsequent to the proposed termination, novation, assignment, transfer or alteration.

#### **4.2.3 Organisational capacity**

**We are satisfied that GSW has the organisational capacity to construct, operate and maintain the water industry infrastructure identified in its application.**

Our analysis showed that, through its relationship with Flow Systems, GSW has demonstrated its organisational capacity to construct, operate and maintain water industry infrastructure at the Green Square Town Centre development by:

- ▼ providing evidence of its experience in providing similar services to other schemes, including Pitt Town, Central Park and Discovery Point
- ▼ having an appropriate organisational structure to manage its nominated third parties to deliver the proposed work based on their contractual arrangements and agreements

- ▼ outlining the experience of the personnel currently in the Managing Director, Chief Operating Officer, Executive Manager Project Delivery and Executive Manager Utility Operations roles, which matched that of the role descriptions
- ▼ having previous experience (within Australia) in the water industry and specific personnel nominated to the project, as shown by the CVs of its key personnel provided to us in its application form
- ▼ showing evidence of its capacity to negotiate utility service agreements with network operators, through its correspondence with Sydney Water, and
- ▼ having demonstrated that business risks have been identified and will be managed, through the risk assessment provided to us in its application form.

GSW relies on its parent company, Flow Systems, for business support. The CSA and the Deed demonstrate continual organisational support from Flow Systems.

We received no submission regarding GSW's organisational capacity.

We consider that the information submitted by GSW demonstrates that it has the organisational capacity to supply and reticulate recycled water to the Green Square development.

We recommend that GSW should be subject to the following licence condition (see draft licence in Attachment 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 Network Operator's Reporting Manual.

Further, we recommend that GSW should be subject to the following special condition, in relation to organisational capacity, if a licence is granted, this condition requires GSW to provide prior notification to IPART when the licensee proposes to modify any agreement in connection with the licence application, including the Deed and CSA:

A4.1: If a party to an Agreement proposes to:

- a) terminate the Agreement;
- b) novate the Agreement;
- c) assign or transfer any of its rights or obligations under the Agreement to any other person; or
- d) alter the Agreement in any way that materially reduces the Licensee's technical, financial or organisational capacity to carry out the activities authorised by this Licence,

the Licensee must provide IPART with written notice as soon as practicable, but no later than 3 months, before the time when the proposed action is to occur. The written notice must include details of how the service provided under the Agreement will be provided subsequent to the proposed termination, novation, assignment, transfer or alteration.

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

**We are satisfied that GSW has the capacity to construct, operate and maintain water industry infrastructure identified in the application in a manner that does not present a risk to public health.**

We assessed GSW's capacity to manage the following key risks to public health, posed by constructing, operating and maintaining water industry infrastructure in the Green Square Town Centre:

- ▼ **Water supply interruption:** Interruptions in supply of drinking water or non-potable water could potentially pose a risk to public health. GSW will connect to the Sydney Water supply main in Joynton Avenue, to establish a backup supply of potable water for the proposed non-potable water uses within the Green Square Town Centre development, as well as onsite storages, to minimise interruptions to customers. These storages will contain no less than 24 hours of supply.
- ▼ **Provide non-potable water quality fit for purpose:** GSW has demonstrated its capacity to treat and provide non-potable water to an appropriate quality given the proposed specific uses. We consider GSW's proposed non-potable water reticulation and recycled water treatment systems to be robust and consistent with the requirements of the *Australian Guidelines for Water Recycling*.
- ▼ **Potential for inappropriate water use:** GSW proposes to supply non-potable water to Flow Systems, who will then retail to customers at the Green Square Town Centre development. This could present a risk to public health if customers do not use non-potable water for the appropriate purposes. GSW has indicated that customers will be provided with guidance on appropriate use of non-potable water by Flow Systems and taps will be clearly marked as containing recycled water. We consider this is the responsibility of the retailer, and will be considering Flow Systems application for a variation to its retail supplier's licence to include the Green Square development in the coming weeks.

- ▼ **Potential for cross connections:** GSW has indicated technical controls to ensure the risks of cross connections are minimised. Such controls include lower pressure in the recycled water network relative to the drinking water distribution network, network pressure monitoring, colour coded and labelled pipes and marker tape in the recycled water distribution network. Further, GSW proposes to conduct quality assurance inspections to non-potable water connections prior to commercial operation and will follow a specific notification protocol in case of possible cross connection incidents. These measures are considered industry best-practice for minimising the risk of cross connections.

We reviewed GSW's preliminary risk assessment and we consider that GSW has demonstrated its capacity to identify and manage hazards and risks of supplying and using recycled water in the proposed scheme, to acceptable levels of risk, and will have in place reasonable control and mitigation measures.

We have also considered NSW Health's submission on GSW's capacity to carry out the activities to be authorised under the licence in a manner that would not present a risk to public health.

NSW Health supports the licence application, subject to the applicant addressing a number of issues,<sup>31</sup> including:

- ▼ Consultation with NSW Health during the risk assessments, the Technology Assessment stage (if undertaken), and before commercial production commences, to ensure all relevant health matters have been addressed.
- ▼ Involvement by NSW Health in the development of the final management plans, including incident notification and management procedures.

NSW Health has also requested further characterisation of the source water quality be undertaken. GSW has indicated that additional sampling has been undertaken, with further sampling and analysis planned during the operational approval stages. The analytical results confirmed the original modelling outcomes. Additional sampling results will be submitted to the auditor prior to commercial operation.

NSW Health noted that the planned discharge of filter waste should be to sewer, in agreement with Sydney Water and EPA. NSW Health also noted that connection to the potable water supply should be maintained to ensure continuity of supply for essential services when recycled water is not being produced at an appropriate volume or quality. GSW have agreed to negotiate with Sydney Water to develop a Trade Waste Agreement for discharge of waste products to their sewerage network, and to complete negotiation of an agreement for ongoing potable water backup supply to the scheme.

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<sup>31</sup> Submission from NSW Health, 16 June 2014. Available at [http://www.ipart.nsw.gov.au/Home/Industries/Water/Private\\_Sector\\_Licensing\\_WICA/Green\\_Square\\_Water\\_Pty\\_Ltd](http://www.ipart.nsw.gov.au/Home/Industries/Water/Private_Sector_Licensing_WICA/Green_Square_Water_Pty_Ltd).

We consider that the information submitted by GSW demonstrates that it has the capacity to supply and reticulate recycled water to the Green Square development, in a manner that does not present a risk to public health.

We recommend that GSW should be subject to the following licence condition (see draft licence in Attachment A), in relation to its capacity to protect public health, if a licence is granted:

- B4: 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.

#### **4.4 Appropriate arrangements with respect to insurance**

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

In making our assessment of GSW's insurance arrangements, we have considered GSW's Public and Products Liability Insurance, Professional Indemnity Insurance, Contract Works and Legal Liability, Business Liability, and Risk assessment and mitigation measures.

Both Flow Systems and GSW are nominated on the insurance policies.

We requested advice from SICorp on the appropriateness of GSW's insurance arrangements, with respect to the activities to be licensed.

As part of the review, SICorp examined the applicant's proposed scope of work, the risk assessment, insurance coverage in the areas of professional indemnity, public liability and product liability, as shown in the applicant's insurance certificates. SICorp also reviewed the product disclosure statements for each insurance certificate, and examined the financial rating of the various underwriters providing the insurance. The Deed and the CSA between Flow Systems and GSW were also provided to SICorp for review.

SICorp reviewed the insurance certificates and product disclosure statements in GSW's licence application. It concluded that sufficient insurance coverage has been demonstrated, in the area of professional indemnity, public liability, and product liability, subject to an additional requirement on the applicant to maintain professional indemnity insurance during the design phase of the infrastructure and for a minimum of six years following the completion of the design phase of the infrastructure.<sup>32</sup>

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<sup>32</sup> Email to IPART, Mr Wayne Chandler, SICorp, 13 February 2015.

Further, we intend to consult with SICorp in reviewing an Insurance Expert's report on the proposed insurance arrangements provided by GSW, prior to commercial operation of the scheme. Such a report would be required under our recommended conditions of the licence.

We received no submissions regarding GSW's insurance arrangements.

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

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

## **B2 Obtaining appropriate insurance**

B2.1: Before commencing to commercially operate the Specified Water Industry Infrastructure under this Licence, the Licensee must:

- a) obtain insurance that is appropriate for the size and nature of the activities authorised under this Licence;
- b) provide a copy of each certificate of currency of the insurance obtained to IPART; and
- c) demonstrate that the insurance obtained 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 obtained 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 Network Operator's 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 Network Operator's 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 Network Operator's 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.
- B3.5: The licensee must maintain professional indemnity insurance during the Design Phase and for a minimum period of 6 years from the date of the completion of the Design Phase.

#### **4.5 Capacity to carry out those activities in a manner that does not present a significant risk of harm to the environment**

**We are satisfied that GSW has the capacity to construct, operate and maintain water industry infrastructure to service the Green Square development in a manner that will not present a significant risk of harm to the environment.**

Our analysis shows that GSW, in conjunction with Flow Systems, has:

- ▼ Demonstrated capacity to comply with environmental regulations, through their previous experience (within Australia) in preparing environmental impact assessments and implementing mitigation measures for the construction of recycled water reticulation infrastructure and wastewater treatment infrastructure in urban and new release areas.
- ▼ Demonstrated capacity to identify and manage environmental risks from their site-specific environmental risk assessment and impact assessments. We will audit the adequacy of these controls prior to GSW 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 Environment (DPE).<sup>33</sup>

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<sup>33</sup> Council, as the owner of all of the site infrastructure, has already obtained a Part 4 approval under the EP&A Act for the network reticulation works, and has conducted an environmental assessment under Part 5 of the EP&A Act, for the wastewater treatment plant and associated infrastructure works.  
Refer Green Square network licence application - Supporting document - Appendix 3, pp 5-51, [http://www.ipart.nsw.gov.au/Home/Industries/Water/Private\\_Sector\\_Licensing\\_WICA/Green\\_Square\\_Water\\_Pty\\_Ltd](http://www.ipart.nsw.gov.au/Home/Industries/Water/Private_Sector_Licensing_WICA/Green_Square_Water_Pty_Ltd).

- ▼ Identified issues regarding the safe disposal of waste by-products to sewer under agreement with Sydney Water, and balancing the production of recycled water with end user demand to ensure that excess water is not extracted and treated unnecessarily.

We received two submissions regarding GSW's potential environmental impacts. NSW Health and the EPA noted that discharge of treatment by-products to the stormwater channel has the potential to cause water pollution. GSW agreed that it would seek a Trade Waste Agreement with Sydney Water for disposal of treatment by-products to their sewerage network.

We consider that the information submitted by GSW and the City of Sydney Council demonstrates that it has the capacity to carry out the construction, operation and maintenance of water industry infrastructure, in a manner that does not present a significant risk of harm to the environment.

We consider that an additional condition requiring GSW to negotiate with Sydney Water for Trade Waste Agreements would be a duplication of existing requirements under other regulatory frameworks because any disposal of waste will require an agreement with an organisation operating under a regulatory licence:

- ▼ for discharge of waste by-products to sewer, Sydney Water operates under a licence administered by IPART, or
- ▼ for discharge of waste to landfill, an operator must be licenced by the EPA.

We recommend that GSW should be subject to the following licence condition (see draft licence in Attachment A), in relation to its capacity to protect the environment, if a licence is granted:

A1.1: This Licence authorises the Licensee and any authorised persons specified in Table 1.1 to construct, maintain and operate the water industry infrastructure specified in Table 1.2:

- a) to the extent that such infrastructure:
  - i) as at the date of grant of this Licence, has been granted development consent under the EPA Act; or
  - ii) is exempt development under the EPA Act and may be carried out without development consent under section 76(3)(a) of the EPA Act; or
  - iii) is described in a review of environmental factors and has, as at the date of grant of this Licence, been assessed by the City of Sydney Council under Part 5 of the EPA Act,
- b) for the authorised purposes specified in Table 1.3; and
- c) within the area of operations specified in Table 1.4,



subject to the conditions imposed by or under the Act, the Regulation and this Licence.

## **4.6 Licensing principles**

We had regard to each of following licensing principles in making a recommendation as to whether or not the network operator'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 GSW's capacity to undertake activities to construct, operate and maintain non-potable water in a manner that does not present a risk to public health. As outlined in section 4.3 of this report, we assessed GSW's capacity to manage the key risks posed to public health by the activities to be licensed.

If the Minister grants a network operator's licence to GSW, we consider that public health will be protected in relation to the activities licensed.

### **4.6.2 Protection of the environment**

In having regard to protection of the environment, we considered the approvals obtained/required under the EP&A Act for the activities to be licensed. The EP&A Act is the main legislation that controls planning and development in NSW.

We understand that all of the activities to be licensed have obtained approval under the EP&A Act:

- ▼ The development has obtained a development approval under Part 4 of the EP&A Act from City of Sydney Council, including the reticulation networks for drinking water, non-potable water and sewerage systems.
- ▼ The treatment plant has had an environmental assessment undertaken and determined under Part 5 of the EP&A Act by the City of Sydney Council, as the determining authority.<sup>34</sup>
- ▼ These approvals have been obtained for the authorised purposes specified in Table 1.3, within the area of operations specified in Table 1.4, of the licence.

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<sup>34</sup> Advice was sought to verify, and was confirmed, that Council was a determining authority, and that the Minister administering WIC Act is not required to undertake any further assessment.

DPE confirmed that the site is listed as a prescribed land use zone (SP1 Special Activities), and that therefore the treatment plant may constitute 'development without consent' under clause 106(2) of the *State Environmental Planning Policy (Infrastructure) 2007* provided the works are carried out by a WICA licensee. The Council is a public authority under the *Local Government Act 1993 (NSW)* and the Council's approval is required for the construction of the facility. Accordingly, the Council was able to undertake an environmental assessment, and 'determine' the treatment plant under Part 5 of the EP&A Act.

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

- ▼ City of Sydney Council's Review of Environmental Factors (REF) – Water Re-use facility at the former Royal South Sydney Hospital Administration Building, No. 3 Joynton Avenue, Zetland.
- ▼ City of Sydney Council's Statement of Environmental Effects and development consent approving the works within the development precinct.
- ▼ Council also provided a letter which notified the approvals it had granted for the development:
  - Consent under Part 4 of the EP&A Act for the redesign of the building to house the Water Re-use facility. This consent was provided in the application.
  - Consent under Part 4 of the EP&A Act for all essential infrastructure within the Green Square development, including all below ground services. Council further advised that the consent also covers the new offtake structure, gross pollutant trap, source water pump station and rising main which will deliver the source water to the treatment plant. This consent was provided in the application.
  - Approval under Part 5 of the EP&A Act for the Water Re-use facility, comprising a water treatment plant, underground water reservoir two balance tanks and an underground pipe connection. Council has determined the works as an approved determining authority. An internal Council memo was provided which provided the notification that the REF had been assessed under Part 5 of the EP&A Act, and was approved.

No submissions were received regarding GSW's approvals under the EP&A Act.

In having regard to protection of the environment, we recommend that the activities authorised by the licence (if granted) should be limited to the construction, maintenance and operation of water industry infrastructure that:

- ▼ has been granted development consent under the EP&A Act, or
- ▼ is exempt development under the EP&A Act and may be carried out without development consent under section 76(3)(a) of the EP&A Act, or
- ▼ is the subject of an environmental assessment under Part 5 of the EP&A Act.

#### **4.6.3 Protection of public safety**

We have had regard to the protection of public safety through our assessment of GSW's technical capacity to supply and reticulate recycled water to the development. As outlined in section 4.3 of this report, we assessed GSW's capacity to manage key risks to public safety by the activities to be licensed.

If the Minister grants a network operator's licence to GSW, 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 GSW's technical capacity to supply and reticulate recycled water. As outlined in section 4.2.1 of this report, we assessed GSW's capacity to protect consumers through its demonstrated technical capacity to understand and implement the *Australian Guidelines for Water Recycling*, its previous experience in operating and maintaining functioning water supply facilities, the results of audits undertaken on Flow Systems various subsidiaries' licence plans, and the outcomes of compliance audits on its site operations.

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

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

Historically, Sydney Water has provided monopoly supply of drinking water services in the Sydney area. This licence will enable a new entity to supply water for non-potable uses to small customers, minimising the reliance on drinking water from Sydney Water for non-potable uses and encouraging competition in the provision of these services. This is consistent with the long title of the WIC Act.

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

GSW will provide non-potable water sourced from generally poor quality stormwater that would have otherwise been discharged to the environment. Furthermore, the non-potable water will negate the need to unnecessarily use potable water for toilet flushing, cold water clothes washing, irrigation, street cleaning and cooling tower water.

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

GSW will provide non-potable water to the Green Square Town Centre development and promote the use of stormwater as a substitute for potable water.

Through its website and other marketing material, GSW has also committed to promoting the use of non-potable water in the community.

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

The Metropolitan Water Plan (MWP) is the only prescribed water policy document in the *Water Industry Competition (General) Regulation 2008*. The MWP outlines strategies to secure greater Sydney's water supply now and in the future.

The increased water recycling is consistent with the key initiatives of the MWP, including in relation to water recycling, water efficiency and innovation.<sup>35</sup>

The MWP also recognises that the recycling of stormwater provides a valuable alternative source for non-drinking water use<sup>36</sup> and GSW's proposal is consistent with this initiative.

#### **4.6.9 Potential for adverse financial implications for small retail customers**

This principle applies to retail supplier licence applications. It will be considered in our assessment of Flow Systems' application to vary its retail supplier's licence application to include the Green Square Town Centre development scheme.

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

GSW and/or the Council will purchase drinking water from Sydney Water at the regulated price. This price takes into account the cost of infrastructure that significantly contributes to water security.

### **4.7 Public interest considerations**

**We did not identify any additional matters with regard to the public interest in relation to GSW's capacity to construct, operate and maintain water industry infrastructure to service the Green Square development.**

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<sup>35</sup> NSW Office of Water, *2010 Metropolitan Water Plan*, August 2010, p 27.

<sup>36</sup> NSW Office of Water, *2010 Metropolitan Water Plan*, August 2010, p 31.

Our assessment concluded that there were no additional matters that were raised with regard to public interest during the stakeholder consultation process or in our analysis of GSW's licence application.

We consider that GSW should not be subject to additional licence conditions in respect to public interest considerations.

## 4.8 Additional matters considered

In addition to assessing the application against the licensing criteria and principles of the WIC Act, we also considered whether the applicant's services should be declared a monopoly and subject to price regulation, at this time.

### 4.8.1 Monopoly supplier and price regulation

**We recommend that the Minister does not declare GSW to be a monopoly supplier in relation to the supply and reticulation of recycled water in the Green Square development precinct.**

**Should the Minister declare any monopoly services at the Green Square Town Centre development, we recommend that the Minister does not refer these services to IPART for a determination of pricing or a periodic review of pricing policies.**

The Minister *may* declare a licensed retail supplier or licensed network operator to be a monopoly supplier in relation to a specified water supply or sewerage service in a specified area to a specified class of customers.<sup>37</sup>

The Minister can declare a monopoly supplier at any time. This declaration does not have to link to the grant or variation of a licence or a change in licence conditions. If the Minister declares a monopoly supplier, the Minister may then refer the monopoly services to IPART for price regulation.<sup>38</sup>

A monopoly declaration can only be made in relation to a service if the Minister is satisfied that it is a service:

- ▼ for which there are no other suppliers to provide competition in the part of the market concerned
- ▼ for which there is no contestable market by potential suppliers in the short term in that part of the market, and
- ▼ in the case of a water supply service for recycled water, that connection of land to that service is required by or under some other Act.<sup>39</sup>

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<sup>37</sup> WIC Act, section 51.

<sup>38</sup> Determination of the pricing and/or periodic review of the pricing policies. WIC Act, section 52(1).

<sup>39</sup> WIC Act, section 51(2).

We have considered the market for the service being provided within the Green Square Town Centre development (the specified area) for all classes of customer. GSW will construct, operate and maintain water industry infrastructure to supply non-potable water (stormwater recycling) services.

We understand that non-residential developments, open-space and Council buildings are required to install dual reticulation infrastructure and connect to the non-potable water network under the Green Square Town Centre Development Control Plan. Residential developments are compelled to connect to the non-potable water scheme under the terms of each development's Voluntary Planning Agreements (VPAs). Developers may agree to a VPA in order to access the higher site densities on offer.

Section 51(2)(b) of the WIC Act notes that, if connection of a recycled water service is required by, or under some other Act, this may constitute a monopoly service. The obligations set out in a VPA are as agreed by relevant parties. Such obligations are not legislative requirements.<sup>40</sup>

In addition, we consider that it is reasonable to expect that customers will undertake due diligence when buying or renting properties in the development, to determine the costs and benefits of being connected to a recycled water scheme.

Furthermore, this is an infill development, with Sydney Water being connected to the network for sewerage and drinking water services, and providing contingency supply services for non-potable water. Consequently, Sydney Water has the capacity to create competition for supplying water to these households, albeit using potable water for non-potable uses.

We recommend therefore that no declaration of monopoly supply be made at this time.

We also note that GSW is limited by the terms of its contract with Council to supply non-potable water at a maximum of 95% of Sydney Water's regulated price for potable water.

We consider these reasons justify our recommendation that the Minister does not declare any monopoly services, and should the Minister declare any monopoly services, we recommend that the Minister does not refer these monopoly services to IPART for price regulation, at this time.

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<sup>40</sup> The EP&A Act imposes some requirements regarding the form and subject matter of VPAs. See, for instance, section 93F.

## 5 Recommendations

We recommend that the Minister:

- ▼ Grants a network operator's licence to GSW, subject to the conditions as set out in the draft licence number 15\_031 (Attachment A).
- ▼ Does not declare GSW a monopoly supplier in relation to the supply of recycled water at the Green Square development.

**Should the Minister declare a monopoly service at Green Square, we recommend that the Minister does not refer these services to IPART for a determination of pricing or a periodic review of pricing policies.**

The Minister must consider, but is not bound to accept, any advice or recommendation in this report in determining the licence application. The Minister may, if circumstances so require, seek further advice from us in relation to the licence application.<sup>41</sup>

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 licence<sup>42</sup>. We will then make the information in the notice available to the public on our website, in accordance with the requirements of the Act.<sup>43</sup>

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<sup>41</sup> WIC Act, section 10(2).

<sup>42</sup> WIC Act, section 10(5).

<sup>43</sup> WIC Act, section 10(6).







**Appendices**



## **A    Draft Network Operator's Licence**



**NEW SOUTH WALES  
GOVERNMENT**

*WATER INDUSTRY COMPETITION ACT 2006*  
(NSW)

**NETWORK OPERATOR'S LICENCE**

**Green Square Water Pty Ltd**

**ACN 163 432 906**



## **New South Wales**

### ***Water Industry Competition Act 2006 (NSW)***

#### **Grant of network operator's licence Licence no. 15\_031**

I, The Hon Niall Blair MLC, Minister for Lands and Water, under section 10 of the *Water Industry Competition Act 2006 (NSW)*, grant a network operator's licence to:

Green Square Water Pty Ltd ACN 163 432 906

to construct, maintain and operate water industry infrastructure, subject to:

- (i) the conditions imposed by the *Water Industry Competition Act 2006 (NSW)*;
- (ii) the conditions imposed by clause 9(a) and set out in Parts 1 and 2 of Schedule 1 to the *Water Industry Competition (General) Regulation 2008 (NSW)*;
- (ii) the conditions imposed by the Minister in the attached Schedule A, being special Ministerially-imposed licence conditions for Green Square Water Pty Ltd's network operator's licence; and
- (iii) the conditions imposed by the Minister in the attached Schedule B, being standard Ministerially-imposed licence conditions for all licensed network operators.

.....

Minister for Lands and Water

Dated this

day of

20

## **SCHEDULE A - SPECIAL MINISTERIALLY-IMPOSED LICENCE CONDITIONS FOR GREEN SQUARE WATER PTY LTD'S NETWORK OPERATOR'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.

### **A1 Activities authorised - non-potable water**

A1.1 This Licence authorises the Licensee and any authorised persons specified in Table 1.1 to construct, maintain and operate the water industry infrastructure specified in Table 1.2:

- a) to the extent that such infrastructure:
    - i) as at the date of grant of this Licence, has been granted development consent under the EPA Act; or
    - ii) is exempt development under the EPA Act and may be carried out without development consent under section 76(3)(a) of the EPA Act; or
    - iii) is described in a review of environmental factors and has, as at the date of grant of this Licence, been assessed by the City of Sydney Council under Part 5 of the EPA Act,
  - b) for one or more of the authorised purposes specified in Table 1.3; and
  - c) within the area of operations specified in Table 1.4,
- subject to the conditions imposed by or under the Act, the Regulation and this Licence.

**Table 1.1 Authorised persons**

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Flow Systems Pty Ltd (ACN 136 272 298)  
City of Sydney Council (ACN 636 550 790)

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**Table 1.2 Water industry infrastructure**

- 
- 1) A treatment plant for non-potable water and other water infrastructure used, or to be used, in connection with the treatment plant, where components of the treatment plant or the other water infrastructure may also be used for one or more of the following:
    - a) production of non-potable water;
    - b) treatment of non-potable water;
    - c) filtration of non-potable water;
    - d) storage of non-potable water; and
    - e) conveyance of non-potable water.
  - 2) A reticulation network for non-potable water and other water infrastructure used, or to be used, in connection with the reticulation network, where components of the reticulation network or the other water infrastructure may also be used for one or more of the following:
    - a) storage of non-potable water;
    - b) conveyance of non-potable water; and
    - c) treatment of non-potable water.
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**Table 1.3 Authorised purposes**

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Toilet flushing, washing machines (cold water tap), cooling tower make-up, irrigation, water features and street cleaning.

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**Table 1.4 Area of operations**

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- 1) The areas identified in the map at Attachment A to this Licence as Green Square Town Centre; and
  - 2) the section of Joynton Avenue, Zetland situated between the intersection of:
    - a) Joynton Avenue and Elizabeth Street, Zetland; and
    - b) Joynton Avenue and Hansard Street, Zetland.
- 

**A2 Activities authorised – drinking water**

*[Not applicable]*

**Table 2.1 Authorised persons**

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*[Not applicable]*

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**Table 2.2 Water industry infrastructure**

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*[Not applicable]*

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**Table 2.3 Authorised purposes**

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*[Not applicable]*

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**Table 2.4 Area of operations**

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*[Not applicable]*

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**A3 Activities authorised – sewerage services**

*[Not applicable]*

**Table 3.1 Authorised persons**

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*[Not applicable]*

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**Table 3.2 Water industry infrastructure**

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*[Not applicable]*

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**Table 3.3 Authorised purposes**

[Not applicable]

**Table 3.4 Area of operations**

[Not applicable]

**A4 Special Condition**

A4.1 If a party to an Agreement proposes to:

- a) terminate the Agreement;
- b) novate the Agreement;
- c) assign or transfer any of its rights or obligations under the Agreement to any other person; or
- d) alter the Agreement in any way that materially reduces the Licensee's technical, financial or organisational capacity to carry out the activities authorised by this Licence,

the Licensee must provide IPART with written notice as soon as practicable, but no later than 3 months, before the time when the proposed action is to occur. The written notice must include details of how the service provided under the Agreement will be provided subsequent to the proposed termination, novation, assignment, transfer or alteration.

**INTERPRETATION AND DEFINITIONS****Interpretation**

In this Schedule A, unless the context requires otherwise:

- (i) the singular includes the plural and vice versa;
- (ii) headings are used for convenience only and do not affect the interpretation of this Schedule A;
- (iii) a reference to a document includes the document as modified from time to time and any document replacing it;
- (iv) a reference to a person includes a natural person and any body or entity whether incorporated or not;
- (v) a reference to a clause is to a clause in this Schedule A;
- (vi) a reference to a schedule is to a schedule to this Licence;
- (vii) 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
- (viii) explanatory notes do not form part of this Licence, but in the case of uncertainty may be relied on for interpretation purposes.

**Definitions**

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

In this Schedule A:

Act means the *Water Industry Competition Act 2006* (NSW).



Agreement	means any agreement or deed provided to IPART in connection with the Licensee's application for this Licence.
EPA Act	means the <i>Environmental Planning and Assessment Act 1979</i> (NSW).
IPART	means the Independent Pricing and Regulatory Tribunal of New South Wales established under the <i>Independent Pricing and Regulatory Tribunal Act 1992</i> (NSW).
Licence	means this network operator's licence granted under section 10 of the Act.
Licensee	means the person to whom this Licence is granted under section 10 of the Act.
Minister	means the Minister responsible for Part 2 the Act.
Regulation	means the <i>Water Industry Competition (General) Regulation 2008</i> (NSW).

## **SCHEDULE B - STANDARD MINISTERIALLY-IMPOSED LICENCE CONDITIONS FOR ALL LICENSED NETWORK OPERATORS UNDER THE ACT**

This schedule sets out the standard conditions which the Minister imposes on the Licensee and all other licensed network operators 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 Before commencing to commercially operate the Specified Water Industry Infrastructure under this Licence, the Licensee must:
- a) obtain insurance that is appropriate for the size and nature of the activities authorised under this Licence;
  - b) provide a copy of each certificate of currency of the insurance obtained to IPART; and
  - c) demonstrate that the insurance obtained 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 obtained 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.

- B2.2 *[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 this 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, scope or limit on the amount 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, scope or limit on the amount of insurance held by the Licensee may not be appropriate for the size and nature of the activities authorised under this Licence.]*

B3.5 The Licensee must maintain professional indemnity insurance during the Design Phase and for a minimum period of 6 years from the date of the completion of the Design Phase.

#### **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 Within 14 days of any change in relation to the following, the Licensee must notify IPART, and provide IPART with details, of the change in accordance with the Reporting Manual:

- a) any source from which the water handled by the Specified Water Industry Infrastructure is derived;
- b) the Authorised Purposes of the water handled by the Specified Water Industry Infrastructure;
- c) the identity of each licensed retail supplier or public water utility that has access to the infrastructure services provided by the Specified Water Industry Infrastructure for the purpose of supplying water to its customers;
- d) any other water infrastructure to which the Specified Water Industry Infrastructure is connected; and
- e) *[Not Applicable]*
- f) *[Not Applicable]*
- g) the arrangements for the disposal of waste from the Specified Water Industry Infrastructure.

## **B8 Monitoring**

- B8.1 The Licensee must undertake any monitoring that is required for the purposes of this Licence, any Plan, the Act or the Regulation in accordance with this clause B8.
- B8.2 The Licensee must keep the following records of any samples taken for monitoring purposes specified in the Water Quality Plan:
- a) the date on which the sample was taken;
  - b) the time at which the sample was collected;
  - c) the point or location at which the sample was taken; and
  - d) the chain of custody of the sample (if applicable).
- B8.3 The Licensee must ensure that analyses of all samples taken for the purposes of Verification Monitoring are carried out by a laboratory accredited for the specified tests by an independent body that is acceptable to NSW Health, such as the National Association of Testing Authorities or an equivalent body.

## **B9 Provision of copy of Plan**

- B9.1 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.

## **B10 Delineating responsibilities – interconnections**

- B10.1 If a code of conduct has not been established under clause 25 of the Regulation, the Licensee must (by a date specified by IPART) establish a code of conduct (**Licensee's Code of Conduct**) in accordance with this clause B10.
- B10.2 The Licensee's Code of Conduct must set out the respective responsibilities of:
- a) the Licensee; and
  - b) each licensed network operator, licensed retail supplier and/or public water utility that supplies water, provides sewerage services or constructs, maintains or operates any other water industry infrastructure in the Specified Area of Operations,
- by, at a minimum, providing for:
- c) if the Specified Water Industry Infrastructure is connected to any other water industry infrastructure, who is responsible for repairing, replacing or maintaining any pipes, pumps, valves, storages or other infrastructure connecting the Specified Water Industry Infrastructure to the other water industry infrastructure;
  - d) who is responsible for water quality;
  - e) who is liable in the event of the unavailability of water;
  - f) who is liable in the event of failure of the Specified Water Industry Infrastructure;
  - g) the fees and charges payable in respect of the use of the Specified Water Industry Infrastructure; and
  - h) who is responsible for handling customer complaints.
- B10.3 Before the Licensee brings the Specified Water Industry Infrastructure into commercial operation 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 B10.2.

B10.4 *[Not Applicable]*

B10.5 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.

#### **B11 Notification of changes to end-use**

B11.1 If the Licensee proposes to operate the Specified Water Industry Infrastructure to supply water for an end-use which is not set out in the most recent Water Quality Plan provided to IPART, the Licensee must notify IPART in writing at least 3 months before commencing such operation.

#### **B12 Notification of changes to Authorised Person**

B12.1 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.

#### **B13 Notification of commercial operation**

B13.1 This clause B13 applies each time the Licensee has brought any of the Specified Water Industry Infrastructure into commercial operation.

B13.2 The Licensee must:

- a) notify IPART in accordance with the Reporting Manual that it has brought the relevant Specified Water Industry Infrastructure into commercial operation; and
- b) provide such notification within 10 days after it has brought the relevant Specified Water Industry Infrastructure into commercial operation.

### **INTERPRETATION AND DEFINITIONS**

#### **Interpretation**

In this Schedule B, unless the context requires otherwise:

- i) the singular includes the plural and vice versa;
- ii) headings are used for convenience only and do not affect the interpretation of this Schedule B;
- iii) a reference to a document includes the document as modified from time to time and any document replacing it;
- iv) a reference to a "person" includes a natural person and any body or entity whether incorporated or not;
- v) a reference to a clause is to a clause in this Schedule B;
- vi) a reference to a schedule is to a schedule to this Licence;
- vii) 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

- viii) explanatory notes do not form part of this Licence, but in the case of uncertainty may be relied on for interpretation purposes.

## Definitions

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

In this Schedule B:

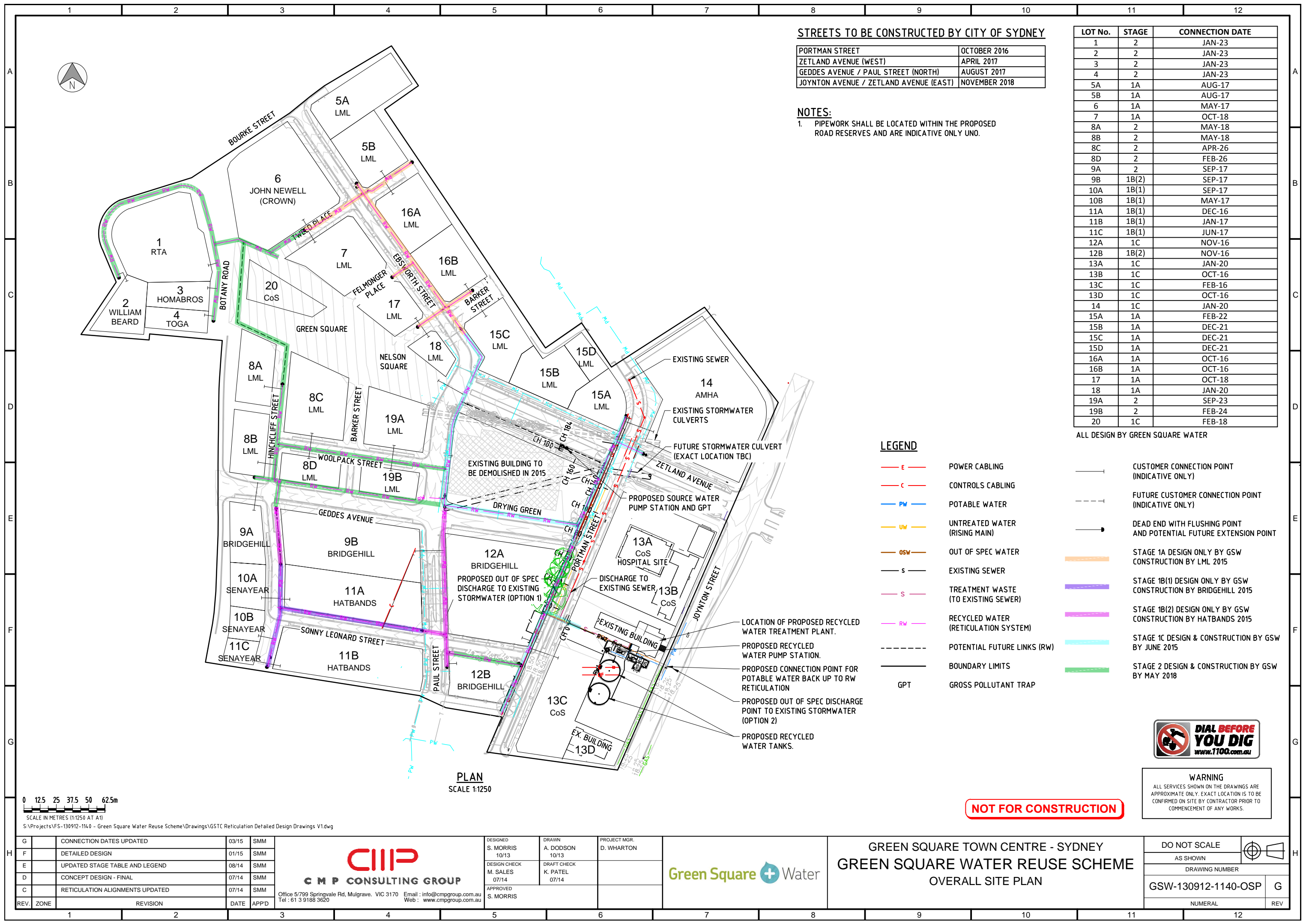
Act	means the <i>Water Industry Competition Act 2006</i> (NSW).
Audit Guidelines	means the document entitled “Audit Guideline – Water Industry Competition Act 2006” which is prepared by IPART and is available on IPART’s website at <a href="http://www.ipart.nsw.gov.au">www.ipart.nsw.gov.au</a> , and any 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"><li>i) Schedule A, clause A1, Table 1.1;</li><li>ii) Schedule A, clause A2, Table 2.1; and</li><li>iii) Schedule A, clause A3, Table 3.1.</li></ul>
Authorised Purposes	means the authorised purposes specified in, as applicable: <ul style="list-style-type: none"><li>i) Schedule A, clause A1, Table 1.3;</li><li>ii) Schedule A, clause A2, Table 2.3; and</li><li>iii) Schedule A, clause A3, Table 3.3.</li></ul>
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 1992</i> (NSW).
Licence	means this network operator’s licence granted under section 10 of the Act.
Licensee	means a person to whom this Licence is granted under section 10 of the Act.
Licensee’s Code of Conduct	has the meaning given in clause B10.1.
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 any infrastructure operating plan, water quality plan or sewage 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 “Network Operator's Reporting Manual” which is prepared by IPART and is available on IPART’s website at <a href="http://www.ipart.nsw.gov.au">www.ipart.nsw.gov.au</a> .
Specified Area of Operations	means the area of operations specified in, as applicable: <ul style="list-style-type: none"> <li>i) Schedule A, clause A1, Table 1.4;</li> <li>ii) Schedule A, clause A2, Table 2.4; and</li> <li>iii) Schedule A, clause A3, Table 3.4.</li> </ul>
Specified Water Industry Infrastructure	means the water industry infrastructure specified in, as applicable: <ul style="list-style-type: none"> <li>i) Schedule A, clause A1, Table 1.2;</li> <li>ii) Schedule A, clause A2, Table 2.2; and</li> <li>iii) Schedule A, clause A3, Table 3.2.</li> </ul>
Verification Monitoring	means verification monitoring as described in the document entitled “Australian Drinking Water Guidelines” or the document entitled “Australian Guidelines for Water Recycling” as the case may be.
Water Quality Plan	means the water quality plan that the Licensee is required to prepare under the Regulation.

## Attachment A – Area of operations

Drawing No	Revision	Date
GSW-130912-1140-OSP	G	March 2015





# STREETS TO BE CONSTRUCTED BY CITY OF SYDNEY

PORTMAN STREET	OCTOBER 2016
ZETLAND AVENUE (WEST)	APRIL 2017
GEDDES AVENUE / PAUL STREET (NORTH)	AUGUST 2017
JOYNTON AVENUE / ZETLAND AVENUE (EAST)	NOVEMBER 2018

## NOTES:

- PIPEWORK SHALL BE LOCATED WITHIN THE PROPOSED ROAD RESERVES AND ARE INDICATIVE ONLY UNO.

LOT No.	STAGE	CONNECTION DATE
1	2	JAN-23
2	2	JAN-23
3	2	JAN-23
4	2	JAN-23
5A	1A	AUG-17
5B	1A	AUG-17
6	1A	MAY-17
7	1A	OCT-18
8A	2	MAY-18
8B	2	MAY-18
8C	2	APR-26
8D	2	FEB-26
9A	2	SEP-17
9B	1B(2)	SEP-17
10A	1B(1)	SEP-17
10B	1B(1)	MAY-17
11A	1B(1)	DEC-16
11B	1B(1)	JAN-17
11C	1B(1)	JUN-17
12A	1C	NOV-16
12B	1B(2)	NOV-16
13A	1C	JAN-20
13B	1C	OCT-16
13C	1C	FEB-16
13D	1C	OCT-16
14	1C	JAN-20
15A	1A	FEB-22
15B	1A	DEC-21
15C	1A	DEC-21
15D	1A	DEC-21
16A	1A	OCT-16
16B	1A	OCT-16
17	1A	OCT-18
18	1A	JAN-20
19A	2	SEP-23
19B	2	FEB-24
20	1C	FEB-18

ALL DESIGN BY GREEN SQUARE WATER

## LEGEND

	POWER CABLE		CUSTOMER CONNECTION POINT (INDICATIVE ONLY)
	CONTROLS CABLE		FUTURE CUSTOMER CONNECTION POINT (INDICATIVE ONLY)
	POTABLE WATER		DEAD END WITH FLUSHING POINT AND POTENTIAL FUTURE EXTENSION POINT
	UNTREATED WATER (RISING MAIN)		STAGE 1A DESIGN ONLY BY GSW CONSTRUCTION BY LML 2015
	OUT OF SPEC WATER		STAGE 1B(1) DESIGN ONLY BY GSW CONSTRUCTION BY HATBANDS 2015
	EXISTING SEWER		STAGE 1B(2) DESIGN ONLY BY GSW CONSTRUCTION BY HATBANDS 2015
	TREATMENT WASTE (TO EXISTING SEWER)		STAGE 1C DESIGN & CONSTRUCTION BY GSW BY JUNE 2015
	RECYCLED WATER (RETICULATION SYSTEM)		STAGE 2 DESIGN & CONSTRUCTION BY GSW BY MAY 2018
	POTENTIAL FUTURE LINKS (RW)		
	BOUNDARY LIMITS		
	GROSS POLLUTANT TRAP		



## WARNING

ALL SERVICES SHOWN ON THE DRAWINGS ARE APPROXIMATE ONLY. EXACT LOCATION IS TO BE CONFIRMED ON SITE BY CONTRACTOR PRIOR TO COMMENCEMENT OF ANY WORKS.

NOT FOR CONSTRUCTION

0 12.5 25 37.5 50 62.5m

SCALE IN METRES (1:1250 AT A1)  
S:\Projects\FS-130912-1140 - Green Square Water Reuse Scheme\Drawings\GSTC Reticulation Detailed Design Drawings V1.dwg

REV.	ZONE	REVISION	DATE	APP'D
G		CONNECTION DATES UPDATED	03/15	SMM
F		DETAILED DESIGN	01/15	SMM
E		UPDATED STAGE TABLE AND LEGEND	08/14	SMM
D		CONCEPT DESIGN - FINAL	07/14	SMM
C		RETICULATION ALIGNMENTS UPDATED	07/14	SMM

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DESIGNED S. MORRIS 10/13	DRAWN A. DODSON 10/13	PROJECT MGR. D. WHARTON
DESIGN CHECK M. SALES 07/14	DRAFT CHECK K. PATEL 07/14	
APPROVED S. MORRIS		

Green Square + Water

GREEN SQUARE TOWN CENTRE - SYDNEY  
GREEN SQUARE WATER REUSE SCHEME  
OVERALL SITE PLAN

DO NOT SCALE	
AS SHOWN	
DRAWING NUMBER	
GSW-130912-1140-OSP	G
NUMERAL	REV

