



Independent Pricing and Regulatory Tribunal

Application for a Network Operator's Licence and a Retail Supplier's Licence from Pitt Town Water Factory Pty Ltd

IPART's report to the Minister

Water — Ministerial report
September 2010

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1 Background

On 9 April 2010 IPART received a licence application under the *Water Industry Competition Act 2006* (the Act or WICA) from Pitt Town Water Factory Pty Ltd (PTWF) for the Pitt Town new release area. The application is for a network operator's licence to construct, operate and maintain non-potable water and sewerage infrastructure and retail supplier's licence for the supply of non potable water and the provision of sewerage services to residential lots in the Pitt Town release area.

PTWF proposes to construct, maintain and operate water industry infrastructure to provide sewerage services and supply non potable water to up to 943 residential lots within the Pitt Town release area. Currently 80 customers from the 943 lots are connected to Hawkesbury City Council's (HCC's) sewerage system. These customers will be able to choose between HCC and PTWF for sewerage services once the proposed infrastructure has been constructed. However, no additional customers of this estate will have this choice due to current capacity constraints in HCC's sewerage treatment plant.

In accordance with the Act, this report sets out IPART's consideration of the application and submissions, in particular in relation to whether the licensing criteria has been satisfied and the licensing principles have been considered. The report concludes with a recommendation to either grant or refuse the licence. Where a recommendation to grant the licence is made the report proposes the conditions (if any) to which the licence should be subject.

2 Submissions

Under the Act, IPART must provide the application to, and invite submissions from, the following Ministers:

- ▼ Minister administering the *Public Health Act 1991* (Minister for Health)
- ▼ Minister administering Chapter 2 of the *Water Management Act 2000* (Minister for Water)
- ▼ Minister administering the *Protection of the Environment Operations Act 1997* (Minister for Climate Change and the Environment)
- ▼ Minister administering the *Environmental Planning and Assessment Act 1979* (Minister for Planning).¹

On 10 May 2010, the application was provided to the Ministers with submissions requested by 15 June 2010.

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

We received submissions from the Minister for Water, the Minister for Planning, the Department of Environment, Climate Change and Water (DECCW) and the NSW Department of Health (NSW Health)).

The Minister for Water and NSW Health raised no issues of concern, for consideration during the licence assessment stage of the process. The Minister for Planning and DECCW raised several matters for consideration. These are addressed in sections 3.1.6 and 3.1.9.

We must also call for submissions on the application from the public.² On 12 May, we advertised in the Sydney Morning Herald, the Daily Telegraph and the Hawkesbury Gazette inviting public submissions on the application. The closing date for submissions was 15 June 2010. Only Sydney Water provided a public submission and this is discussed in Section and 3.1.2 and 3.1.8.

3 Assessment of application

The Minister is required to determine an application for a licence by granting the licence or refusing the application, and determining the conditions to which the licence (if granted) should be subject.³ The Minister may not grant the licence unless satisfied of certain licensing criteria, namely that the applicant:

- ▼ is not a disqualified corporation (i.e. '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, 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 be obtained from a public water utility
- ▼ such other matters as the Minister considers relevant, having regard to the public interest.⁴

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
- ▼ the encouragement of competition in the supply of water and the provision of sewerage services

² *Water Industry Competition Act 2006*, section 9(1)(c).

³ *Water Industry Competition Act 2006*, section 10(1).

⁴ *Water Industry Competition Act 2006*, sections 10(3) & (4).

- ▼ the ensuring of sustainability of water resources
- ▼ the promotion of production and use of recycled water.⁵

The following sections of this report are structured to address each of the licensing criteria and principles outlined above.

3.1 Licensing criteria

3.1.1 Disqualified corporation

In making an assessment of the standing of PTWF, its related entities, directors and persons concerned in its and its related entities' management, regard was given to:

- ▼ the statutory declaration made by the directors of the applicant corporation, that the applicant corporation, nor any director or person concerned in the management of the applicant corporation is or would be a disqualified corporation or disqualified individual within the meaning of the Act.
- ▼ results of the ASIC and ITSA searches provided in the Dun & Bradstreet report obtained by IPART.
- ▼ results of IPART's search of the *Water Industry Competition Act* licence database⁶.

IPART considers PTWF has satisfactorily met this criterion.

3.1.2 Technical capacity

We undertook a detailed assessment of PTWF's technical capacity (current and ongoing) to construct, operate and maintain water industry infrastructure for the purpose of supplying non-potable water and providing sewerage services. We also considered submissions provided by other regulatory authorities consulted.

The assessment was based wholly on the information provided as part of PTWF's application. In particular, we considered:

- ▼ Previous technical experience of specific personnel employed by the Corporation (within Australia)
- ▼ Preliminary and draft reports and plans for the proposed scheme to demonstrate the technical capacity of the corporation to safely and reliably construct, operate and maintain water industry infrastructure and supply non-potable water and provide sewerage services
- ▼ Technical details of the proposed water industry infrastructure including the preliminary design and the operating and maintenance plans and procedures.

⁵ *Water Industry Competition Act 2006*, section 7.

⁶ There are currently no disqualified corporations or individuals on the register pursuant to the *Water Industry Competition Act 2006*, section 16(e) and 16(f).

- ▼ A response to our specific questions regarding the application in the form of an updated application and supplementary information

The Assessment of the technical capacity of the applicant is discussed in terms of each of the activities for which they are seeking a licence.

Network Operator's Licence

PTWF is a start-up company and therefore has no historical operating experience as a corporation. However, PTWF has provided documentary evidence of the management and operational experience (within the water industry) of persons employed by the corporation.

PTWF proposes to be responsible for providing administrative, financial, commercial and retail oversight of the construction, operation and maintenance of the water industry infrastructure, using appropriately qualified contractors. To this end PTWF have provided evidence that they have engaged specialist contractors to:

- ▼ Construct the sewage and non-potable water networks connecting the residential lots to and from the recycled water treatment works (Bona Vista Properties Pty Ltd)
- ▼ Design, supply and provide operational support for the low pressure sewer mains (Mono Pumps)
- ▼ Design, supply and install the recycled water treatment plant (GE Betz Pty Ltd)
- ▼ Manage and oversee the technical operation of the recycled water treatment plant (Permeate Partners)

Of the above mentioned specialist contractors PTWF will rely on Permeate Partners to provide operation and technical management advice and expertise.

Further, IPART was able to make a technical assessment of the proposed wastewater and recycled water treatment system for the development, the associated health and environmental risks and the measures intended to manage any such risks on the basis of the above documents. In particular these included the site specific preliminary risk assessment, the draft recycled water management plan and the water balance for the scheme.

The assessment identified an issue arising from the applicant's proposal to dispose of excess recycled water and all residuals (wastes) generated from the treatment process to the Hawkesbury City Council (HCC) wastewater system. This proposal would remove the need for a water pollution licence (or an environmental protection licence) from DECCW and would minimise the risks from odour nuisance at the site. IPART understands from discussion with HCC that PTWF may not be able to use Council's assets to dispose of treatment residuals and excess recycled water as there is currently insufficient capacity within the Council infrastructure.

Further information was requested from PTWF. The applicant has advised that it is continuing negotiations with Council to improve the capacity of their infrastructure to allow disposal of the excess recycled water. However, should this not eventuate, PTWF has advised of proposed alternative arrangements including:

- ▼ to dispose of excess recycled water to both green space and vacant land in the development; or
- ▼ the disposal to an alternative HCC treatment plant; or
- ▼ direct discharge to the Hawkesbury River under a water pollution licence; and
- ▼ to use of a third party contractor to dispose of treatment residuals off site.

Additional information was also requested to address other minor technical issues relating mainly to inconsistencies in the application and information supplied. The applicant responded in detail to these issues. We consider the applicant's response adequately addresses the technical issues raised above as well as the other minor issues, at this stage in the WICA process.

However we note that the applicant (if granted a licence) will need to provide further details on the proposed alternative arrangements and the management of risks (particularly the management of environmental risks such as the generation of odour) as the appropriate scenario(s) are developed. Typically we would anticipate such risks to be identified and managed as part of their Water Quality, Sewage Management and Infrastructure Operating Plans which are audited prior to the commencement of commercial operation.

Several submissions were also received from other Government stakeholders concerning technical aspects of PTWF's licence application.

The submission received from the Minister for Water identified no additional issues of concerns.

NSW Health provided a submission on the application which is detailed in section 3.1.5 Public Health.

DECCW provided submissions, which are detailed in section 3.1.6 Environment.

IPART and NSW Health concluded that PTWF, having access to Permeate Partner's expertise to manage the technical operation of the treatment plant, has and will continue to have the technical capacity to carry out the activity for which a licence has been sought. This conclusion requires Permeate Partners to be named as an authorised third party on the network operator's licence.

In addition to the above, Sydney Water in its submission raised the issue of Supplier of Last Resort (SOLR). SOLR involve arrangements that are made to maintain essential services in the event of failure by a licence holder to continue to provide such services. Sydney Water nominated HCC as a potential candidate for a SOLR role in respect to this development. We note changes to the legislation are required

to implement a SOLR regime and that the NSW Office of Water is currently developing such arrangements for water industry infrastructure. We therefore consider that this matter should be addressed when this regime has been finalised.

IPART considers that PTWF has satisfactorily met the technical capacity criterion subject to the naming of Permeate Partners as an authorised third party.

Retail Supplier

The applicant is proposing to outsource its customer service personnel. PTWF will either engage a leading third party customer service solution provider or negotiate appropriate terms with HCC to continue providing billing and other customer services to PTWF's residential customers.

We consider that the applicant has demonstrated an understanding of the arrangements it will need to have in place to provide retail services in compliance with a retail supplier's licence. We consider that, based on the current status of the project, the applicant, as a small start up company, is currently demonstrating sufficient technical capacity to undertake retail services. However, the applicant will need to increase this capacity prior to commercial operation.

As a consequence, we have recommended that a condition be included in the Retail Supplier's licence to require PTWF to submit a report to IPART before commencing to supply water or provide sewerage services outlining:

- ▼ the arrangements it has in place in relation to billing customers, including at least the following:
 - the identity of the person who will undertake billing services; and
 - a description of the billing system;
- ▼ the processes the Licence Holder has in place to enable the transfer of customers (if applicable); and
- ▼ the Curriculum Vitae of the key personnel involved in the operation and management of the activities authorised by this Licence.

Before commencing to supply water or provide sewerage services under this Licence, PTWF will also be required to provide to IPART a statement that identifies any third party that provides customer services under this Licence. This statement would also outline the controls the Licence Holder has in place to enable it to respond to any suspected breaches of these Licence conditions.

Before commencing retail activities, retail suppliers are also required to provide IPART with a retail supply management plan, outlining the arrangements it has made or proposes to make in relation to a range of matters including:

- ▼ events and circumstances that could adversely affect its ability to supply water;
- ▼ alternative sources of supply;

- ▼ customer complaints handling;
- ▼ debt recovery;
- ▼ marketing activities; and
- ▼ customer transfer arrangements.

IPART and the Minister may audit a retail supply management plan and the Minister may direct a licensee to amend its plan.

We conclude that, based on the current status of the project, PTWF has adequate technical capacity to be granted a retail supplier's licence. However a condition (as outlined in this section) should be imposed on its retail supplier licence.

IPART considers that PTWF has satisfactorily met this criterion subject to a licence condition being made as outlined in this section.

3.1.3 Financial capacity

An external financial consultant, Vincents Chartered Accountants (Vincents), undertook an assessment of PTWF's current and on-going financial capacity to construct, operate and maintain water industry infrastructure (network operator) and to supply non-potable water to customers and provide sewerage services (retail supplier).

The PTWF and its parent entity the Water Factory Company (WFC) are both recently incorporated, special purpose companies and neither has a financial history. As such the financial assessment by Vincents placed greater weight on the following factors in deciding whether the applicant had the financial capacity to undertake the activities for which is seeking licences.

- ▼ the applicant has satisfactorily demonstrated the financial viability of its proposed activities
- ▼ the applicant, based on current information available, has satisfactorily demonstrated it has the capacity to fund the proposed activities
- ▼ the applicant has satisfactorily demonstrated it can access appropriately qualified professionals such as accountants and registered tax agents.

Further we note that, if PTWF were unable to raise sufficient equity to fund future infrastructure development and upgrades to the plant, the developer of the residential estate should have step in rights that would enable water and sewerage services to continue. IPART concluded that the developer, if required, has both the financial capacity and the incentive to step in to protect its investment in this residential estate.

Finally, we would like to emphasise that a financial assessment of this type is limited to a point in time, and the granting of a licence should not be viewed as endorsement

of the future viability of the company. The assessment is based on a combination of information sources, none of which is to be regarded as individually determinative. This assessment is done for IPART's own purpose and the conclusion is not to be relied upon for any other purpose by any other person.

IPART considers that PTWF has satisfactorily met this criterion.

3.1.4 Organisational capacity

We undertook an assessment of PTWF's organisational capacity (current and ongoing) to construct, operate and maintain sewerage infrastructure to provide sewerage services and supply non potable water to residential customers.

Our assessment was based wholly on the information provided as part of PTWF's application. This includes:

- ▼ management structure;
- ▼ resourcing structure;
- ▼ resourcing plan; and
- ▼ short form biographies of key personnel.

We found that the PTWF and its nominated consultants, suppliers and contractors have together experience in the design, construction, operation and maintenance of water industry infrastructure. Further, as outlined earlier, the applicant proposes to outsource its customer service personnel to an appropriately qualified third party.

PTWF is undertaking the project primarily through the engagement and management of suitably qualified third party expert consultants and suppliers through engagement procedures. Although the proponent is a new, start-up company, we have identified no significant issues regarding the applicant's current organisational capacity to hold a WICA network operator's licence or a retail supplier's licence subject to the conditions identified in the discussion of technical capacity above.

IPART is satisfied that PTWF has satisfactorily met this criterion.

3.1.5 Public health

The capacity of PTWF to construct, operate and maintain sewerage infrastructure in a matter that protects public health was considered as part of the technical, financial and organisational capacity assessment.

In this respect, the proponent has provided a draft Water Quality Plan which included a preliminary risk assessment to demonstrate its commitment to the safe production and use of recycled water in accordance with the *National Guidelines for Water Recycling: Managing Health and Environmental Risks (Phase 1) 2006*.

We found the information contained in the proponent's application sufficiently demonstrated its capacity to protect public health and public safety in undertaking the proposed activities.

In addition NSW Health assessed the public health aspects of PTWF's application. NSW Health supports a licence to PTWF subject to the standard conditions. We note that NSW Health will review PTWF's Water Quality Plan for the non-potable water supply prior to it commencing commercial operation.

NSW Health provided additional comments on the preliminary risk assessment. These provide further information for PTWF to consider in its final risk assessment for the project. We consider this information will be required as part of the final Water Quality Plan which will be audited prior to the commencement of commercial operation.

IPART considers that PTWF has satisfactorily met this criterion.

3.1.6 Environment

Before granting a network operator's licence, the Minister must be satisfied 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.⁷ We requested DECCW to provide advice on the environmental aspects of the proposal.

DECCW raised concerns regarding the potential loss of endangered ecological communities and impacts on threatened species that would result from the construction of the proposed recycled water facility at the nominated site. DECCW also raised the possibility that the circumstances of the site may trigger the *Environment Protection and Biodiversity Act (1999)* and therefore require Commonwealth approval.

We requested additional information from PTWF to address these environmental concerns.

In response, the applicant submitted a revised ecological assessment report prepared by Parsons Brinkerhoff Australia Pty Ltd (PB). The report proposed increased mitigation measures and concluded that the project is unlikely to significantly affect any matters of national environmental significance. Based on this assessment, PB has advised that a referral of the project to the Commonwealth is not recommended.

The revised ecological assessment report was sent to DECCW for their review and comment. Based on the revised assessment and the proposed improvements in mitigation measures, DECCW advised that the project will not significantly impact on any endangered ecological community listed under the *Threatened Species*

⁷ *Water Industry Competition (General) Regulation 2008*, clause 7

Conservation Act 1995 and is unlikely to affect significantly any matters of national environmental significance.

We consider that licence conditions will be required to manage the risk to the environment from the construction of the water infrastructure. IPART recommends that the Minister should grant PTWF a network operator's licence which includes the following conditions:

- ▼ Before commencing construction of the water industry infrastructure, the licensed network operator for the infrastructure must prepare, and forward to IPART, a construction environmental management plan (EMP)⁸. The construction EMP should outline the proposed actions and mitigation measures to manage the environmental risks from undertaking construction activities at the site.
- ▼ The licensee must provide IPART with a report, prepared by an approved auditor, in such manner and form as IPART may direct as to the adequacy of the plan prior to commencing any construction of the specified water industry infrastructure.
- ▼ The licensee must implement all actions and mitigation measures in accordance with the 'Response to the DECCW submission to IPART regarding the Pitt Town Water Factory' prepared by Parsons Brinkerhoff Australia Pty Ltd.

As DECCW is now satisfied that the revised ecological assessments report has appropriately addressed all concerns raised in its submission, we are confident that the project complies with the licensing criteria in relation to the protection of environment. With the additional licence condition and the requirement to audit the EMP that and that the project will not cause any significant harm to the environment.

IPART considers that PTWF has satisfactorily met this criterion subject to the above licence conditions.

3.1.7 Insurance

We assessed PTWF's existing insurance arrangements. The assessment was based wholly on the information provided as part of PTWF's application, including the certificates of currency that have been submitted with the application. It is noted that additional, scheme specific, insurance cover may be obtained following the commencement of the project activities.

We recommend the standard ministerially imposed licence condition should be included in the licence. The licensee should be required to obtain and maintain appropriate insurance as determined by an independent reputable insurer registered

⁸ The construction EMP will encapsulate the mitigation actions outlined in the PB report and include broader environmental risks, and their management actions, that may arise from construction activities such as (but not limited to) the generation of noise and dust, sediment and erosion controls on the site and disposal of construction wastes.

with the Australian Prudential Regulation Authority or registered under the *Insurance (Agents and Brokers) Act 1992*.

IPART is satisfied that PTWF has satisfactorily met this criterion.

3.1.8 Sufficient quantities of water (assessment of Retail Supplier licence only)

PTWF proposes to provide non-potable water to the Pitt Town new release area residents. A water balance prepared by the applicant indicates that while future water demand may require top-up of the recycled water from the Sydney Water potable water supply, most of non-potable water will be sourced from the treatment of domestic sewage.

IPART is satisfied that PTWF has satisfactorily met this criterion.

3.1.9 Public interest considerations

The submission from the Minister from Planning raised several issues for consideration. In particular the Minister was concerned about consultation with HCC, Sydney Water and the State Emergency Services⁹ regarding different aspects of the applicants proposed project.

A public submission received from Sydney Water suggested that a review of its water servicing plans for Pitt Town may be necessary. Sydney Water encouraged the applicant to work with Sydney Water to eliminate potential contamination of the potable water supply as a result of cross connection with the recycled water supply.

The applicant has been encouraged to make contact with these stakeholders. However, we consider that the consultation can occur after the licence is granted. The outcomes of the consultation will facilitate the detailed risk assessment which will inform the Water Quality and Infrastructure Operating Plan. These plans are required prior to the proponent commencing commercial operation.

We have confirmed with HCC that the ecological impacts of the proposed water factory site have not been the subject of any development application to-date. However, appropriate action has been taken to ensure that there is no significant impact to the environment resulting from this project (see section 3.1.6 of this report).

IPART is satisfied that PTWF has satisfactorily met this criterion.

3.2 Licensing principles

We considered each of the following licensing principles:

⁹ The Minister for Planning recommended that the applicant contact the SES to ensure the proposed development is captured in the emergency plan arrangements relating to flooding.

- ▼ Protection of public health, environment, public safety and consumers is considered as part of the technical assessment. In particular, IPART, NOW, NSW Health and DECCW considered whether PTWF has the technical capacity to undertake the activities in a way that would manage any risk to public health and the environment to an acceptable level. Full details of the assessment are outlined above.
- ▼ Encouragement of competition. Currently Sydney Water and HCC have respectively a monopoly on water and sewerage services in the Hawkesbury area. The proposed recycled water factory will enable a new entity to provide sewage and recycled water services in Pitt Town.
- ▼ Ensuring sustainability of water resources. The proposed recycled water factory will provide an alternative source of irrigation water for sportsfields and parks. It will replace potable water supply for residential use in toilet flushing, irrigation and clothes washing. This will reduce the amount of potable water use in new dwellings. It complements the BASIX¹⁰ scheme introduced by the NSW Government.
- ▼ Promotion of production and use of recycled water. The proposed water factory promotes the use of recycled water as explained above. Currently there is no opportunity for recycled water use in Pitt Town.

IPART is satisfied that the grant of a Network Operator’s licence and a Retail Supplier’s licence to PTWF is consistent with the licensing principles.

4 Recommendations

In determining the licence application the Minister must consider, but is not bound to accept, any advice or recommendation in this report and may, if circumstances so require, seek further advice from IPART in relation to the application.¹¹

IPART is satisfied that Pitt Town Water Factory 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.

IPART therefore recommends that the Minister grants a Network Operator’s licence and a Retail Supplier’s licence to Pitt Town Water Factory Pty Ltd, subject to the conditions as set out in licence number 10_014 and 10_015R respectively.

On making a decision whether or not to grant the licence, the Minister is required to provide IPART with a notice of the decision and of the reasons for the decision.¹²

¹⁰ Building Sustainability Index

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

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

IPART will then make the information in the notice available to the public on IPART's internet website in accordance with the requirements of the Act.¹³

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