



Hawkesbury City Council

attachment 1  
to  
item 170

Submission by  
Johnson Property Group

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location: council chambers  
time: 5:00 p.m.



**JOHNSON PROPERTY GROUP**  
Creating living communities

## **Hawkesbury City Council Pitt Town Water Utility**

*Options for the construction, operation and  
management of the Pitt Town sewerage and  
recycled water system*

*Terry Leckie*

**July 2009**

# **Hawkesbury City Council & Johnson Property Group**

## **Options for the construction, operation and management of the Pitt Town sewerage & recycled water system**

### **1.0 Introduction**

Johnson Property Group met with representatives of Hawkesbury City Council on 12<sup>th</sup> May 2009 to discuss a proposal to introduce water recycling to the Pitt Town Village. Recycled water would be generated and distributed via a privately owned and operated sewerage treatment facility known as a “Water Factory”. (Refer *‘Revised Pitt Town Water Servicing Strategy –26 May 2009’*)

A further meeting was held on the 27<sup>th</sup> May 2009. At that meeting, it was agreed that the proposal should be developed further through a working group comprising Council staff and representatives from the Johnson Property Group. The intention is to present a formal submission to Council at a meeting in August.

This paper presents information developed from workshops held at Council offices on 5 June and 2 July 2009. The following people were involved in the workshops:

Mr Chris Daley – Hawkesbury City Council  
Mr Ramez Younan - Hawkesbury City Council  
Mr Ross Blancato – Johnson Property Group  
Mr Terry Leckie – Blue Sky Consulting

## 2.0 Background

Pitt Town consists of a semi rural residential community and a township of 230 residential lots and one primary school.

Hawkesbury City Council recently approved a rezoning of land surrounding the Pitt Town Township that will lead to a further 1040 residential lots being developed over the next 15 to 25 years.

The Pitt Town Township is currently serviced by a drinking water supply from Sydney Water and a sewerage system installed and operated by Hawkesbury City Council.

The drinking water supply requires minimal augmentation to service the additional 1040 residential lots. The sewerage system is unable to accommodate the additional sewage flows and requires major new infrastructure.

Hawkesbury City Council adopted a sewerage strategy in October 2008. The strategy required the construction of a new pumping station at Pitt Town and a new rising main to transfer flows to McGraths Hill Wastewater Treatment Plant (WWTP). This new infrastructure has been installed.

The McGraths Hill WWTP is close to its capacity therefore a further pumping station and rising main is required to transfer the Pitt Town flows from McGraths Hill to South Windsor WWTP.

The total cost of this infrastructure is \$21,349,000, the costs will be spread over 943 new lots at Pitt Town at a Section 64 contribution of \$22,640 per lot.

The cost of sewage infrastructure under this proposal is considered to be inequitable to the incoming residents and prohibitive for the development of the Pitt Town Release Area.

Water Recycling and the installation of a Water Factory at Pitt Town will reduce the infrastructure cost and improve the viability of the new development by JPG.

### 3.0 The System

The Pitt Town sewerage system comprises the following:

1. Existing Pitt Town Village 230 lots plus primary school
2. Existing unsewered Rural Pitt Town (Amelia Grove plus Hall Rd pump outs)
3. New Development JPG
4. New Development Others.

### 4.0 The Fundamental Assumption

It was agreed that a single entity should provide sewerage services for the whole of the Pitt Town village area.

### 5.0 Pitt Town Water Utility Options

#### 5.1 Option 1 – Council Owned infrastructure

- Council **retains ownership** of existing sewerage assets.
- The Private Pitt Town Water Utility builds and **transfers ownership** of the new Water Factory, all new sewage and recycled water reticulation to Council.
- The Private Pitt Town Water Utility operates and maintains the whole of the Pitt Town sewerage and recycled water system for 25 years minimum in order to generate a suitable commercial return on investment to the Private Pitt Town Water Utility.

Infrastructure owned by Council –

- Existing gravity sewer system in Pitt Town village
- SPS and old rising main J to McGraths Hill
- New rising main J and new Fernadell Carrier
- New SPS and new rising main T to McGraths Hill
- New Blighton Carrier.(As currently constructed - part only)
- New gravity sewers in the new development. (Stages 1 and 2 )
- Water Factory

- Recycled Water storages
- Sewage storage at SPS T
- Low Pressure Sewer Systems
- Recycled Water reticulation

Infrastructure owned by Private Pitt Town Water Utility

- Nil

Operational Conditions will be as follows:

- Council is the responsible entity and will need to obtain a 3<sup>rd</sup> wastewater treatment plant license.
- Standard Council operational contract
- Equivalent level of service for existing residents
- Adopt councils current maintenance and renewal programme on a “Cost Plus” basis
- Fee for service (operating the sewage system) would be on a “Cost Plus” basis.

Issues & questions addressed in Section 6.

## 5.2 Option 2 – Separate Ownership transferred to Council Owned

- Council **retains ownership** of existing sewerage assets and leases these assets to a Private Pitt Town Water Utility.
- The Private Water Pitt Town Utility builds and **owns** the new Water Factory, all new sewage and recycled water reticulation and transfers ownership to Council after 99 years.
- The Private Pitt Town Water Utility operates and maintains the whole of the Pitt Town sewerage and recycled water system for a 99 year term. Thereafter, the parties may choose to revert to Option 1 or Council may become the operator.

Infrastructure owned by Council –

- Existing gravity sewer system in Pitt Town village
- SPS and old rising main J to McGraths Hill
- New rising main J and new Fernadell Carrier

- New SPS and new rising main T to McGraths Hill
- New Blighton Carrier.(As currently constructed - part only)
- New gravity sewers in the new development. (Stages 1 and 2 )

Infrastructure owned by Private Pitt Town Water Utility for the 99 year term.

- Water Factory
- Recycled Water storages
- Sewage storage at SPS T
- Low Pressure Sewer Systems
- Recycled Water reticulation

Lease conditions (for infrastructure owned by Council) to Private Pitt Town Water Utility to operate entire system under Private Pitt Town Water Utility – WICA water license.

- 99 year term
- Peppercorn asset rental
- Equivalent level of service for existing residents
- Adopt councils current maintenance and renewal programme
- Volumetric payment to Council for sewage discharge to McGraths Hill
- Sewage service charge to residents equal to average Hawkesbury City Council sewage charge
- Recycled Water service and usage charges to residents equal to Sydney Water charges for Rouse Hill.

Issues & questions addressed in Section 6.

### **5.3 Option 3 – Private Pitt Town Water Utility Owned**

- Council **transfers ownership** of existing sewerage assets to the Private Pitt Town Water Utility.
- The Private Pitt Town Water Utility builds and owns the new Water Factory, **all new** sewage and recycled water reticulation.
- The Private Pitt Town Water Utility operates and maintains the whole of the Pitt Town sewerage and recycled water system under its water license for

perpetuity. The PPTWU may sell, lease or transfer the system or the operations (or both) to anyone in the private or public water utility market.

Infrastructure owned by the Private Pitt Town Water Utility –

- Existing gravity sewer system in Pitt Town village
- SPS and old rising main J to McGraths Hill
- New rising main J and new Fernadell Carrier
- New SPS and new rising main T to McGraths Hill
- New Blighton Carrier.(As currently constructed - part only)
- New gravity sewers in the new development. (Stages 1 and 2 )
- Water Factory
- Recycled Water storages
- Sewage storage at SPS T
- Low Pressure Sewer Systems
- Recycled Water reticulation

Infrastructure owned by Council:

- Nil

Private Pitt Town Water Utility Operational conditions

- Equivalent level of service for existing residents
- Determine own maintenance and renewal programme to meet bullet point 1
- Volumetric charge for all sewage discharged to McGraths Hill to Council
- Sewage service charge to residents equal to average Hawkesbury City Council sewage charge
- Recycled Water service and usage charges equal to Sydney Water charges for Rouse Hill.



Issues & questions addressed in Section 6.

## **6.0 Questions.**

The following questions may arise in any fair assessment of the concepts presented above. The concepts may have impacts on either the Council or the Private Pitt Town Water Utility and as such we have sought a legal perspective where appropriate and include that advice at Appendix 3.

Additional questions have been generated through the Council/JPG workshop meetings and as such have been included along with comments and/or preliminary answers.

### **6.1 - Is there a need to amend the current Pitt Town Wastewater Section 64 plan?**

*Yes. This is common to all options. A Council resolution would be required.*

### **6.2 - Is there a need for a section 68 LGA approval?**

*Yes. This is common to all options.*

### **6.3 - Is there a need to competitively tender the contract involving council owned infrastructure?**

*Section 55 of the Local Government Act provides that a council must invite tenders before entering into any of the following contracts:*

*“(c) a contract to perform a service or to provide facilities that, by or under any Act, is directed or authorised to be performed or provided by the council,*

*(d) a contract to perform a service or to provide facilities that, under some other contract, the council has undertaken to perform or provide for some other body,*

*(g) a contract for the disposal of property of the council,”*

*All options clearly involve the above types of services and facilities, and the use of Council property will be probably be caught by the reference to the 'disposal' of Council property.*

*The following classes of contracts are excluded from the requirements to tender:*

- a contract where, because of extenuating circumstances, remoteness of locality or the unavailability of competitive or reliable tenderers, a council decides by resolution (which states the reasons for the decision) that a satisfactory result would not be achieved by inviting tenders*
- a contract involving an estimated expenditure or receipt of an amount of less than \$100,000 or such other amount as may be prescribed by the regulations*

*Some options involve no expenditure by Council and as such this may permit Council to proceed without tender (expenditure of under \$100,000).*

*The financial viability of this alternative servicing strategy relies on the rate of development which is controlled by JPG (the proponent). It is that relationship between the development and servicing arms of JPG that permits the offer to be made. The servicing aspect of development shifts to the developer under this model.*

*The rate of development is a fundamental factor in the financial model. Council has no control over this factor. The rate of development is the fundamental market risk that any developer takes in the normal course of business on every project. It is not something that can be transferred to a third party without additional cost to offset that risk. Under these circumstances tendering does not create the usual competitive tension.*

*The demonstration of value arises from the developer's desire to maximize margins on land sales by reducing the cost of development. This servicing proposal must therefore be cost effective relative t the traditional forms of servicing .Otherwise it would not be proposed.*

*Council needs to ensure that as a consequence of adopting this approach, it does not accept a higher risk than it has at present. The risk in this proposal is partially carried by the developer and partially by the licensing authority (WICA) and the NSW State Government (IPART) in creating a competitive water market. Council's risk is diminished.*

*In the event of failure, it would be incumbent on the NSW the State Government (through IPART) to seek out solutions. These solutions could include going out to the water market comprised of both public and private operators to step in.*

#### **6.4 - Does this arrangement fall under the definition of a Public Private Partnership as per section 400B of the LGA?**

*A public-private partnership is defined under section 400B of the Local Government Act to mean an arrangement:*

- (a) between a council and a private person to provide public infrastructure or facilities (being infrastructure or facilities in respect of which the council has an interest, liability or responsibility under the arrangement), and*
- (b) in which the public infrastructure or facilities are provided in part or in whole through private sector financing, ownership or control.*

*A council must not enter into a public-private partnership unless the council has provided the Director-General with an assessment of the project to be carried out under the partnership. In providing such an assessment, the general manager of the council is required to certify that it has been prepared in accordance with the PPP Guidelines.*

**However**, the Local Government Act regulation 408 seems to say (and the PPP Guidelines back this up) that a contract which is subject to the tendering requirements is **not** something that requires a separate approval as a PPP. However, the PPP Guidelines go on to say:

*“Notwithstanding these exclusions [ie for tendering], in general terms, arrangements will need to comply with [the PPP requirements] of the Act where the council retains an equity or an ongoing obligation in the provision of public infrastructure, facilities or services.”*

*This could be the case as Council will still operate McGrath’s Hill WWTP.*

*The PPP guidelines also state:*

*“If a council is unsure about whether or not a project is a PPP, advice should be sought from the Director General. The aim of the legislation is to ensure that complex and/or risky projects are understood and well managed so that project delivery occurs in line with expectations and so that risks are minimised through a rigorous process.*

*Councils should not seek to avoid the legislation by attempting to circumvent the PPP definition.”*

#### **6.5 - What happens if the Private Water Utility fails financially?**

*The company’s financial capacity is scrutinised by the Independent Pricing and Regulatory Tribunal (IPART) as part of the Water Industry Competition Act (WICA) Licensing process.*

*It is IPART’s responsibility to ensure that the company complies with all of its performance criteria throughout the license period (renewal required every 10 Years).*

*Financial failure will be dealt with by IPART and it is their responsibility to ensure that an appropriate level of service is continued for the residents of Pitt Town.*

*In a mature market, other operators would pursue the business opportunity presented by the commercial arrangement that exists with Council. This may occur on renegotiated or different terms. The mature market could include Council, Hunter or Sydney Water et al.*

#### **6.6 - What happens if the sewerage system fails due to a design fault?**

*The Private Water Utility will ensure that it has the appropriate professional indemnity insurances. These insurances are a condition of license and are checked by IPART.*

*The Private Water Utility will be required to maintain an acceptable level of service whilst rectifying any design fault.*

#### **6.7 - What happens if system failure occurs as a result of operator performance?**

*Technical experience and management systems are scrutinised by the Independent Pricing and Regulatory Tribunal (IPART) as part of the Water Industry Competition Act (WICA) Licensing process.*

*The Private Water Utility is required to join and promote the Water Ombudsman scheme that provides an independent party to assist with customer complaints that might arise.*

*The WICA includes penalties for breaches in license conditions. These conditions include operational performance.*

#### **6.8 - What are the charges for other developers who will be serviced by the Private Pitt Town Water Utility?**

*Charges for capital expenditure will be developed on a similar basis to those determined under a section 64 contribution plan for Pitt Town.  
That is the Estimated Costs (Excl GST) divided by 943 lots.*

*Service and usage charges will be the same for all Pitt Town households and will be in parity with the surrounding Hawkesbury and Rouse Hill areas.*

#### **6.9 - Operation of existing infrastructure under the revised servicing approach?**

*No changes will be required. Our expectation is that the existing infrastructure will remain as is and the extended low pressure sewer system and recycled water factory will connect into the system without major alteration.*

#### **6.10 - Headworks Charges for Pitt Town**

*Council officers suggested that Council may seek to impose an additional charge of \$6796.50/lot for headworks charges. This matter was raised as an item to be further discussed however council should consider three important facts.*

- 1. The new sewage concepts proposed above will all service the entire New Pitt Town Release Area (Existing residents, JPG development lands and what will potentially become other developer's holdings). The level of access to existing infrastructure used to service the rest of the Hawkesbury LGA will remain at the same level as it does before development; that allowed for the existing village + 80 lots = 327 ET.*
- 2. Under the current sewage concept, which involves a \$10m new rising main and pump station from Pitt Town to McGraths Hill (already built by JPG) and \$12m to transfer flows from McGraths Hill to South Windsor, Pitt town was seen as a part of the wider Hawkesbury City Council sewage system.*

*Under the current concept, the need for the transfer of flows is eliminated, as is augmentation of the pumping systems beyond that which currently exists*

*and serves the existing village. The recently constructed works under the current sewage concept (\$10m/ \$22m) are actually an impediment.*

- 3. In late 2008, the NSW State Government abolished headworks charges for new development in the Sydney Water and Hunter Water districts. The NSW government recognized that such charges were a disincentive to economic growth, led to intergenerational inequity and generally targeted homemakers at their most vulnerable and leading many of them to make interstate choices ahead of NSW. The same could be said for the Hawkesbury.*

#### **6.11 - Council Charges for sewage transfer to McGraths Hill STP**

*The working group is to determine the most appropriate charging methodology for sewage transfers from Pitt Town to McGraths Hill STP.*

*The working group needs to ensure there is a consistent approach to charging across the whole of the municipality.*

*Currently 2 methods have been put forward. Each method produces approximately the same charge per kL of sewage transferred.*

## 7.0 Risk - Table showing risk to Council

	Costs	Return	Standards	Risk
<b>Option 1</b>	There are costs to council before breakeven at year 20	-\$391,000 in year 1 To \$179,000 in year 18	The responsibility of Council.	1. Development takes longer than planned. 2. Recycled Water Sales are lower than expected. 3. Costs are higher than budgeted.
<b>Option 2</b>	\$0	\$0 - 135,500 (McGraths Hill) \$50,000 (SPS O&M costs saving) Total Value \$210,000 pa	The responsibility of the Private Water Utility for 99 years or such longer term as Council decides.	1. Private Water Utility provides a lesser level of service than Council.
<b>Option 3</b>	\$0	\$0 - \$135,500 (McGraths Hill) \$50,000 (SPS O&M costs saving) Total Value \$210,000 pa	The responsibility of the Private Water Utility.	1. Private Water Utility provides a lesser level of service than Council.

**Option 1** places additional market risks on Council. These risks are development delays, recycled water use and operations cost fluctuations. The cashflow shows a **loss** of between \$391,000 and \$45,000 over the first 7 years and a breakeven return at 20 years. These losses exclude any impact of risk. Option 1 shows reasonable return after year 20 however this assumes that council has been able to mitigate the risks described in 1 above.

**Option 2** places all risk with the Private Utility. Council obtains revenue for sewage transferred to McGraths Hill and is able to reduce its operation and maintenance expenditure for the existing infrastructure at Pitt Town. Operation and Maintenance of the existing system becomes the responsibility of the Private Utility under this option. The use of a 99 year lease provides Council with a contractual end date that permits future Council administrators servicing options. Control over the asset is retained.

**Option 3** is the same as Option 2 except that council hands over all assets to the Private Water Utility.

## 8.0 Recommendation

**Option 2**, where Council **retains ownership** of existing sewerage assets and leases these assets to a Private Pitt Town Water Utility, is recommended. This option provides Council with the greatest return, the least risk and options for the future.

WICA licensing conditions together with councils lease conditions for the assets will ensure that Pitt Town residents continue to receive a high level of service.

Council will reduce its existing costs by \$50,000 a year (re: Ramiz Younan) and receive a rental income of up to \$135,500 a year for the use of the existing assets.

## 9.0 Appendices

**Appendix 1** Water Industry Competition Act - Overview of licensing regime Factsheet



# APPENDIX 1

## Water Industry Competition Act - Overview of licensing regime Factsheet

## WICA FACT SHEET

# Overview of licensing regime under the *Water Industry Competition Act 2006*

August 2008

### Introduction

The NSW Government introduced the *Water Industry Competition Act 2006* (the Act) <http://www.ipart.nsw.gov.au/water/private-sector-licensing/regulatory-framework.asp> as part of its strategy for a sustainable water future to harness the innovation and investment potential of the private sector in the water and wastewater industries. At the same time, the Act establishes a licensing regime for private sector entrants to ensure the continued protection of public health, consumers and the environment.

A person must not construct, maintain or operate any water industry infrastructure or to supply water (potable or non-potable) or provide sewerage services by means of any water industry infrastructure otherwise than under the authority of a licence under the Act. An application for a licence may only be made by or on behalf of a corporation.

However, a public water utility does not require a licence in relation to water industry infrastructure situated within its area of operations. (Note: There are other exemptions to the requirement for a licence. See Fact Sheet "Who needs a licence under the WIC Act?" for more information at <http://www.ipart.nsw.gov.au/water/private-sector-licensing/fact-sheets.asp>.)

### Legislative framework

The Act sets out when a licence is required, the procedures for applying for a licence, how licences and licence fees are determined, and how licences are audited and enforced. The Act establishes mechanisms to resolve disputes between private sector bodies and their customers, and to protect customers in the event of the failure of a new market entrant (i.e. retailer of last resort provisions). The Act also establishes a register of licences to provide key licensing information to licensees and the public.

The Act sets out the functions and responsibilities given to the Minister for Water (the Minister) and the Independent Pricing and Regulatory Tribunal (IPART) in relation to the licensing regime. The Minister's functions include determining whether to grant a licence, determining licence conditions, setting licence fees and enforcing licences. IPART's functions include considering licence applications, recommending the terms or conditions of a licence to the Minister, and auditing and enforcing licences. The Minister also has a range of functions to ensure the integrity of the licensing regime, such as giving emergency directions to deal with a risk to public health or safety, declaring specified persons as retailers of last resort and declaring a supply failure.

The Act is supported by the *Water Industry Competition (General) Regulation 2008* (the Regulation)

<http://www.ipart.nsw.gov.au/water/private-sector-licensing/regulatory-framework.asp> which sets out the matters a licence application must address, standard licence conditions, information to be contained on the register of licences and the retailer of last resort provisions. The Regulation also provides for the establishment of a marketing code of conduct, a transfer code of conduct and a water industry code of conduct.

The following information provides an overview of the elements of the licensing regime set out under the Act and the Regulation.

## Types of licences granted

Corporations that wish to supply water or provide sewerage services must obtain a licence.

There are two types of licences:

- ▼ a network operator's licence, and
- ▼ a retail supplier's licence.

## Network operator's licence

A network operator's licence must be obtained to construct, maintain or operate water industry infrastructure. Once the Minister has granted a network operator's licence, the licensee is entitled to operate on terms similar to a public water utility. Specifically, licensed network operators are entitled to:

- ▼ carry out work in or under public roads and public reserves to construct water industry infrastructure
- ▼ require landowners to stop trees, other structures and things on their land from damaging their infrastructure
- ▼ retain ownership of all the water industry infrastructure they construct, whether or not they own the land in, on or over which it is situated

- ▼ appoint meter readers to enter private premises to read meters that measure the supply of water from or discharge of sewage into a water or sewer main controlled by the licensed network operator.

A licensed network operator does not need to pay the local council or roads authority for any water industry infrastructure located in a public reserve or public road or for the space in a public reserve or public road that is occupied by the infrastructure.

## Retail supplier's licence

A retail supplier's licence must be obtained to supply water (potable or non-potable) or provide sewerage services by means of water industry infrastructure. A retail supplier may require access to existing infrastructure to supply water or provide a sewerage service via the use of that infrastructure. (For further information, see <http://www.ipart.nsw.gov.au/water/network-access/network-access.asp>.)

Licensed retail suppliers will be required to belong to an approved external ombudsman scheme to deal with disputes and complaints involving small retail customers.

Licensed retail suppliers are also required to implement any relevant government policy with respect to social programs that apply to it. Social programs for the supply of water and the provision of sewerage services are programs to ensure that those services are available to people in need, including those suffering financial hardship and those living in remote areas, and includes a program for the granting of payment assistance, discounts or rebates.

Licensed retail suppliers must comply with the water industry code of conduct, marketing code of conduct and transfer code of conduct established pursuant to the Regulation.

## Applying for a licence

Licence applications must be lodged with IPART. (Licence application forms can be obtained from <http://www.ipart.nsw.gov.au/water/private-sector-licensing/application-forms.asp>). IPART will furnish copies of the application to the Minister. IPART will also furnish copies and invite submissions from:

- ▼ the Minister administering the *Public Health Act 1991*,
- ▼ the Minister administering Chapter 2 of the *Water Management Act 2000*,
- ▼ the Minister administering the *Environmental Planning and Assessment Act 1979*, and
- ▼ the Minister administering the *Protection of the Environment Operations Act 1997*.

IPART must also invite submissions on the application from the public.

IPART will consider the licence application, along with any submissions, and provide a report to the Minister recommending whether or not the licence should be granted and on what terms or conditions.

## Obtaining a licence

Licences are granted by the Minister. In deciding whether or not to grant a licence, and what conditions the licence should be subject to, the Minister will consider (but is not bound to accept) any advice or recommendation in IPART's report.

To obtain a licence, applicants must:

- ▼ be a corporation
- ▼ not be a disqualified corporation
- ▼ have, and continue to have, the capacity (including technical, financial and organisation capacity) to carry out the activities to be authorised by the licence
- ▼ have the capacity to carry out the activities to be authorised by the licence in a manner that does not present a risk to public health or a significant risk of harm to the environment

- ▼ have made, and continue to maintain, appropriate arrangements with respect to insurance
- ▼ comply with such other matters as the Minister considers relevant, having regard to the public interest.

In addition, applicants for a retail supplier's licence to supply water must, if the licence is granted, be in a position to obtain sufficient quantities of water from a source other than from a public water utility.

In determining whether or not to grant a licence, and what conditions the licence should be subject to, the Minister will have regard to a number of licensing principles under the Act:

- ▼ protection of public health, the environment, public safety and consumers
- ▼ encouragement of competition
- ▼ sustainability of water resources
- ▼ promotion of production and use of recycled water.

## Licence conditions

If an application is successful, a licence will be granted indefinitely, dependent upon the payment of annual licence fees and compliance with the licence. The licence will be subject to conditions imposed by the Act, the Regulation and the Minister.

Standard licence conditions that apply to all licences are set out in the Schedules to the Regulation. These standard licence conditions include requiring a licensed network operator to prepare and implement an infrastructure operating plan and water quality or sewage management plan (as is relevant), and a licensed retail operator to prepare and implement a retail supply management plan.

The Minister may impose such additional licence conditions as he or she sees fit, consistent with the Act and the Regulation. In particular, the Minister may impose conditions to:

- ▼ ensure the licensee has, and continues to have, the capacity (including technical, financial and organisational capacity) to carry out the activities authorised by the licence,
- ▼ give and maintain security (in such amount and form as the Minister may determine) for the fulfilment of the licensee's obligations under the licence, and
- ▼ maintain appropriate arrangements with respect to insurance.

IPART will make recommendations to the Minister as to what licence conditions it believes the licence should be subject to.

The conditions of a licence may be varied at any time either by the Minister or upon application by the licensee. The existing conditions may be amended or new conditions may be imposed.

### **Commercial operation of new infrastructure**

The granting of a licence does not allow the licensee to bring new water or sewerage infrastructure into immediate commercial operation. It is a standard licence condition on all network operators' licences that written Ministerial approval must be obtained prior to commencing commercial operation.

See Fact Sheet "Commercial operation of new infrastructure under the WIC Act" for further information at <http://www.ipart.nsw.gov.au/water/private-sector-licensing/fact-sheets.asp>.

### **Performance monitoring and reporting**

The licensee must keep records and furnish information to IPART, where IPART requests the licensee to do so. IPART is required to report to the Minister annually on the compliance of licensees with their licence conditions. This report is to be laid before both Houses of Parliament.

### **Licence audits**

A number of components of the licensing regime are subject to audit.

#### **Compliance and licence review audits:**

IPART is required to monitor and report to the Minister on a licensee's compliance with the conditions of the licence. In particular, IPART is required to review each licence at intervals of not more than every 5 years (starting from the date the licence commences). IPART may require an audit of the licence as part of its compliance reporting or licence review process.

#### **Commercial operation of new infrastructure audits:**

An audit must be conducted by an approved auditor and provided to the Minister in order to obtain his or her approval to bring any new water or sewerage infrastructure into commercial operation.

#### **Plans and infrastructure audits:**

Periodic audits by an approved auditor will also be required by the Minister or IPART as to the condition of the licensee's infrastructure and the adequacy of the licensee's infrastructure operating, water quality, sewage management or retail supply management plans (as is relevant to the particular licence).

See Fact Sheet "Summary of audit framework under the WIC Act" for further information at <http://www.ipart.nsw.gov.au/water/private-sector-licensing/fact-sheets.asp>.

### **Approved auditors**

An approved auditor will conduct audits on behalf of the Minister, IPART or a licensee. An approved auditor is a person nominated by IPART, chosen by the licensee from a panel of persons nominated by IPART or nominated by the licensee and approved by IPART.

See Fact Sheet “Joining the audit panel for the purposes of the WIC Act” for further information at <http://www.ipart.nsw.gov.au/water/private-sector-licensing/fact-sheets.asp>.

## Licence enforcement

When a licensee contravenes the Act or the Regulation or a condition of the licence, the Minister or IPART may take a range of enforcement action. Such action could include (amongst other things) imposing a monetary penalty not exceeding \$500,000 for the first day of the contravention, and \$20,000 for each subsequent day (not exceeding 25 days); requiring a licensee to notify customers or take action to rectify the contravention; cancelling or suspending a licence; or disqualifying a corporation or individual for the purposes of the Act. (However, some of these enforcement actions can only be taken by IPART if the Minister concurs.)

## Register of licences

IPART must maintain a register of licences on its website which will contain all the key information pertaining to each licence granted under the Act. The register can be found at <http://www.ipart.nsw.gov.au/water/private-sector-licensing/registers.asp>.

## Monopoly suppliers

A licensed network operator or a licensed retail supplier may be declared by the Minister to be a monopoly supplier if they provide a service for which there are no other suppliers to provide competition in that market, and for which there is no contestable market by potential suppliers in the short term 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.

If declared a monopoly supplier, the licensee may be subject to a pricing determination or periodic review of their pricing policies by IPART.

## Retailer of last resort scheme

Where a licensed retail supplier can no longer supply water or provide sewerage services to its customers, the Act protects the continued supply of these customers by providing that a licensed retail supplier or a public water utility may be declared by the Minister as a retailer of last resort. In the event that the Minister declares a supply failure in relation to a licensed retail supplier, the retailer of last resort must commence supplying water or providing sewerage services to the customers in the area in respect of which it is the retailer of last resort.

## Further information

For any further information on the licensing scheme, please contact IPART’s Utility Licensing team either by:

- ▼ **phone**  
(02) 9290 8400 (general number)
- ▼ **email**  
[compliance@ipart.nsw.gov.au](mailto:compliance@ipart.nsw.gov.au)

## Legal context for this Fact Sheet

IPART has prepared this Fact Sheet as a general summary of relevant parts of:

- ▼ **the Act**  
Water Industry Competition Act 2006.
- ▼ **the Regulation**  
Water Industry Competition (General) Regulation 2008.

This Fact Sheet should not be relied on as a substitute for legal advice, and is designed to be read in conjunction with the above source documents.