

Huntlee – Scheme Approval variation determination

31 July 2024

IPART administers the licensing of private water utilities in NSW under the *Water Industry Competition Act 2006* (WIC Act).

Under the WIC Act, construction of water industry infrastructure to which the WIC Act applies is prohibited unless it is authorised by a scheme approval. The Independent Pricing and Regulatory Tribunal (The Tribunal) can:

- determine scheme and operational approval applications (new or variations)
- impose, revoke or vary approval conditions (of its own initiative or on application).

This report addresses the Tribunal's decision to vary the scheme approval for the Huntlee scheme in Rothbury and North Rothbury, NSW, located in both the Cessnock City and Singleton Shire local government areas.

Summary

The Huntlee scheme is privately owned and provides drinking water, recycled water and sewerage services to the Huntlee residential development. Altogether Huntlee Pty Ltd (Altogether Huntlee) operates the scheme and maintains the water industry and sewerage infrastructure within its licensed area of operation.

The scheme has capacity to provide drinking water, sewerage and recycled water services to residential, retail and commercial customers equivalent to 2,500 residential customers in stage 1 of the Huntlee development. It currently provides these services to approximately 1,200 residential customers.¹

On 29 June 2022, Altogether Huntlee applied to vary its network operator's licence to:

- add new end-uses for recycled water (general washdown, street cleaning, ornamental water features and use of process water at the recycled water treatment plant)
- build the drinking water and recycled water storage tanks that are required to adequately service the growing development
- expand the network area of operations to supply recycled water, drinking water and sewerage services to approximately 300 additional customers in stage 1 of the development.

On 22 September 2023, we recommended that the Minister vary Altogether Huntlee's network operator licence (15_030) after we assessed Altogether Huntlee's licence variation application. On 1 March 2024 substantial changes were made to the WIC Act after the commencement of the *Water Industry Competition Amendment Act 2021* and the *Water Industry Competition (General) Regulation 2024* (WIC Reg).

The application was not determined before the changes to the WIC Act came into effect. Consequently, the application became a 'pending application' under the WIC Act.²

We have determined the pending application under the WIC Reg, Schedule 5, clause 3, at the same time as exercising our functions under the WIC Act, Schedule 4, clause 10 to grant a scheme approval for the Huntlee scheme, as an application for a variation to the scheme approval (no. 24_024SA).

The application to vary the scheme approval included an expansion of the area of operations. We addressed the proposed expansion of the area of operations when granting the transitioned scheme approval (24_024SA) in accordance with the transitional provisions under Schedule 4, Part 4 of the WIC Act. A decision to expand to the area of operations is no longer required and was not considered as part of this application.

In assessing Altogether Huntlee's application for a varied scheme approval, we considered the requirements of section 7K of the WIC Act and had regard to the objects set out in sections 2A and 5A of the WIC Act,

This report contains our assessment of the pending application as a scheme approval variation under section 7K of the WIC Act.

Our decision

The Tribunal grants Altogether Huntlee Pty Ltd (Altogether Huntlee) a varied scheme approval (no. 24_024SA).

The varied scheme approval authorises Altogether Huntlee to:

- provide additional drinking water and recycled water storage tanks required to service the current development.
- allow four additional end-uses for recycled water.

Assessment

We considered the relevant criteria for a variation to a scheme approval under section 7K of the WIC Act, including the available grounds for refusal. The available grounds for refusal include:

- IPART must refuse to approve a variation of a scheme approval:
 - if the application for the approval as proposed to be varied would be required to be refused under section 7C(1)(a)
 - if in IPART's opinion the proposed variation is so significant as to be better dealt with by a fresh application for the approval.
- IPART may refuse to approve a variation of a scheme approval on 1 or more grounds on which an application for the approval as proposed to be varied would be permitted to be refused. That is, the grounds specified in section 7C(1)(b) to (g)^a, and section 7E.

^a These are ground on which applications for new scheme approvals must be refused. They are not mandatory grounds for refusal for applications to vary an approval.

We also had regard to the objects of the Act set out in sections 2A and 5A of the WIC Act.

1.1 Assessment against objects of the Act

Table 1 Regard to the objects of the WIC Act (ss.2A and 5A)

Objects of the Act	Consideration
Protect public health and safety and the environment in connection with the water industry, including in the longer term	We consider that the varied scheme approval supports this object because: <ul style="list-style-type: none"> The licensee has established and implemented water quality management plans, a sewage management plan, infrastructure operating plan and associated risk management processes that set out preventative and mitigative measures for the protection of public health, safety and the environment in relation to end-uses for recycled water and infrastructure. These plans have been audited and found to be consistent with the requirements set out in the WIC Reg and are subject to ongoing audits.
Protect the interests of consumers, particularly small retail customers, in the quality, reliability and price of water and sewerage services, including in the longer term	We consider that the varied scheme approval supports this object because: <ul style="list-style-type: none"> The scheme is operational, and the proposed reservoirs are necessary for the long-term viability and operation of the scheme. The proposed additional end-uses will enable more recycled water to be used by consumers reducing reliance on drinking water and reducing the cost of disposing of excess recycled water.
Facilitate the efficient, reliable and sustainable provision of water and sewerage services, having regard to financial, environmental and social considerations	We consider that the varied scheme approval supports this object because: <ul style="list-style-type: none"> The proposed reservoirs are necessary for managing sustainable and reliable supply of water at the scheme. Additional end-uses facilitate the efficient use of recycled water and reduces excess recycled water.
Promote the sustainable use of resources in connection with the water industry	We consider that the varied scheme approval supports this object because additional end-uses promotes sustainability through production of recycled water from sewage and reduces demand for rainfall dependent drinking water in the area.
Facilitate competition in the water industry with a view to encouraging innovation and improved efficiency in the industry	Not applicable to the variation – the scheme is established and operational.
Promote the adoption of written policies concerning the use of water resources as prescribed by the regulations	We consider that the varied scheme approval supports this object because by facilitating the increased use of recycled water the variation meets priority 2 <i>"Making the most of what we've got"</i> of the Lower Hunter Water Security Plan.
Mitigate the potential for adverse financial implications for small retail customers generally arising from the activities proposed to be covered by the approval or licence	We consider that the varied scheme approval supports this object because the proposed reservoirs subject to the variation are necessary to maintain capacity for new and existing customers, ensuring long-term financial sustainability of the scheme to the benefit of customers.
Promote the equitable sharing among participants in the drinking water market of the costs of water industry infrastructure that significantly contributes to water security	This object applies to cost sharing arrangements that may be put in place under a retailer licence and is not applicable to a decision to vary a scheme approval.

1.2 Assessment against grounds for refusal

Criteria	Assessment
<p>7C(1) A scheme approval must not be granted unless IPART is satisfied as to each of the following—</p> <p>(a) proposed infrastructure, when constructed as authorised, will be fit for purpose and capable of operating:</p> <p>(i) safely and reliably,</p>	<ul style="list-style-type: none"> • New infrastructure to be constructed as part of this variation application are reservoirs for drinking water and recycled water. • We consider that Altogether Huntlee can construct the proposed infrastructure and that it will be capable of operating safely and reliably as part of the scheme. This is because: <ul style="list-style-type: none"> - Altogether Huntlee has demonstrated experience in constructing safe and reliable water industry infrastructure at the scheme that includes infrastructure that is identical to the infrastructure proposed in the scheme approval variation. We have not identified any issues or concerns regarding the construction and operation of the infrastructure. - An audit will be required for the proposed infrastructure (reservoirs) before operational approval can be granted and we consider this would provide additional assurance on the safety and reliability of the infrastructure. Previously constructed water industry infrastructure at the scheme were subjected to an audit that concluded that the infrastructure could operate safely. - Altogether Huntlee has in place an infrastructure operating plan (IOP)³. The IOP is the asset management plan that describes the asset lifecycle planning, system redundancy, contingency plans and condition monitoring for water industry infrastructure, amongst other infrastructure management considerations. - The IOP was audited for adequacy (i.e. its consistency with the relevant legislation) prior to the grant of commercial operation of the current infrastructure and found to be adequate. The implementation of the plan is annually audited through a risk-based operational audit. - Infrastructure operation and management of the new infrastructure will be carried out in accordance with Altogether Group's IOP.
<p>(ii) in a way consistent with the national safety guidelines for the control of public health risks, and</p>	<ul style="list-style-type: none"> • The prescribed national safety guidelines are the <i>Australian Drinking Water Guidelines</i> (ADWG) and <i>Australian Guidelines for Water Recycling</i> (AGWR). • Altogether Huntlee construct, operate and maintain its water industry infrastructure, both current and those proposed in this variation application, in accordance with the generic Altogether Group plans and a scheme specific plan. The plans are: <ul style="list-style-type: none"> - Altogether Group drinking water quality plan (DWQP)⁴ - Altogether Group recycled water quality plan (RWQP)⁵ - Altogether Group sewage management plan (SMP)⁶ • The plans were audited for adequacy (i.e. its consistency with the relevant guidelines) prior to the grant of commercial operation for the current infrastructure. The implementation of the plans is annually audited through a risk-based operational audit. We have not identified any significant issues or concerns relating to the implementation of these plans in managing water industry infrastructure.
<p>(iii) in a way that does not present a significant risk of harm to the environment,</p>	<ul style="list-style-type: none"> • The proposed development has been subject to an assessment under Part 4 of the EP&A Act.

Criteria	Assessment
	<ul style="list-style-type: none"> • Altogether Huntlee's activities were considered in the development application process.^{b,c} Environmental impacts from the construction and operation of infrastructure were considered under the assessment. • We have not identified any additional risks to environment from the proposed infrastructure.
<p>b. the applicant has established it is highly likely the proposed scheme will become financially viable to operate within a reasonable period of time and will then remain financially viable for the life of the scheme,</p>	<p>We found the scheme to be financially viable when we considered the original licence application and recommended to the Minister that the licence be granted. The new infrastructure to be constructed as part of this variation application are reservoirs for drinking water and recycled water. This infrastructure will enhance the viability of the scheme in the longer term, and we consider that it will therefore support the financial viability of the scheme over the life of the scheme.</p>
<p>c. the applicant has established, for a regulated scheme, that it is not reasonably foreseeable that the operation of the scheme will have significant adverse financial implications for small retail customers,</p>	<p>We found the scheme to be financially viable and the licensee, Altogether Huntlee, to have financial capacity to construct and operate the scheme when we considered the original licence application and recommended to the Minister that the licence be granted. The new infrastructure to be constructed as part of this variation application are reservoirs for drinking water and recycled water. This infrastructure will enhance the viability of the scheme in the longer term, and we consider that it will therefore have positive rather than adverse financial implications for small retail customers.</p>
<p>d. the proposed registered operator of the scheme—</p>	<p>Altogether Huntlee (the applicant) is the proposed registered operator of the scheme and will hold an appropriate operator licence (no. 24_005) once its current network operator licence is transitioned.</p>
<p>(i) if the applicant is the proposed registered operator, holds an appropriate operator licence, and</p>	
<p>(ii) if the applicant is not the proposed registered operator, has entered into an agreement with the applicant for the operation of the scheme,</p>	<p>Not applicable – the applicant is the proposed registered operator.</p>
<p>e. the applicant has established that the proposed area of operations of the scheme is appropriate,</p>	<p>Not applicable to variation – no modification of the area of operation proposed.</p>
<p>f. for a scheme proposed to be constructed in stages—the applicant has established that the group of premises proposed to be serviced by each stage is reasonable having regard to the orderly and economic use and development of land in the area,</p>	<p>Not applicable to variation – no staged construction proposed.</p>
<p>g. matters prescribed by the regulations.</p>	<p>The relevant operator licence authorises the activities proposed under the scheme approval variation.</p>
<p><i>WIC Reg section 11 Grant of scheme approval</i> For the Act, section 7C(1)(g), IPART must be satisfied that the relevant operator licence authorises the activities proposed under the scheme approval, having regard to all the water industry infrastructure to be operated under the operator licence.</p>	
<p>7E(1) IPART may refuse to grant an approval if not satisfied—</p>	<p>The variation will not impact capacity of Altogether Huntlee to comply with its licence conditions as the new water reservoirs are similar to what is already operational at Huntlee and both these and the additional end-uses for recycled water do not require any changes to water quality or treatment infrastructure.</p>
<p>(a) the proposed registered operator of the infrastructure has the capacity to comply with the conditions of its operator licence, having regard to all the infrastructure it operates or will operate under the licence, or</p>	

^b NSW Government, State Significant Development [Huntlee – Stage 1 Development, MP 10-0137](#)

^c Cessnock City Council, Notice of Determination, [DA 8/2018/853/1](#)

Criteria	Assessment
(b) for a regulated scheme—the proposed licensed retailer of water or sewerage services provided by means of the scheme has the capacity to comply with conditions of its retailer licence, having regard to all the water and sewerage services it sells or will sell under its licence, or	The variation will not impact capacity of Altogether Group to comply with conditions of its retailer licence. The proposed variation increases the end-uses authorised for customers but does not otherwise impact water and sewerage services provided by the scheme.
(c) about other matters IPART considers relevant, having regard to the public interest.	We do not consider there to be any other relevant grounds for refusing to approve the variation.
7K(9) IPART is not to approve a variation of an approval if in its the opinion the proposed variation is so significant as to be better dealt with by a fresh application for the approval.	The variation is not significant as: <ul style="list-style-type: none"> • The new water reservoirs are similar to what is already operational at Huntlee and do not impact water treatment or quality. • The additional end-uses for recycled water do not require any changes to water quality or treatment.

We do not consider there to be any relevant grounds on which to refuse the application.

1.3 Consultation and submissions

In November 2022, we provided the pending licence application to, and invited submissions from, the following Ministers⁷ and their relevant departments:

- Minister administering the WIC Act and Chapter 2 of the *Water Management Act 2000* (Minister for Lands and Water)⁸
- Minister administering the *Public Health Act 2010* (NSW) (Minister for Health)⁹
- Minister administering the *Protection of the Environment Operations Act 1997* (NSW) (POEO Act) (Minister for Energy and Environment)¹⁰
- Minister administering the *Environmental Planning and Assessment Act 1979* (NSW) (EP&A Act) (Minister for Planning).¹¹

We invited Cessnock City and Singleton Shire Councils to make a submission as the local councils and Hunter Water as the local public water utility. We also invited submissions on the application from the public by advertising in the Cessnock Advertiser and Singleton Argus.¹² We advertised the application on our website on 25 November 2022. The closing date for submissions was 25 January 2023.

We wrote separately to 3 lot owners to notify them that the proposed area of operations for the varied licences would not include their lots and that this might have an impact on the lot owner's ability to connect to or be supplied by the Huntlee scheme should they wish to do so in the future. This is no longer relevant to the variation. The 3 excluded lots have been included in the area of operations for the Huntlee scheme in the transitioned scheme approval instrument. We considered the concerns raised by these lot owners in our transition of the existing network operator licence.

In addition to inviting submissions, we sought expert advice from Insurance & Care NSW (icare) to inform our assessment of appropriate insurance arrangements.

Table 2 Summary of submissions

Issue	Consideration
<p><i>NSW Health</i></p> <ul style="list-style-type: none"> • Management plans for drinking water, sewage and recycled water will need updating if details of the scheme change, including an assessment of the capacity of the systems to service the expanded area. • Requested that the risk assessment is reviewed to ensure that the additional end-uses are captured. 	<ul style="list-style-type: none"> • We consider that the risk mitigation measures that Altogether Huntlee has proposed in its risk register, are adequate to demonstrate Altogether Huntlee's capacity to undertake the current and proposed end-uses. • However, this is not an endorsement of Altogether Huntlee's current risk register by IPART, which should be further developed with NSW Health prior to supplying recycled water for the new end-uses. • We consider the scheme approval conditions are adequate for managing risk to public health and additional conditions are not required.
<p><i>The then Minister for Environment and Heritage</i></p> <ul style="list-style-type: none"> • The EPA has expressed concern that the proposed additional end-use of recycled water for general washdown for residential and industrial use on hard surfaces and street cleaning may pose an unacceptable risk to the environment. It is unresponsive of the proposed end-uses, and stated that: <p><i>Recycled water is potentially high in nutrients and other pollutants. Washdown and street cleaning would result in the ingress of recycled water into gutters, the stormwater system and a release to environmental waters.¹³</i></p> 	<ul style="list-style-type: none"> • This risk should be viewed in relation to the Huntlee scheme rather than generally. • The primary risk is the impact to waterways from recycled water containing excess phosphorus, nitrogen, salinity and chlorine. • The Huntlee scheme uses a membrane bioreactor system to produce high quality recycled water fit for residential use. Nitrogen is removed through the bioreactor while phosphorus is removed by chemical dosing (alum). The treatment processes are validated and are monitored using operational and verification methods to ensure water quality. The chlorine levels present in the recycled water are similar to drinking water, which is used for the same end-uses. • Several Altogether Group schemes have the proposed end-uses approved in their licences and have risk management measures in place including information brochures/education kits for their customers. There have been no related incidents reported, or issues raised in the annual operational audits. • We consider Altogether Huntlee is managing this risk appropriately and the additional end-uses do not pose an unreasonable risk to the environment.
<p><i>The then Minister for Planning and Homes</i></p> <ul style="list-style-type: none"> • Advised that DPE had examined current approvals under the Huntlee New Town Stage 1 State significant development consent and modifications (MP10_0137) and considers the area of proposed operations are consistent with the activities the network operator's licence variation would authorise. • DPE advised it is unaware of any unacceptable risks and did not recommend any licence conditions. 	<p>No longer applicable to the variation.</p>
<p><i>The then Minister for Lands and Water</i></p> <p>advised that a controlled activity approval, surface water access licence and a water supply work approval is not required under the <i>Water Management Act 2000</i> from the expansion of the Huntlee scheme.</p>	<p>No longer applicable to the variation.</p>
<p><i>Cessnock City Council, J&P Vizzard, D. Bedall</i></p> <ul style="list-style-type: none"> • Concerns related to potential stranded lots in the area of operations. • 2 lot owners, <i>J&P Vizzard, and D. Bedall</i> (who would have continued to be excluded under the licence variation application) objected to the variation applications being granted as it would have left them without access to timely reticulated sewage and water services. 	<ul style="list-style-type: none"> • No longer applicable to the variation. • The "stranded lots" have been considered in the transition of the existing network operator's licence. • These lots are included in the area of operations.

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- ¹ Altogether Group, email dated 19 April 2024.
 - ² Schedule 4, clause 11, of the WIC Act.
 - ³ Altogether, *Infrastructure Operating Plan*, version 14, 12 January 2022.
 - ⁴ Altogether, *Drinking Water Quality Plan*, version 13, 16 March 2021.
 - ⁵ Altogether, *Recycled Water Quality Plan*, version 18, 31 May 2021.
 - ⁶ Altogether, *Sewage Management Plan*, version 10, 6 January 2022.
 - ⁷ Listed as at that date.
 - ⁸ WIC Act (as in force at the time), section 9(1)(a) and section 9(1)(b)(ii).
 - ⁹ WIC Act (as in force at the time), section 9(1)(b)(i).
 - ¹⁰ WIC Act (as in force at the time), section 9(1)(b)(iii) and *Water Industry Competition (General) Regulation 2021* (2021 Regulation), section 17(1)(b).
 - ¹¹ WIC Act (as in force at the time), section 9(1)(b)(iii) and 2021 Regulation, section 17(1)(a).
 - ¹² WIC Act (as in force at the time), section 9(1)(c).
 - ¹³ Submission from the Minister for Environment and Heritage, 19 December 2022.