



Independent Pricing and Regulatory Tribunal

# **Application for a Network Operator's and Retail Supplier's Licence from Mirvac Real Estate Pty Ltd**

**IPART's report to the Minister**

**Water — Ministerial report**  
November 2012



# Contents

<b>1</b>	<b>Background</b>	<b>4</b>
<b>2</b>	<b>Submissions</b>	<b>4</b>
<b>3</b>	<b>Assessment of application</b>	<b>5</b>
3.1	Licensing criteria	6
3.2	Licensing principles	11
<b>4</b>	<b>Recommendations</b>	<b>12</b>

## 1 Background

On 12 April 2012 we received a licence application for a Network Operator's and Retail Supplier's licence under the *Water Industry Competition Act 2006* (the Act) from Mirvac Real Estate Pty Ltd. The application is for a Network Operator's licence and a Retail Supplier's licence to construct, operate and maintain a recycled water treatment plant located in the basement of the 8 Chifley Square Development in the Sydney CBD and supply water by means of this infrastructure.

Mirvac Real Estate Pty Ltd proposes to treat wastewater generated from within the development and raw sewage extracted from a Sydney Water sewer main located adjacent to the 8 Chifley Square Development to a standard suitable for the following applications within the development premises:

- ▼ cooling tower make-up
- ▼ irrigation
- ▼ toilet flushing

A small volume of rainwater harvested from the roof of the development will supplement the non-potable water supply from the recycled water treatment plant.

The proposed customer is Mirvac 8 Chifley Pty Ltd, the owner of the 8 Chifley Square Development, which will distribute the recycled water to the commercial occupants of the building. A potable (Sydney Water) water supply system will be maintained as a contingency and, if required, to top-up the recycled water system, to minimise the risk of loss of supply to the customer.

In accordance with the Act, this report sets out our 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. This report concludes with a recommendation to grant a Network Operator and a Retail Supplier licence. The report also proposes the conditions to which the licence should be subject.

## 2 Submissions

We 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 Primary Industries)
- ▼ Minister administering the *Protection of the Environment Operations Act 1997* (Minister for Environment and Minister for Heritage)

- ▼ Minister administering the *Environmental Planning and Assessment Act 1979* (Minister for Planning and Infrastructure).<sup>1</sup>

A copy of the application was also provided to the Minister for Finance and Services, the Minister administering the Act.

On 30 May 2012, the application was provided to the Ministers with submissions requested by 4 July 2012.

We received submissions from the Minister for Primary Industries, the Minister for Planning and Infrastructure, the Minister for the Environment and Minister for Heritage and NSW Health (now NSW Ministry of Health).

The contents of the submissions were generally supportive of the proposed scheme and the application. The Ministry of Health (MOH) and the Minister for Environment and Minister for Heritage raised some minor matters for consideration and these are addressed in sections 3.1.5 and 3.1.6.

The application was also provided to Sydney Water which advised that it was already working at an operational level with Mirvac Real Estate Pty Ltd and that it had no concerns with the proposed scheme and application.

IPART must also call for submissions on the application from the public.<sup>2</sup> On 6 June 2012 we also advertised in the Sydney Morning Herald and the Daily Telegraph for public submissions. The closing date for submissions was 18 July 2012.

No submissions were received.

### 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.<sup>3</sup> 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

---

<sup>1</sup> *Water Industry Competition Act 2006*, section 9(1)(b)

<sup>2</sup> *Water Industry Competition Act 2006*, section 9(1)(c).

<sup>3</sup> *Water Industry Competition Act 2006*, section 10(1).

- ▼ 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.<sup>4</sup>

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
- ▼ the ensuring of sustainability of water resources
- ▼ the promotion of production and use of recycled water
- ▼ the promotion of policies set out in any prescribed water policy document,
- ▼ the potential for adverse financial implications for small retail customers generally arising from the activities proposed to be covered by the licence,
- ▼ the promotion of the equitable sharing among participants in the drinking water market of the costs of water industry infrastructure that significantly contributes to water security.<sup>5</sup>

The following sections address the licensing criteria and principles outlined above.

### 3.1 Licensing criteria

#### 3.1.1 Disqualified corporation

The applicant corporation, Mirvac Real Estate Pty Ltd, its related entities, directors and persons concerned in its management are not disqualified pursuant to the Act. In making the assessment of the standing of Mirvac Real Estate Pty Ltd and its related entities', directors and persons concerned in its management, regard was given to:

- ▼ the statutory declaration made by the Chief Executive Officer and Director
- ▼ 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 database<sup>6</sup>.

**IPART considers that Mirvac Real Estate Pty Ltd has satisfactorily met this criterion.**

<sup>4</sup> *Water Industry Competition Act 2006*, sections 10(3) & (4).

<sup>5</sup> *Water Industry Competition Act 2006*, section 7.

<sup>6</sup> 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), this being the second application.

### 3.1.2 Technical capacity

#### Network Operator Licence

We undertook a detailed assessment of Mirvac Real Estate Pty Ltd's technical capacity to construct, operate and maintain water industry infrastructure for the purpose of supplying non-potable water in a manner that would protect public health and the environment.

As the Applicant relies on a third party (Innaco Pty Ltd - Innaco) to construct operate and maintain the wastewater / recycled water treatment plant, we also assessed the technical capacity of this company.

Our assessment was therefore based on the information provided by Innaco as part of Mirvac Real Estate Pty Ltd's application and their response to our request for additional information, including:

- ▼ previous technical experience of the Mirvac Real Estate Pty Ltd and Innaco
- ▼ the specific personnel nominated to the project
- ▼ preliminary/draft reports and plans for the proposed scheme which demonstrate the technical capacity of the applicant/Innaco to safely and reliably construct operate and maintain water industry infrastructure
- ▼ examples of final reports and plans required to demonstrate Innaco's technical capacity to safely and reliably construct, operate and maintain water industry infrastructure prepared for a similar project
- ▼ technical details of the proposed water industry infrastructure including the preliminary design and the operating and maintenance plans and procedures.

On the basis of the above documents and other site specific documentation provided by the Applicant, including a Preliminary Risk Assessment, we assessed the proposed recycled water treatment system for the development, the associated health and environmental risks and the measures intended to address any such risks.

Finally, we assessed whether the Applicant had sufficient controls in place to ensure Innaco would meet all relevant licensing requirements. The review showed that the Applicant had entered into a contractual agreement with Innaco to operate and maintain the proposed recycled water treatment plant but was not responsible for the construction of the plant. Innaco had been contracted to Mirvac Projects Pty Ltd (the Developer) to construct the plant.

To overcome this, a Deed of Understanding between Mirvac Real Estate Pty Ltd and Innaco was drawn up in relation to responsibilities for the construction of the plant.

Based on our assessment we conclude, that subject to Innaco being named in the licence, Mirvac Real Estate Pty Ltd has, and will continue to have, the technical capacity to carry out the proposed activity.

**IPART considers that Mirvac Real Estate Pty Ltd has satisfactorily met this criterion subject to Innaco Pty Ltd being named within the licence.**

#### Retail Supplier Licence

IPART assessed Mirvac Real Estate Pty Ltd's technical capacity to act as a retail supplier. In respect to this application, the supply of non-potable water will only be to one customer, the building owner. The cost of the recycled water will be paid for by the building manager (Mircvac Real Estate Pty Ltd) and then recovered from the building tenants through their lease payments. This arrangement forms part of a service agreement between Mirvac Real Estate Pty Ltd and the building owner to operate and maintain the building. The assessment was therefore based wholly on the information provided in the application including the answers provided in the licence application form.

**IPART considers that Mirvac Real Estate Pty Ltd has satisfactorily met this criterion.**

#### 3.1.3 Financial capacity

A financial viability assessment was carried out by an external financial consultant, Vincents (Chartered Accountants) to satisfy the Minister that the applicant has and will continue to have the financial capacity to carry out the activities under the licence. The applicant is a wholly owned subsidiary of Mirvac Limited, a publicly listed company, and is not required to prepare and produce financial records<sup>7</sup>. As such, the applicant has not provided details of its own financial history but has supplied financial information for its parent entity, Mirvac Limited.

Based on its assessment of Mirvac Real Estate Pty Ltd and its most recent historical financial position, Vincents concluded that the applicant has satisfactorily demonstrated the ongoing financial capacity of its parent company and as such, demonstrated that it has the ongoing financial capacity to carry out the activities to be licensed.

An assessment of this type is limited to a point in time, and 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.

Regardless of the above assessment, IPART notes that this project could readily convert to the use of potable water in the event that Mirvac Real Estate Pty Ltd was unable or unwilling to continue the supply of recycled water

---

<sup>7</sup> In accordance with the *Corporations Act (Cth) 2001* and the Australian Stock Exchange Listing Rules.



Accordingly, we conclude that the applicant has demonstrated adequate financial capacity to be granted a network operator's and retail supplier's licence. However,

**IPART considers that Mirvac Real Estate Pty Ltd has satisfactorily met this criterion.**

#### **3.1.4 Organisational capacity**

IPART undertook an assessment of Mirvac Real Estate Pty Ltd's organisational capacity (current and ongoing) to construct, operate and maintain water industry infrastructure for the purpose of supplying non-potable water in a manner that would protect public health and the environment. The assessment also took into account the capability and experience of Innaco.

The assessment was based wholly on the information provided as part Mirvac Real Estate Pty Ltd's application. It included a review of the Applicant's and Innaco's previous experience of within Australia and the CVs of the specific personnel nominated to the project.

The Applicant forms part of the integrated Mirvac Group and provides key property management, engineering and operational services to internal and external real estate clients. It has over 260 staff and utilises approximately 5,000 contractors to manage retail, commercial and industrial properties in approximately 130 locations throughout metropolitan and regional areas of Australia.

Innaco has been operating since 2005 and has demonstrated experience in the design, construction, operation and maintenance of water infrastructure projects. Recent projects undertaken by the company include the Gordon Golf Course sewer mining facility, the North Turrumurra Recreation Area sewer mining facility and the St Ives Showground leachate treatment and reuse system. These schemes use treatment processes similar to that proposed for 9 Chiefly Square and treat wastewater to a quality suitable for high exposure applications. On the basis of the information provided, we identified no issues regarding the applicant's current organisational capacity to hold a WICA network operator's licence.

**IPART considers Mirvac Real Estate Pty Ltd has satisfactorily met this criterion.**

#### **3.1.5 Public health**

The capacity of Mirvac Real Estate Pty Ltd to construct, operate and maintain water industry infrastructure in a manner that protects public health was considered as part of the technical, financial and organisational capacity assessments.

MOH supported the application but requested that it be consulted at the Technology Assessment stage and following the final operational audit before commercial production commences to ensure that all relevant health matters have been

addressed. Additionally, it requested that it be involved in the development of the detailed risk assessment and final Recycled Water Quality Management Plan (including the development of incident notification and management procedures) which should be submitted to MOH for review prior to the operation of the recycled water system. The Applicant will be advised of MOH's comments and our subsequent audit process should verify that these matter has been addressed prior to commercial operation of the scheme.

**IPART considers that Mirvac Real Estate Pty Ltd has satisfactorily met this criterion and licensing principle.**

### **3.1.6 Environment**

The submission received from the Minister for the Environment and Minister for Heritage stated that the Environment Protection Authority (EPA) advised that the development is not a scheduled activity under the provisions of the *Protection of the Environment Act 1997* (POEO Act). Further it does not need to be licensed by the Office of Environment and Heritage (OEH). The EPA noted that in the event of an emergency, the risk of harm to the environment will be mitigated due to the scheme arrangement which enables all sewage generated by the development to drain by gravity to Sydney Water's sewer system.

The EPA also advised that it was unable to provide significant comment on the adequacy of the applicant's proposed measures to protect the environment from any significant risk of harm as an environmental assessment for the project had not been provided with the application, Subsequent information sought from the applicant demonstrated that the scheme presented minimal risks of any adverse environmental impacts.

The applicant has indicated that an Operational Environmental Management Plan will form part of the final Recycled Water Quality Management Plan which will be audited prior to commercial operation of the recycled water treatment plant.

**IPART considers that Mirvac Real Estate Pty Ltd has satisfactorily met this criterion.**

### **3.1.7 Insurance**

An assessment was made of Mirvac Real Estate Pty Ltd's existing arrangements with respect to insurance. The assessment was based wholly on the information provided as part of Mirvac Real Estate Pty Ltd's application including the certificates of currency. The activities conducted at the 8 Chifley Square site will be covered under the Mirvac Group global insurance program. According to Mirvac Real Estate Pty Ltd, the coverage provided under the global program is significantly in excess of the limits required for the size and nature of the activities at 8 Chifley Square.

IPART is satisfied on the information provided that Mirvac Real Estate Pty Ltd has demonstrated that it has made, and will continue to maintain, appropriate arrangements in respect to insurance.

Mirvac Real Estate Pty Ltd will also be subject to standard licence conditions B2 and B3 (approved by the Minister to be imposed on all WICA licences). Condition B2 requires Mirvac Real Estate Pty Ltd to provide a report from an insurance expert certifying that in the insurance expert's opinion the type and level of insurance obtained by Mirvac Real Estate Pty Ltd is appropriate for the size and nature of the activities authorised under the licence. Condition B3 requires Mirvac Real Estate Pty Ltd to maintain appropriate insurance sufficient for the size and nature of the activities authorised by the licence. It also requires Mirvac Real Estate Pty Ltd to notify IPART of any change in the type, level or period of insurance held by Mirvac Real Estate Pty Ltd and provide a copy of the certificate of currency within 10 days of the change being made. This condition also enables IPART to request further insurance expert reports from Mirvac Real Estate Pty Ltd in future, should it consider it necessary.

**IPART is satisfied that Mirvac Real Estate Pty Ltd has satisfactorily met this criterion and notes that standard licence conditions B2 and B3 will apply.**

#### **Additional public interest considerations**

We support the implementation of projects of this type which seek to replace the use of potable water in non-potable applications.

**IPART considers that Mirvac Real Estate Pty Ltd has satisfactorily met this criterion.**

### **3.2 Licensing principles**

Each of the licensing principles was considered in making a recommendation as to whether or not the licence should be granted and what licence conditions to impose, as follows:

- ▼ Protection of public health, environment, public safety and consumers was considered as part of the technical assessment. In particular IPART and MOH considered that Mirvac Real Estate Pty Ltd had the technical capacity and experience to undertake the activities in a way that will manage risks to public health and the environment at an acceptable level.
- ▼ Encouragement of competition. The scheme proposes to supply non-potable water to the 8 Chifley Square development in the Sydney CBD. The non-potable water will be supplied in bulk to a single customer in direct competition to the existing drinking water supply.

- ▼ Ensuring sustainability of water resources. The non-potable water will be sourced from wastewater that would have otherwise been discharged to the ocean via Sydney Water’s Bondi deepwater ocean outfall, in direct substitution of potable water
- ▼ Promotion of production and use of recycled water. The supply of recycled water by Mirvac Real Estate Pty Ltd to the 8 Chifley Square development does promote the use of recycled water and the substitution for potable water.
- ▼ Promotion of policies set out in any prescribed water policy document. The supply of recycled water by Mirvac Real Estate Pty Ltd to the 8 Chifley Square development is consistent with the objectives of the NSW Metropolitan Water Plan.
- ▼ Potential for adverse financial implications for small retail customers generally arising from the activities proposed to be covered by the licence. This principle is not applicable. There are no small retail customers involved in this scheme as the recycled water is being supplied in bulk to one customer, the owner of the 8 Chifley Square development.
- ▼ Promotion of the equitable sharing among participants in the drinking water market of the costs of water industry infrastructure that significantly contributes to water security. This principle is not applicable since the licence does not involve the production or supply of drinking water.

**IPART is satisfied that the grant of a Network Operator’s and Retail Supplier’s licence to Mirvac Real Estate Pty Ltd 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.<sup>8</sup>

**IPART is satisfied that Mirvac Real Estate 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 and Retail Supplier’s licence to Mirvac Real Estate Pty Ltd, subject to the conditions as set out in licence numbers 12\_020 and 12\_021R**

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.<sup>9</sup>

---

<sup>8</sup> *Water Industry Competition Act 2006*, section 10(2).

<sup>9</sup> *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.<sup>10</sup>

---

<sup>10</sup> *Water Industry Competition Act 2006*, section 10(6).