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File No: 1954-14
Our Ref: 13/1187 ZB/RC



Mr Miles Hampton
Chairman
Tasmanian Water and Sewerage Corporation Pty Ltd
GPO Box 1393
HOBART TAS 7001

Dear Mr Hampton

WATER AND SEWERAGE LICENCE

I am pleased to advise that the Regulator has granted a water and sewerage licence to Tasmanian Water & Sewerage Corporation Pty Ltd (ACN 162 220 653).

The licence is effective from 1 July 2013 and remains in force until it is cancelled.

I have enclosed the Regulator's Statement of Reasons and the licence document, both of which will be published on OTTER's website.

If you have any queries concerning this matter please contact Zoe Bok of this office by telephone on (03) 6233 3632 or by email to zoe.bok@economicregulator.tas.gov.au.

Yours sincerely

Raymond Chan
DELEGATE OF THE REGULATOR

22 April 2013

Enc



WATER AND SEWERAGE INDUSTRY ACT 2008

WATER AND SEWERAGE LICENCE

issued to

**TASMANIAN WATER AND SEWERAGE CORPORATION PTY
LTD**

ACN 162 220 653

effective date from

1 July 2013

Tasmanian Water and Sewerage Licence

1. Definitions and Interpretation

1.1. In this licence, words and phrases appearing italicised in bold type:

1.1.1. which are defined in the **Act**, have the same meaning when used in this licence; and

1.1.2. which are not defined in the **Act**, have the meaning ascribed to them in Part 1 of Schedule 1.

1.2. This licence must be interpreted in accordance with Part 2 of Schedule 1.

2. Issue of Licence

The **Regulator**, in exercise of the powers conferred by section 35 of the **Act**, authorises the **Licensee** to:

2.1. own **water infrastructure** for the provision of a **water service** and **sewerage infrastructure** for the provision of a **sewerage service**; and

2.2. operate **water infrastructure** for the provision of a **water service** and **sewerage infrastructure** for the provision of a **sewerage service**; and

2.3. provide a **water service** and a **sewerage service**;

to another person in the State of Tasmania on and subject to the conditions of this licence.

3. Term of Licence

Subject to the **Act**, this licence takes effect on and from 1 July 2013 and remains in force until it is cancelled.

4. Compliance with Guidelines and Other Requirements

4.1. The **Licensee** must comply with all applicable **guidelines**.

- 4.2. The **Licensee** must use best endeavours to ensure that each contractor engaged by it complies with the terms and conditions of this licence, to the extent that such terms and conditions are relevant to that contractor.

5. Provision of Information

- 5.1. The **Licensee** must provide to the **Regulator**, in the manner and form and by a time determined by the **Regulator**, such information as the **Regulator** may from time to time reasonably require and which is, in the opinion of the **Regulator**, relevant to the functions of the **Regulator** under the **Act**.
- 5.2. The **Licensee** must notify the **Regulator** if it commits a material contravention of a requirement imposed by or under the **Act**, **codes**, **regulations**, **guidelines** or this licence as soon as the **Licensee** becomes aware of having committed such a contravention and in any case no later than 5 **business days** after becoming aware of the contravention.

6. Management Plans

The **Licensee** must develop and submit to the **Regulator** the **management plans** as set out in Schedule 2 of this licence.

7. Advice to the Regulator

- 7.1. The **Licensee** must report to the **Regulator** as soon as possible the occurrence of any of the following circumstances:
- 7.1.1. the **Licensee** is put under external administration as defined in the *Corporations Act 2001* (Cwth); and
 - 7.1.2. the **Licensee** experiences a significant change in its circumstances which may affect the **Licensee's** ability to meet its obligations under the **Act**, **codes**, **guidelines** or this licence.
- 7.2. The **Licensee** must report to the **Regulator** any change of the **Licensee's officer** within 10 **business days** of that change.

8. Honesty and Integrity

The **Licensee** must maintain honesty and integrity in its commercial and other dealings.

9. Capacity

The **Licensee** must maintain the technical, financial and organisational capacity to carry out the activities authorised under this licence.

10. Public and Environmental Health Risk Management

The **Licensee** must maintain the capacity to carry out the activities authorised under this licence in a manner that appropriately manages the risk to public and environmental health.

11. Insurance

The **Licensee** must arrange and maintain with one or more insurers, adequate contract works and public liability insurance in respect of the potential for any loss, harm or damage caused to any person or property arising out of, or in any way connected with, the action or inaction of the **Licensee** or any of its agents or employees, or of any contractor or subcontractor of the **Licensee** pursuant to this licence.

12. Communications

12.1. A **communication** must be in writing.

12.2. A **communication** is to be regarded as having been given by the sender and received by the addressee:

12.2.1. when delivered in person to the addressee; or

12.2.2. where sent by post, on the 4th **business day** after the date of posting, if the **communication** is posted within Australia; or

- 12.2.3. where sent by post, on the 7th **business day** after the date of posting, if the **communication** is posted outside Australia; or
- 12.2.4. when, according to the sender's transmission report, received by facsimile transmission by the addressee; or
- 12.2.5. where sent by electronic mail, when the **communication** is recorded as having been first received at the electronic mail destination.

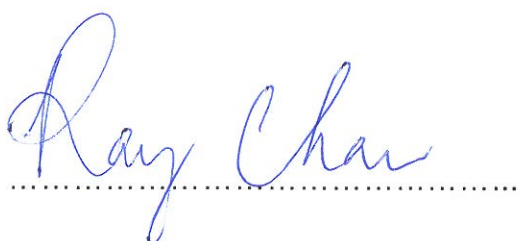
13. Management and Operating Contracts

13.1. The **Licensee** must advise the **Regulator** of the entering into, by the **Licensee**, of any contract under the terms of which another person assumes, or will assume, operational responsibility for carrying out any substantive part of the activities authorised by this licence not less than 14 days prior to the commencement of any contract.

13.2. The **Licensee** must submit to the **Regulator**:

- 13.2.1. the identity and contact details of the other person;
- 13.2.2. details of the nature of the activities that the other person will assume responsibility for carrying out; and
- 13.2.3. details of the qualifications and experience of the other person.

Signed



Raymond Chan

DELEGATE OF THE REGULATOR

22 April 2013

Schedule 1 - Definitions and Interpretation

1. Definitions

In this licence, unless the context otherwise requires:

“Act” means the *Water and Sewerage Industry Act 2008* (Tas);

“communication” means a written notice, notification, agreement, consent, direction, representation, advice, statement or other communication required or given pursuant to or in connection with this licence;

“guideline” means any guideline issued in accordance with the provisions of the **Act**;

“Licensee” means ‘Tasmanian Water and Sewerage Corporation Pty Ltd’ (ACN 162 220 653);

“Licensee’s officer” means the person nominated by the **Licensee** to be responsible for regulatory compliance and may include a director, company secretary or chief executive officer;

“management plan” means any of the plans referred to in clause 1.1 of Schedule 2;

“reporter” means an appropriately qualified person engaged by the **Licensee** with the approval of the **Regulator** to report to the **Regulator** on compliance with and adequacy of the **management plans** in accordance with terms of reference approved by the **Regulator**.

2. Interpretation

In this licence, unless the context otherwise requires:

2.1. headings are for convenience only and do not affect the interpretation of this licence;

2.2. words importing the singular include the plural and vice versa;

2.3. words importing a gender include any gender;

- 2.4. an expression importing a natural person includes any company, partnership, trust, joint venture, association, corporation or other body corporate and any governmental agency;
- 2.5. a reference to a condition, clause, Schedule or Part is to a condition, clause, Schedule or Part of this licence;
- 2.6. a reference to terms of an offer or agreement is to all terms, conditions and provisions of the offer or agreement;
- 2.7. a reference to any statute, regulation, proclamation, order in council, ordinance or by-law includes all statutes, regulations, proclamations, orders in council, ordinances or by-laws varying, consolidating, re-enacting, extending or replacing them and a reference to a statute includes all regulations, proclamations, orders in council, ordinances, by-laws and determinations issued under that statute;
- 2.8. a reference to a document or a provision of a document includes an amendment or supplement to, or replacement or novation of, that document or that provision of that document;
- 2.9. a reference to a person includes that person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and permitted assigns;
- 2.10. when italicised, other parts of speech and grammatical forms of a word or phrase defined in this licence have a corresponding meaning;
- 2.11. a period of time:
- 2.11.1. which dates from a given day or the day of an act or event is to be calculated exclusive of that day; or
- 2.11.2. which commences on a given day or the day of an act or event is to be calculated inclusive of that day;

- 2.12. an event which is required under this licence to occur on or by a stipulated day which is not a **business day** may occur on or by the next **business day**;
- 2.13. in the event of any inconsistency between the conditions of this licence, the **Act** or **regulations**, the **Act** or **regulations** will prevail to the extent of such inconsistency; and
- 2.14. in the event of any inconsistency between the conditions of this licence and the Schedules, the conditions of this licence prevail to the extent of such inconsistency.

Schedule 2 – Other Licence Conditions

1. Management Plans

- 1.1. The aspects of the **Licensee's** operations that shall be the subject of **management plans** are:
- 1.1.1. compliance;
 - 1.1.2. asset management; and
 - 1.1.3. emergency management.
- 1.2. The **management plans** required under clause 1.1 of this Schedule 2 must be submitted to the **Regulator** on such date as notified by the **Regulator** and subsequently as required and advised by the **Regulator**.
- 1.3. The **management plans** are to be made in accordance with and take account of any **guidelines**.
- 1.4. The **Regulator** may require the **Licensee** to provide a report or reports to the **Regulator** which includes:
- 1.4.1. details of the **Licensee's** actual performance against the standards, indicators and targets included in the **management plans**;
 - 1.4.2. if the **Licensee's** actual performance is below the targets included in the **management plans**, the reasons for the failure to meet the targets and strategies for achieving the targets in the future;
 - 1.4.3. projections of the **Licensee's** future performance against the standards, indicators and targets included in the **management plans**;
 - 1.4.4. a description of the strategies adopted or to be adopted by the **Licensee** to achieve or exceed the performance targets included in the **management plans**; and

- 1.4.5. details of the **Licensee's** adherence to relevant Australian Standards and other standards.
- 1.5. For the avoidance of doubt, the requirement under clause 1.4 of this Schedule 2 to prepare a report or reports containing the information listed in paragraphs 1.4.1 to 1.4.5 of that clause does not limit the powers of the **Regulator**, under clause 5 of this licence or the **Act**, to require the **Licensee** to produce information.
- 1.6. The **Regulator** may require and advise the **Licensee** that reports prepared in accordance with clause 1.4 of this Schedule 2 are to be accompanied by a report prepared by a **reporter**.
- 1.7. The **Regulator** may require and advise the **Licensee** to arrange the provision of a report by a **reporter** at such times and on such conditions as are specified in terms of reference provided by the **Regulator** and in accordance with any relevant **guideline**.



WATER AND SEWERAGE INDUSTRY ACT 2008

Statement of Reasons

Water and Sewerage Licence Application

Tasmanian Water and Sewerage Corporation Pty Ltd

(ACN 162 220 653)

22 April 2013

BACKGROUND

The *Water and Sewerage Industry Act 2008* (W&SI Act) provides for the Tasmanian Economic Regulator to issue licences for the ownership and/or operation of water infrastructure and/or sewerage infrastructure in Tasmania, and the provision of a water service and/or a sewerage service. In February 2013, the Regulator received a licence application from Tasmanian Water & Sewerage Corporation Pty Ltd (ACN 162 220 653) (TWSC) for a licence to:

- 1) own and operate water infrastructure and sewerage infrastructure; and
- 2) provide water services and sewerage services.

CONSULTATION

Notice of the application was also published in the Gazette as required by the W&SI Act. The Regulator invited public comment on the licence application on 9 March 2013 by way of notice in the *Mercury*, *Advocate* and *Examiner* newspapers, and on the Regulator's website. The Regulator also invited submissions from the relevant Ministers as required under the W&SI Act.

Consultation concluded 10 April 2013. The Regulator received one acknowledgement letter from the Minister administering the *Public Health Act 1997*. No submissions were received.

REGULATOR'S ASSESSMENT

Disqualified person

The W&SI Act states that a licence may not be granted to a disqualified person.

In relation to a corporation, a 'disqualified person' is defined in the W&SI Act as:

a corporation that, pursuant to a declaration under section 41, is a disqualified person for the purposes of this Act and includes a corporation that is a related entity (within the meaning of the Corporations Act 2001 of the Commonwealth) in relation to the corporation.

The applicant has not been declared as a disqualified person under section 41 of the W&SI Act.

Section 35(7): Criteria for granting a licence

Under section 35(7) of the W&SI Act, the Regulator must be satisfied that the following conditions have been met before granting a licence.

(a) that the applicant has shown honesty and integrity in previous commercial and other dealings.

The applicant has confirmed that it and its officers or major shareholders have not been involved in any legal proceedings, civil or criminal, commenced or likely to be commenced in relation to the applicant's business activities (including past proceedings) involving claims of dishonesty or lack of integrity.

The Regulator is satisfied that TWSC meets this condition and notes that the water and sewerage licence will require the licensee to maintain honesty and integrity in its commercial and other dealings.

(b) that the applicant has, and will continue to have, the capacity (including technical, financial and organisational capacity) to carry out the activities that the licence (if granted) would authorise.

Technical capacity

TWSC stated that it will be formed with the proven technical capacity of the three regional water and sewerage corporations (trading as Ben Lomond Water, Southern Water, and Cradle Mountain Water) (the regional corporations) and Onstream. The applicant noted that its technical capacity is demonstrated by the employment of more than 800 employees with specialist, professional, technical and trade skills, qualifications and competencies ranging from customer relations and community engagement to laboratory operation and emergency management, supplemented by professional consultants and trade service organisations to deliver additional specialist skills.

Financial capacity

TWSC stated that it will commence operation with predictable revenue, a strong balance sheet and adequate resourcing of qualified accounting and support staff.

TWSC noted that the amalgamated corporation is to be formed with the proven financial capacity (both fiscal and human) of the regional corporations and Onstream, as demonstrated over their period of operation since 1 July 2009.

TWSC provided credit ratings of A for Ben Lomond Water and Southern Water, as assessed by Tasmanian Public Finance Corporation, and A- for Cradle Mountain Water. TWSC noted that the applicant's credit ratings will be provided to the Regulator as early as possible on a "commercial in confidence" basis.

Organisational capacity

TWSC stated that it will be supported by 800 full time equivalents spread across the key areas of service delivery, assets, corporate services, human resources, information technology, and billing.

TWSC noted that the Regulator will be informed of the applicant's organisational structure as soon as it is finalised.

The Regulator is satisfied that TWSC meets this condition and notes that the water and sewerage licence will require the licensee to maintain the technical, financial and organisational capacity to carry out the authorised activities for which the applicant is applying.

(c) that the applicant has the capacity to carry out those activities in a manner that appropriately manages the risk to public and environmental health.

The applicant noted that TWSC will be formed from the amalgamation of the regional corporations, each of which has been operating since 1 July 2009 under an interim licence and from 1 July 2011 under a water and sewerage licence which authorises those activities for which the applicant is applying. Under the respective licences, each corporation has been required to operate in a manner that appropriately manages the risk to public and environmental health and that complies with the relevant regulatory requirements. Amongst other requirements, each licensee has been required under its licence to develop, implement and maintain the following plans:

- asset management plan;
- emergency management plan;
- wastewater management plan;
- water quality management plan; and
- compliance implementation plan.

TWSC stated that the Boards of each regional corporation have engaged Deloitte to conduct a review of the corporations' Risk Management Framework and Strategic Risks, which will be combined into the one framework under which the applicant will operate. TWSC noted that Deloitte's review report supports the risk management structures in place across the regional corporations and Onstream. TWSC also indicated that a copy of the final report will be provided to the Regulator once it has been finalised.

The Regulator notes that each of the licensees that will be amalgamated to form TWSC are required under their current licences to maintain the capacity to carry out the authorised activities in a manner that appropriately manages the risk to public and environmental health. The Regulator is satisfied that TWSC meets this condition.

(d) that the applicant has made, and will maintain, appropriate arrangements in respect of insurance.

The applicant has confirmed that it has made the appropriate insurance arrangements, to be in place effective 1 July 2013. TWSC stated that renewal of all classes of insurance currently in place across the regional corporations and Onstream will be effected from this date. TWSC further noted that evidence of insurance will be provided to the Regulator as soon as it is available in June 2013.

The Regulator is satisfied that TWSC meets this condition and notes that the licences under which each of the three regional corporations currently operate require the licensees to arrange and maintain appropriate arrangements in respect of insurance.

(e) such matters as the Regulator considers relevant, having regard to the public interest.

The applicant has confirmed that:

- 1) it is familiar with the operation of the Tasmanian water industry and sewerage industry and the applicable legislation (as noted earlier, the applicant will be formed from the amalgamation of the three regional corporations, each of whom currently holds a licence authorising the activities for which the applicant is applying); and
- 2) it or its associates have not had a water licence or sewerage licence suspended or cancelled in another Australian jurisdiction.

(f) such other matters as are prescribed by the regulations.

There are no other applicable matters prescribed by the relevant regulations concerning the granting of a water licence or sewerage licence.

Based on the information provided by the applicant in support of the licence application and other independent information, the Regulator is satisfied that the conditions prescribed by section 35(7) of the W&SI Act have been met in relation to the application.

REGULATOR'S DECISION

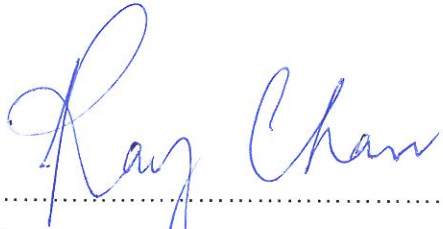
After assessing the application, the Regulator decides to issue a licence to the applicant for:

- 1) owning and operating water infrastructure and sewerage infrastructure; and
- 2) providing water services and sewerage services.

The licence is effective from **1 July 2013** and remains in force until it is cancelled.

The Regulator issues the licence accepting that the information supplied by the applicant in support of its application is true and correct, and that the applicant has made full and diligent inquiry in that regard. The Regulator has relied in good faith on the representations made by the applicant in support of its application.

A copy of the licence is available on the Regulator's website at www.economicregulator.tas.gov.au.



Raymond Chan

DELEGATE OF THE REGULATOR

22 April 2013