



WATER AND SEWERAGE INDUSTRY ACT 2008

Statement of Reasons

Water and Sewerage Licence Applications

**Tasmanian Water and Sewerage Corporation (North-Western Region) Pty Limited
(ACN 133 655 008) trading as Cradle Mountain Water**

**Tasmanian Water and Sewerage Corporation (Northern Region) Pty Limited
(ACN 133 655 062) trading as Ben Lomond Water**

**Tasmanian Water and Sewerage Corporation (Southern Region) Pty Limited
(ACN 133 654 976) trading as Southern Water**

10 June 2011

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 April 2011, the Regulator received three licence applications from:

- Tasmanian Water and Sewerage Corporation (North-Western Region) Pty Limited trading as Cradle Mountain Water;
- Tasmanian Water and Sewerage Corporation (Northern Region) Pty Limited trading as Ben Lomond Water; and
- Tasmanian Water and Sewerage Corporation (Southern Region) Pty Limited trading as Southern Water.

Each applicant applied for a licence to:

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

CONSULTATION

The Regulator invited public comment on the three licence applications and a draft pro-forma licence (containing proposed conditions) on 20 April 2011 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 18 May 2011. The Regulator received:

1) Acknowledgement letters from:

- Hon Bryan Green MP, the Minister administering the *Water Management Act 1999*; and
- Mr Martin Wallace, Secretary, Department of Treasury and Finance.

2) Submissions from:

- Hon Michelle O'Byrne MP, the Minister administering the *Public Health Act 1997*;
- Hon Brian Wightman MP, the Minister administering the *Environmental Management and Pollution Control Act 1994*;
- Mr John Mollison, Assistant Director, Environmental Protection Authority;
- Dr Chrissie Pickin, Acting Director of Public Health, Department of Health and Human Services; and
- Ms Mary Massina, Executive Director (Tasmania), Property Council of Australia.

Minister O'Byrne advised that after reviewing the three applications, she had no objection to the Regulator granting a licence to the three corporations.

Both Minister Wightman and Mr Mollison of the Environment Protection Authority (EPA) noted that:

To help achieve improved environmental outcomes, the Environment Protection Authority has been assisting the new corporations in management of environmental issues arising from the conveyance, treatment and discharge of wastewater. This includes providing input into planned wastewater infrastructure improvement works, developing an improved compliance reporting framework, updating of wastewater policies and guidelines, and an updating of older permits through inclusion of

environmental conditions representative of contemporary best practice outcomes. Over this period the corporations have provided significant resources in these areas to mitigate environmental and public health risk.

While significant levels of non-compliance remain in the wastewater sector and much work remains to be done, it is adjudged that the requirements of 35(7)(c) are met by Cradle Mountain Water, Southern Water and Ben Lomond Water and there are no objections to the issue of these licenses.

The EPA also queried the licensees' existing obligation (under the interim licence) to submit the Wastewater Management Plan to the EPA but it subsequently agreed that it is a matter between the corporations and the EPA.

Dr Pickin (Acting Director of Public Health) had no objection to the grant of water licences to the three corporations and suggested that the required Compliance Management Plan (CMP) be defined in the licence, to ensure the licensees do not confuse or misinterpret the CMP as being the "Compliance Plan", that is a regulatory requirement of the *Drinking Water Quality Guidelines 2005* issued under the *Public Health Act 1997*.

The Regulator notes that in Schedule 2 of the pro-forma licence, 'compliance' is one of various aspects of the licensee's operations that are the subject of 'management plans'. These 'management plans' are to be made in accordance with the relevant guidelines when issued by the Regulator. The Regulator will ensure that the compliance (management) plan as required under the licence is clearly described in the applicable instrument to avoid any confusion or misinterpretation as referred to by Dr Pickin.

Ms Massina of the Property Council of Australia (PCA) raised a concern that the Exemption Order, issued by the Minister under the provisions of the W&SI Act, would in some way limit the application of the licence conditions. The Regulator does not consider this to be the case.

Section 38 of the W&SI Act states that the licence must set out the regulated activities and licence conditions. Section 37 has a list of licence conditions that the Regulator may impose as part of a licence, and several of these matters are included as conditions of the licence. These conditions are binding upon licensees. The Exemption Order states which water and sewerage providers must have a licence. In effect, the Exemption Order exempts all small private water and sewerage providers, such that only the three water and sewerage corporations are currently required to be licensed. The Exemption Order does not impact in any way upon the structure of the licence or the obligation upon licensees to comply with licence conditions.

Ms Massina also stated that the draft water and sewerage operating licence '*does not provide standards of accountability or compliance*' and does not provide '*any comfort to water and sewerage consumers*'.

The Regulator notes that the structure of the regulatory framework under the W&SI Act includes a number of elements, of which the licence is but one. There are also compliance obligations under the W&SI Act and associated regulations, through independent price regulation, as well as through instruments issued by the Regulator, such as the Customer Service Code and a number of binding guidelines. The licence is designed to bring together many of these elements to ensure that licensees are bound to comply with all relevant regulatory obligations. The licence achieves this through referencing appropriate regulatory instruments and other obligations (while avoiding duplication with requirements that are already binding upon licensees - like many of the statutory obligations under the W&SI Act). It also includes requirements for licensees to adopt plans and practices that will result in efficient and effective operational outcomes. It is the regulatory framework as a whole that will, over time, ensure efficient outcomes for consumers in terms of prices and service standards while also achieving a sustainable water and sewerage industry. Therefore, the

effectiveness of the operating licences, in terms of protecting the interests of consumers, needs to be considered as part of the broader regulatory framework and should not be read in isolation.

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 three applicants have not been declared as disqualified persons 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.

Each 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.

(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.

Cradle Mountain Water (CMW)

Technical capacity

CMW stated that it has been operating under an interim licence (since 1 July 2009) and its technical capacity is demonstrated by the employment of more than 123 engineering, specialist, technical and operational staff, supplemented by professional consultants to deliver additional specialist skills.

Financial capacity

CMW stated that its financial capacity is demonstrated by adequate resourcing of qualified accounting staff and it has formal agreements for the provision of financial services from Onstream (a jointly-owned subsidiary of Ben Lomond Water, Cradle Mountain Water and Southern Water).

CMW stated that it has a credit rating of BBB as advised by The Tasmanian Public Finance Corporation (TASCORP).

CMW noted that the move to full regulation and the possible loss of State Government revenue subsidy may result in the corporation trading at a loss for a period of one year. CMW's estimates, in its current corporate plan, that it will recover this loss in future years.

Organisational capacity

CMW stated that it currently employs approximately 154 employees with engineering, financial, technical and operational qualifications and experience that are appropriate to their respective roles and responsibilities. Some of CMW's corporate support functions are delivered through Onstream.

Ben Lomond Water (BLW)

Technical capacity

BLW stated that it has been operating under an interim licence (since 1 July 2009) and its technical capacity is demonstrated by the employment of more than 130 engineering, specialists, technical and operational staff, supplemented by consultants to deliver additional specialist skills.

Financial capacity

BLW stated that its financial capacity is demonstrated by adequate resourcing of qualified accounting staff and a strong balance sheet. BLW noted that it has a credit rating of A as assessed by TASCORP – the equivalent to a Moody's credit rating of A2.

Organisational capacity

BLW stated that it employs approximately 190 employees with engineering, financial, technical and operational qualifications and experience that are appropriate to their respective roles and responsibilities. Some of BLW's corporate support functions are delivered through Onstream.

Southern Water (SW)

Technical capacity

SW stated that it is supported by Onstream through the provision of IT, human resources, procurement, governance and communication services. SW also employs more than 300 staff in activities including asset and service strategy, commercial services, community care, people and culture, service delivery, and sustainability and stakeholder management. SW notes that its Shareholder's Letter of Expectation requires its Board to maintain a capability and governance structure to sustainably manage the water resource, water supply and sewerage services.

Financial capacity

SW noted that it has a credit rating of A as assessed by Moody's Credit Rating Agency and it has a significant Capital Expenditure Program to undertake over the next decade which will need to be substantially funded through borrowing through TASCORP.

SW noted that the minimum credit rating set for State Government businesses is BBB and it aims to maintain, as a minimum, the BBB rating and will operate within the limitations of regulated revenues available to the corporation.

Organisational capacity

SW stated that it employs 365 relevant specialists, technical and operational staff who are all trained and qualified in water industry operations. SW supplements this internal capacity with the engagement of consultants as required.

The Regulator notes that the pro-forma licence requires the licensee to maintain the technical, financial and organisational capacity to carry out the authorised activities.

(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.

Each applicant has been operating since 1 July 2009 under an interim licence which authorises the activities for which the applicant is applying. Under the respective interim licence, each applicant is 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 applicant is required under its interim licence to develop, implement and maintain the following plans:

- Asset management plan
- Emergency management plan
- Wastewater management plan
- Water quality management plan
- Compliance implementation plan

Each applicant outlined its risk management policy and strategy in its application and submitted various management and compliance plans in support of its application.

The Regulator notes that licensees are required under the pro-forma licence to maintain the capacity to carry out the authorised activities in a manner that appropriately manages the risk to public and environmental health.

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

Each applicant has confirmed that it has made the appropriate insurance arrangements and submitted copies of its Insurance Certificates of Currency.

The Regulator notes that the pro-forma licence requires the licensee to arrange and maintain appropriate arrangements in respect of insurance.

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

Each 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, each applicant currently holds an interim 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 three applicants in support of their licence applications 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 each application.

REGULATOR'S DECISION

After assessing the applications and taking into account the submissions received, the Regulator decides to issue a licence to each of the three applicants for:

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

Each licence is effective from **1 July 2011** and remains in force until it is cancelled.

The Regulator issues the three licences accepting that the information supplied by the three applicants in support of their application is true and correct, and the applicants have made full and diligent inquiry in that regard. The Regulator has relied in good faith on the representations made by the three applicants in support of their applications.

Copies of the three licences are available on the Regulator's website at www.economicregulator.tas.gov.au.



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Glenn Peter Appleyard

**CHAIRMAN
TASMANIAN ECONOMIC REGULATOR**

10 June 2011

