

16 May 2022

Our Ref: PLM:ADD015/4041

Angela Villate
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By Email: angela.villate@aoyuangroup.com

Dear Angela,

32 Lovelle St, Moss Vale – WICA Licence Condition

We refer to DA 20/0227 which was lodged for the subdivision and residential development of 32 Lovelle St, Moss Vale (**DA**). You have been advised that the Southern Regional Planning Panel (**SRPP**), tasked to determine the DA, has obtained a Peer Review Report of Decentralised Water Australia dated 28 April 2022. The report has recommended the following:

DWA believe that the most expedient path forward currently would be include a condition(s) of development consent requiring the applicant to obtain all necessary WICA licences prior to issuance of the Stage 1 Subdivision Works Certificate. This is commensurate with standard practice for conventional water, stormwater and sewerage infrastructure that require Local Government Act 1993 Section 68 approval of sewerage works.

You have asked us to advise whether a condition requiring a *Water Industry Competition Act 2006* licence (**WICA licence**) prior to the issuance of the Stage 1 subdivision works certificate is necessary or reasonable, and whether there are any alternatives to such a condition.

Advice

We do not consider it necessary or reasonable to impose a condition to require the WICA licence prior to the issuance of the Stage 1 subdivision works certificate because:

- Such a restriction prevents any subdivision works whether they relate to the sewer component or not.
- Whilst there is a valid need to ensure future lots are not registered, and thus no homes can be constructed and occupied without a sewer connection, this can be ensured by a restriction on the grant of a subdivision certificate and occupation certificates until the WICA licence is issued.
- The sewerage treatment plant has already been approved. The WICA licence application process is focussed more on the capability of the proposed licence holder rather than constructability and design.
- It has not been required on other projects.

Restriction on all subdivision works not necessary or reasonable

The effect of such a condition would be to restrict any subdivision works not just the sewer works. Whilst it is necessary and appropriate that a condition be imposed restricting the grant of a subdivision certificate or occupation certificate until it is known that the housing lots or houses are or can be connected to a licensed sewer system, this need not hold up other subdivision works including preparatory works. These non-sewer works would include such things as earthworks, stormwater, road, electricity upgrades – all of these could be undertaken whilst the WICA licence is being obtained.

WICA licence application purpose and process

The sewerage treatment plant (**STP**) has already been approved by Wingecarribee Shire Council.

The *Water Industry Competition Act 2006 (Act)* seeks to encourage competition in relation to the supply of water and the provision of sewerage services and to facilitate the development of infrastructure for the production and reticulation of recycled water, and for other purposes. The Act establishes:

- a licensing regime for private sector entrants to ensure the continued protection of public health, consumers and the environment
- an access regime to ensure that certain monopoly infrastructure services are available to persons seeking access to them

A key consideration in the grant of the licence is that the applicant must satisfy IPART/ Minister that they have technical, financial and organisation capacity to be granted a licence. There is an ability for third parties providing services to the licensee to be named (authorised) within the licence. That is, an existing WICA licence holder could be engaged to construct and run the STP, being an entity that has already met the WICA licensee requirements.

A condition preventing sewer-related subdivision works is more appropriate

It would not be in breach of the WICA Act to allow subdivision works, that are not sewer-related to commence whilst the WICA licence is being obtained. Section 6(1)(a) of the WICA Act requires that a network operator's licence be obtained prior to construction, maintenance and operation of the "sewerage infrastructure". This is defined as:

any infrastructure that is, or is to be, used for the treatment, storage, conveyance or reticulation of sewage, including any outfall pipe or other work that stores or conveys water leaving the infrastructure, but does not include any pipe, fitting or apparatus that is situated upstream of a customer's connection point to a sewer main.

Example from another project

The project at Bingara Gorge has a development consent for the subdivision of land and construction of 215+ residential lots (DA ID993-05). It was a condition of this DA that the applicant construct a permanent sewage treatment plant to serve the development and ensure "every residential allotment approved in this consent must be serviced by the proposed reticulated sewerage system prior to the release of the Occupation Certificate" (see condition 14.4). Subsequent development consents relating to Bingara Gorge had similar conditions: "Each residential allotment (relevant to the stage) must be connected to the Bingara Gorge sewage treatment plant and documentary evidence shall be provided to Council with each Subdivision Certificate application that this has occurred" (see condition 14(5)).

There was no requirement to obtain a WICA licence for the STP prior to the issuance of the subdivision works certificate for Bingara Gorge.

Yours faithfully

A handwritten signature in black ink, appearing to read 'P. Murray', written in a cursive style.

Penny Murray

Partner

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