

Our reference: D25/14043
Your reference: Patrick Holland 30064047

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11 June 2025

Mr Patrick Holland
Gadens Lawyers
GPO Box 48
Melbourne VIC 3001

via email

Dear Mr Holland

Proposed On-site Sewerage Management System (OSSMS) at Orchard Hills

Thank you for your letter dated 29 May 2025 and our meeting on 22 May 2025 to discuss the proposed On-site Sewerage Management System (OSSMS) at Orchard Hills (the Orchard Hills scheme).

We have responded to the questions and matters raised in your letter below.

1. OSSMS Project and Staging

Thank you for providing the information to date on the project and staging. Any further information regarding the development application and documentation should be provided to us as part of the scheme approval application, as required by the application form. Once a scheme application is lodged, we can assess if we require any further information.

We note that WIC Act licensee, Aquacell Pty Ltd (Aquacell), will lodge the application for the scheme approval for the Orchard Hills scheme in due course.

2. Operator of the OSSMS

We note that operator and retailer licences provide state-wide authorisation for the construction and operation of water industry infrastructure, or sale of water or sewerage services provided by that infrastructure, respectively (see our [website](#) for more information).

Aquacell sought a variation to its Operator Licence ([No. 25_008](#)) that would, if the variation is granted, authorise it to be able to operate the class and scale of infrastructure envisaged in the proposed Orchard Hills scheme. We can advise that the Tribunal recently recommended the variation be granted by the Minister for Water and the matter is now with the Minister for determination. We will advise Aquacell of the Minister's decision in due course. If the variation to the operator licence is approved by the Minister, and the application for scheme approval for the Orchard Hills scheme is approved by IPART (s.7C WIC Act), Aquacell would hold an appropriate operator licence to be the registered operator of that scheme.

We understand the OSSMS is to provide sewerage and recycled water services for more than 30 small retail customers. Based on that understanding, the OSSMS is a 'regulated scheme' under the WIC Act, and those services can only be sold by a registered retailer to the customers (s.6B WIC Act). Aquacell also holds an appropriate retailer licence (No. 25_009R) that would enable Aquacell to be the registered retailer of the Orchard Hills scheme, provided that IPART grants operational approval for that scheme (s.7D WIC Act).

3. Community Title and Intent of Management Statement

We note that the proposed Orchard Hills scheme will be located on land that is a Community Title subdivision and that the intention is for the current owner of the site, Atilol Holdings Pty Ltd, to retain ownership of all member lots. We understand the lots will be used by various small businesses for mixed uses. Can you please advise whether the intent is for commercial leases to be entered into with tenants/users of the member lots while the member lots remain in Atilol's ownership?

In making the scheme approval application, consideration should be given to how the retailer responsibilities for the scheme will be undertaken, such as billing and the application of the deemed customer contract (Sch 4, WIC General Reg). Consideration should also be given to whether member lots would be subject to usage charges for the recycled water and individually metered or whether the retail arrangements would need to change if the current owner decided to sell the member lots in future.

4. The OSSMS is subject to WICA

We note that you are of the opinion that the OSSMS requires approvals and licensing under the WIC Act and the provision of your legal advice to that effect. Based on the information provided, we concur that the Orchard Hills scheme requires regulation under the WIC Act. As noted previously, Aquacell is currently a licensed operator and retailer under the WIC Act and is seeking a variation to its operator licence. If the variation to the licence is granted, Aquacell would be authorised to operate infrastructure of a class and scale like the proposed Orchard Hills scheme. The Minister for Water is responsible for granting licences and variations on the recommendation of IPART. IPART is responsible for granting scheme approvals (to construct scheme infrastructure) and operational approvals (to operate and maintain scheme infrastructure).

5. Development Application submitted to Penrith City Council

In relation to the development application (DA) currently being considered by Penrith City Council (Council), we note that the application will need to be considered in accordance with the planning legislation and consider the environmental impacts of the development. We are supportive of the Council consulting with IPART in relation to the DA proposal and the conditions to be imposed on the consent, and suggest you provide the details of our contact officer to them for this purpose.

We would also suggest that the information provided in Attachment A to this letter could be provided to the Council, which may help them to understand what matters are considered by IPART in assessing and determining applications for scheme and operational approvals. This may assist them in their assessment of the DA.

Other issues

We also draw to your attention that if IPART grants an application for scheme approval, IPART will also determine whether the regulated scheme that is the subject of the application is 'essential infrastructure' (s.54 WIC Act). If IPART makes such a determination, it will not grant an application for operational approval for infrastructure that is, or is likely to be, essential infrastructure until the Minister has designated a last resort provider (s.55 WIC Act). Where sewerage services are being provided, the essential infrastructure criteria are usually met, but we note that the Tribunal still has discretion in whether or not to make a determination under section 54.

Further queries

Should you have any further queries, IPART's contact officer for this matter is Lil Cullen, Manager WICA Applications, contactable on 9290 8410 or lil.cullen@ipart.nsw.gov.au.

Yours sincerely

11/06/2025

X 

Christine Allen
Director, Regulation & Compliance
Signed by: christine.allen@ipart.nsw.gov.au

Attachment A

Extract of the legislation

Water Industry Competition Act 2006, section 7C – Grant of scheme approval

(1) A scheme approval must not be granted unless IPART is satisfied as to each of the following—

- (a) the infrastructure will, if constructed as authorised by the approval, be fit for purpose and capable of operating—
 - (i) safely and reliably, and
 - (ii) in a way consistent with the national safety guidelines for the control of public health risks, and
 - (iii) in a way that does not present a significant risk of harm to the environment,
- (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,
- (c) the applicant has established for a scheme that is servicing to small retail customer premises, that it is not reasonably foreseeable that the operation of the scheme will have significant adverse financial implications for small retail customers,
- (d) the proposed registered operator of the scheme—
 - (i) if the applicant is the proposed registered operator, holds an appropriate operator licence, and
 - (ii) if the applicant is not the proposed registered operator, has entered into an agreement with the applicant for the operation of the scheme,
- (e) the applicant has established that the proposed area of operations of the scheme is appropriate,

Note—

IPART may consider a proposed area of operations is not appropriate if—

- (a) the scheme is unlikely to be capable of supplying water supply or sewerage services to all premises within the proposed area of operations within a reasonable period, or
 - (b) the proposed area of operations excludes premises within the outermost boundary of, or near, the area of operations, including, for example, by excluded enclaves or unusual boundaries, unless the exclusion is reasonable, having regard to the characteristics of the proposed scheme, the characteristics of the premises or the services already available to the premises.
- (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, and
 - (g) matters prescribed by the regulations [*see s.11 WIC Reg*].

Further information

An example of a scheme approval and the types of conditions attached can be found on our website [here](#).

For more information on what information we require an applicant to submit to obtain a scheme approval – see our scheme approval application [form](#) and [guide](#).

Extract of the legislation

Water Industry Competition Act 2006, section 7D – Grant of operational approval

- (1) An operational approval must not be granted unless IPART is satisfied as to each of the following—
- (a) the infrastructure has been substantially constructed as authorised by a scheme approval for the infrastructure,
 - (b) the infrastructure is fit for purpose and is capable of operating—
 - (i) safely and reliably, and
 - (ii) in a way consistent with the national safety guidelines for the control of public health risks, and
 - (iii) in a way that does not present a significant risk of harm to the environment,
 - (c) there are adequate plans and systems in place to ensure the infrastructure continues to be fit for purpose and operated—
 - (i) safely and reliably, and
 - (ii) in a way consistent with the national safety guidelines for the control of public health risks, and
 - (iii) in a way that does not present a significant risk of harm to the environment,
 - (d) the infrastructure is capable of operating in compliance with this Act and the regulations, the plans and systems referred to in paragraph (c) and the conditions of the registered operator's operator licence,
 - (e) if the infrastructure is or is likely to be essential infrastructure—a last resort provider has been designated for each essential service provider,
 - (f) the applicant is the registered operator or has entered into an agreement with the registered operator for the operation of the infrastructure,
 - (g) in relation to a scheme servicing small retail customer premises, the applicant—
 - (i) holds a retailer licence or is a council, or
 - (ii) has entered into an agreement with a public water utility or an appropriately authorised licensed retailer for the sale of the water or sewerage services provided by the infrastructure,
 - (h) matters prescribed by the regulations [see s.12 WIC Reg].

Further information

An example of an operational approval and the types of conditions attached can be found on our website [here](#).

For more information on what information we require an applicant to submit to obtain a scheme approval – see our operational approval application [form](#) and [guide](#).

It is important to note that licensees must operate WICA schemes in accordance with licence conditions that are set out in both the WIC Act (see ss.8H and 8I) and the WIC Reg (Sch 2), as well as in the licence instrument. An important licence requirement is to have appropriate asset management, water quality management and sewage management plans or systems in place for all schemes and to operate the schemes in accordance with these plans or systems. These plans or systems ensure that infrastructure is fit for purpose, safe, reliable and managed in a way that protects public health and the environment.

Audits of the infrastructure and the plans/systems for a new scheme must be undertaken and found to be adequate prior to IPART granting an operational approval for the scheme.