

Our ref 3603403

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3 June 2015

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Natasha Cheshire

Acting Director, Licensing, Monitoring and Reporting

Essential Services Commission of SA

Dear Natasha

[Water licence application by Michell Infrastructure Pty Ltd](#)

I refer to your email dated 18 February 2015, in which the Commission requested additional information from Michell Infrastructure Pty Ltd (**MI**) in connection with MI's pending application for a water retail licence (**Application**).

This letter sets out MI's response to the matters raised in your email, together with requests by MI for the variation of certain reporting obligations arising under guidelines issued pursuant to the *Water Industry Act 2012* (**Act**).

1 MI's legal and technical consultants

Your email requested "*further details on the type of services Michell Infrastructure's legal and technical consultants will be providing in respect of the relevant water service.*"

All consultants will be instructed by, and will report to, Peter Michell, who is a director of MI and who will have primary responsibility for:

- (a) MI's compliance with the Act and associated regulations, licence conditions and guidelines; and
- (b) communications between MI and its customer, and the handling of any customer complaints that may arise.

1.2 Administrative and financial services

As noted in the Application, Roubaix Holdings Pty Ltd (ACN 139 894 027) (**Roubaix**) has engaged Mutual Trust to manage MI's day-to-day administration and finances. Mutual Trust will also provide support to Peter Michell with respect to compliance matters, and communications between MI and its customer, Michell Wool Pty Ltd (**Customer**).

1.3 Legal services

Roubaix has engaged Thomson Geer to provide legal services to MI and to advise MI as necessary on compliance with the Act and associated regulations, licence conditions and guidelines.

1.4 Technical Services

To the extent that any technical or service delivery issues arise (and MI expects that any such issues will be infrequent, for the reasons described in section 2 of this letter), MI has engaged Youngerblood Consulting to provide technical and compliance consulting services in relation to water delivery infrastructure associated with MI's activities.

In addition, Peter Michell is authorised by MI to engage technical consultants as necessary to address any issues that arise, and is authorised to incur expenditure to a reasonable amount in rectifying any such technical issues.

2 Infrastructure for water delivery

Your email requested a detailed description of the infrastructure to be used in the delivery of water to Michell Wool. In response, MI notes that:

- (a) as described in the Application, the City of Salisbury supplies recycled water (**Recycled Water**) to MI's parent company, Michell Pty Ltd (**MPL**) at an agreed location on the boundary of MPL's land (**Delivery Point**);
- (b) title to the Recycled Water will pass from MPL to MI at the Delivery Point, on the terms and conditions set out in the draft supply agreement between MPL and MI, forming Attachment 2 to the Application;
- (c) MI will then supply the Recycled Water to the Customer on the terms and conditions set out in the draft supply agreement between MI and the Customer, forming Attachment 3 to the Application (**Customer Agreement**). It should be noted that under the Customer Agreement, MI's relevant obligation is to deliver the Recycled Water to the Delivery Point. Clause 4.2(a) provides that the Customer is responsible for constructing, installing, maintaining, repairing and replacing its own pipes, connections, irrigation equipment and storage facilities to receive, store, re-pressurise (where necessary) and use the Recycled Water from the Delivery Point; and
- (d) once the Customer has taken receipt of the Recycled Water at the Delivery Point, the Customer pumps the Recycled Water into a header tank located within the leased premises where it is stored for reticulation around the Customer's wool scouring and carbonising plant at the leased premises. The Customer does not use the Recycled Water for purposes other than in connection with wool scouring and carbonising – i.e. it is not used for fire systems, drinking etc.

MI (with the assistance of its technical consultant) will monitor the state of the infrastructure provided by the City of Salisbury as well as the Delivery Point. To the extent that any issues arise with infrastructure up to and including the Delivery Point, MI will require MPL to procure rectification of those issues, and MPL will in turn have the right to seek rectification by the City of Salisbury.

All infrastructure from the Delivery Point is, pursuant to the Customer Agreement, the responsibility of the Customer.

Having regard to the above, MI considers that the technical services to be supplied by its technical consultant will be sufficient to address any infrastructure issues that may arise and which require the involvement of MI – essentially these issues will be limited to the identification of faults in infrastructure up to and including the Delivery Point (since from MI's customer's perspective, such faults will be the responsibility of MI), and the reporting of such faults to MPL, so that MPL can liaise with the City of Salisbury for rectification work to be undertaken.

3 Compliance with regulatory obligations and request for modified reporting regime

MI has reviewed the Act and the materials attached to your email, as well as those contained on the Commission's web site, and considers that it has the human, technical and other resources necessary to comply with the regulatory obligations of a Minor Retailer under the Act.

3.1 Water Retail Code

Enclosed with this letter is a letter from the Customer to MI, setting out the Customer's agreement that the Water Retail Code – Minor and Intermediate Retailers dated March 2015 (**Code**) will not apply in respect of the supply of water retail services by MI to the Customer.

We note that pursuant to section 1.3.2 of the Code, unless otherwise specified by the Commission, the Code will not apply to the sale and supply of a retail service to a customer in circumstances where a non-residential customer:

- (a) takes supply of the retail service subject to agreed and documented terms and conditions (which terms and conditions, in this case, are set out in the Customer Agreement); and
- (b) agrees in writing that the Code will not apply in respect of the supply of retail services to the customer.

We consider that the above conditions are satisfied and therefore submit that the Code ought not apply to the agreement between MI and the Customer.

3.2 Customer relations and dispute resolution

Peter Michell, on behalf of MI, will be the primary point of contact for communications with the Customer. Mr Michell will seek advice, as necessary, from the technical, legal and financial advisors listed above.

We note that under s25(1)(g) of the Act, the Commission may impose licence conditions requiring a licensee to adopt a specified process to be followed to resolve disputes between the licensee and its customers. In the present case, Roubaix, as ultimate holding company of both MI and the Customer, will facilitate discussions and dispute handling between MI and the Customer, should the need arise. In the unlikely event that such discussions fail to resolve the dispute, MI and the Customer will submit to a mediation process conducted by an accredited mediator.

3.3 Compliance systems and reporting

MI has reviewed Water Industry Guideline No. 1 (WG1/2) dated July 2013 (**Guideline 1**) and considers that it has appropriate compliance systems in place in order to monitor its compliance under the Act and relevant licence conditions. Peter Michell will be the "Responsible Officer" as that term is used in Guideline 1.

Guideline 1 contemplates that the Commission may agree to alternative reporting arrangements other than those set out in Guideline 1 (see sections 1.2.1 and 1.5.1). This is consistent with the principle set out in s25(2) of the Act, which provides that when making licence conditions, the Commission must "*have regard to the scale and nature of the operations of the [relevant] water industry entity*".

MI submits that the strictly limited nature and scale of its intended supply (being the supply of non-drinking water to the Customer only) means that the reporting obligations set out in Guideline 1 would be unnecessarily onerous, and would place a substantial administrative burden on MI. MI requests that the Commission agree to a revised compliance reporting regime reflecting the following principles:

- (a) MI would be required to submit Material Breach Compliance Reports as and when necessary, as described in section 3.4 of Guideline 1; and
- (b) in substitution of the requirement to submit Quarterly Compliance Reports and Annual Compliance Reports as described in sections 3.5 and 3.6 of Guideline 1, each year MI would be required to submit, on the same date that the Annual Compliance Report would otherwise fall due under Guideline 1, an annual return (**Annual Return**):
 - (i) stating the names of the officers of MI;
 - (ii) stating the names of the major shareholders of MI;
 - (iii) stating, in respect of retail services provided by MI:
 - (A) the number of residential customers (note that this will be 0);
 - (B) the number of non-residential customers (note that this will be 1);
 - (C) the total volume of water (non-drinking) supplied in (mL) to residential customers, and to non-residential customers;
 - (D) the total number of water connections;
 - (E) the number of water service complaints by customers; and
 - (F) the number of other complaints by customers;
 - (iv) detailing any Type 1, Type 2 or Type 3 breaches of Applicable Obligations during the previous year;
 - (v) confirming that MI is not aware of any other relevant breaches; and
 - (vi) signed by the Responsible Officer of MI.

In MI's submission, the filing of such an Annual Return would satisfy the consumer protection objective of Guideline 1 in an administratively efficient manner having regard to the nature of MI's operations.

3.4 Operational performance reporting

MI has reviewed Water Industry Guideline No. 3 (WG3/03) dated August 2014 (**Guideline 3**). Part C of Guideline 3 sets out a process for annual reporting against certain operational performance matters.

In substitution of the annual report described in Part C of Guideline 3, MI proposes to provide to the Commission the Annual Return described above in section 3.3 of this letter.

3.5 Financial and price monitoring and reporting

Given the scale and nature of MI's intended activities, including the fact that there will be only one customer, MI submits that the financial and price reporting obligations of Guideline 3 would be unnecessarily onerous, and would place a substantial administrative burden on MI.

MI therefore requests that the Commission grant MI relief from the obligation to report, on an annual basis:

- (a) against the financial reporting requirements set out in Part B of Guideline 3;
- (b) against the price monitoring and reporting requirements set out in Part D of Guideline 3; and
- (c) against the Responsibility Statement as required under section 2.4 of Guideline 3.

Instead, MI would submit the Annual Return described above in section 3.3 of this letter. MI would also be prepared to submit statements and returns specified in Guideline 3 from time to time upon request by the Commission.

3.6 Licence conditions

Consistent with section 25(2) of the Act, MI requests that licence conditions imposed on MI by the Commission with respect to:

- (a) ombudsman and disputes;
- (b) accounts and separate business;
- (c) operational and compliance audits; and
- (d) insurance,

are tailored to appropriately reflect the scale and nature of MI's intended water supply operations, and the proposed varied reporting arrangements described above.

We understand that it is not the Commission's usual practice to require licensees to undertake periodic audits of their operations; however, MI would be prepared to do so from time to time upon request by the Commission.

With regard to insurance, MI undertakes to provide to the Commission, on a confidential basis, certificates of currency for general business insurance policies covering MI's corporate group, from time to time upon the Commission's request.

Please let me know if you require any further information in order to assess MI's Application.

We look forward to receiving the Commission's decision.

Yours sincerely,



Brad Simmons

Client Services Director

Representative of Mutual Trust holder of an Australian Financial Services License (234590)

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Enclosure – Letter from Customer re non-application of Water Retail Code



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Our ref 3603403

03 June 2015

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The Directors
Michell Infrastructure Pty Ltd
c/- Brad Simmons, Director, Mutual Trust

Dear Sirs

Agreement to non-application of Water Retail Code

I refer to the draft agreement between Michell Wool Pty Ltd (**Michell Wool**) and Michell Infrastructure Pty Ltd (**Michell Infrastructure**), pursuant to which Michell Infrastructure has offered to supply recycled water to Michell Wool (**Draft Agreement**). Michell Wool stands ready to finalise and execute this agreement upon the grant of a water retail licence to Michell Infrastructure.

Michell Wool has been provided with a copy of the Water Retail Code issued pursuant to the Water Industry Act 2012 (**Code**), and has had an opportunity to consider the Code and the protections that the Code affords.

Having regard to the intra-group nature of the proposed supply arrangement and the terms of the Draft Agreement, Michell Wool is prepared to proceed in the absence of the additional protections set out in the Code. Accordingly, **Michell Wool hereby agrees that, should the parties enter into an agreement substantially reflecting the terms set out in the Draft Agreement, the Code will not apply in respect of the supply of water by Michell Infrastructure to Michell Wool.**

Please let me know if you require anything further in connection with Michell Infrastructure's licence application.

Yours sincerely

David Michell – Director of Michell Wool