



**Applications by Services Sydney for Declaration of Sewage
Transmission and Interconnection Services**

Services Sydney Submission on Issues Paper

4 June 2004

1. INTRODUCTION

This document contains the submissions of Services Sydney Pty Ltd (**Services Sydney**) in response to the National Competition Council's (**Council**) Issues Paper in relation to Services Sydney's Application (**Application**) for declaration of sewage transmission and interconnection services provided by Sydney Water Corporation (**Sydney Water**) released in April 2004 (**Issues Paper**).

In the Issues Paper the Council has defined the NSOOS, BOOS and SWSOOS as the sewage reticulation systems servicing the North Head, Bondi and Malabar sewage treatment plants respectively. Services Sydney adopts these definitions for the purpose of this submission.

2. THE SERVICE, THE FACILITY AND THE SERVICE PROVIDER

2.1 Are the Transmission Service and The Interconnection Service "services" as defined in s 44B?

Yes. See section 6.1 of the Application.

2.2 Are the Transmission Service and the Interconnection Service so integral to the delivery of one another that the relevant service is a combined transportation and interconnection service?

There is no practical consequence if the transmission and interconnection services are considered as separate services or as a combined service. Even if it was necessary to apply the declaration criteria to the transmission and interconnection services separately, the criteria would be met on the same basis for each of the services.

Services Sydney considers that in practice the transmission service and the interconnection service are likely to be integral to the delivery of one another and has no objection to the Application being considered on the basis of a combined transportation and interconnection service.

2.3 Are the Transmission Service and Interconnection Service such that they can each be bought or sold, or for which there are potential transactions?

Services Sydney considers that while there could be potential transactions for the transmission service and the interconnection service separately, in practice, it is likely that an acquirer of these services would seek to negotiate terms and conditions for each service at the same time.

2.4 Scope of the relevant facility

While the Council has not asked a general question as to Services Sydney's approach to the facility, in light of the Council's comments in the Issues Paper and the specific questions raised, Services Sydney considers it useful to make the following observations.

Services Sydney defined the relevant facility (the Sydney Sewage Reticulation Network) as the sewers that service the three major coastal sewage treatment plants, namely the North Head, Bondi and Malabar sewage treatment plants (section 4.3 of the Application). In discussing the relevant facility, the Council has noted that the sewerage system which is commonly owned, operated and coordinated by Sydney Water includes sewage reticulation networks that are not included in the defined Sydney Sewage Reticulation Network.

As set out in the Application, Sydney Water provides sewage collection services through three separate networks; the Sydney, Blue Mountains and Illawarra sewage reticulation networks. Each of these is appropriately considered a facility as each comprise a set of sewage reticulation assets that are located within a specific geographic area and are operated on an integrated and coordinated basis with common charges for the provision of sewage collection services across each network/facility.

The term 'facility' is not defined in the Trade Practices Act 1974 (Cth) (**TPA**) but has been interpreted very broadly by the Australian Competition Tribunal (**Tribunal**) in the context of applications for declaration. In the Australian Union of Students¹ the Tribunal stated that:

“The word ‘facility’ is not defined, but the dictionary definitions may be of some help. For example, the Shorter Oxford Dictionary defines facility as ‘equipment or physical means for doing something’; but the Macquarie Dictionary adopts a broader concept, namely, ‘something that makes possible the easier performance of any action; advantage: transport facilities; to afford someone every facility for doing something’.”

In the Sydney Airport decision², the Tribunal has also given guidance on the meaning of the term 'facility' in the context Part IIIA of the TPA, stating that

“a facility for the purposes of the Act is a physical asset (or set of assets) essential for service provision (para 82). (Emphasis added).

¹ *Re Application for Review of the Decision of the Commonwealth Treasurer, Ex parte Australian Union of Students* (1997) 147 ALR 458 at p 12.

² *Re: Review of Declaration of Freight Handling Services at Sydney International Airport* (2000) ¶ATPR 41-754.

This approach has been adopted by the Council in its Guide to Part IIIA of the TPA³ stating that

“The relevant facility is therefore comprised of the ‘minimum bundle of assets required to provide the relevant services subject to declaration’ ([Sydney Airport Decision] parra 192).” (Emphasis added).

The Sydney Sewage Reticulation Network, as defined in the Application, forms only part of the facility operated by Sydney Water to provide sewage collection services in the Sydney area. This definition was adopted as it is confined to the points of interconnection within that facility upon which the initial phase of Services Sydney’s business model relies. Accordingly, the Sydney Sewage Reticulation Network, as defined in the Application, reflects the stated position of the Council in that it encompasses the ‘minimum bundle of assets’ required to provide the relevant service that is the subject of the Application.

No practical consequence arises if the Sydney Water sewerage system includes sewage reticulation assets that are not included in the defined Sydney Sewage Reticulation Network. To the extent that the Council considers this to be a significant factor in defining the relevant facility for the purpose of the Application, Services Sydney proposes an alternative definition as follows:

“Sydney Sewage Reticulation Network comprises the sewers owned and operated by Sydney Water in the greater Sydney basin area that service:

- (a) the three major coastal sewage treatment plants, namely the North Head, Bondi and Malabar sewage treatment plants;*
- (b) the two minor coastal sewage treatment plants, namely the Warriewood and Cronulla sewage treatment plants;*
- (c) the raw sewage discharge points into the ocean at Diamond Bay and at Vaocluse;*
- (d) the sewage treatment plants in the Lower Hawkesbury, Middle Hawkesbury-Nepean and Upper Hawkesbury areas, namely, the Hornsby Heights, Rouse Hill, Castle Hill, Quakers Hill, St Mary's, Penrith, Camden and Picton sewage treatment plants; and*
- (e) the four inland sewage treatment plants in the Georges River area, namely the Glenfield, Liverpool, Holsworthy and Fairfield sewage treatment plants.*

³ The National Access Regime: Guide to Part IIIA of the Trade Practices Act 1974, Part B, Declaration, para 3.36.

2.5 Facility or facilities

There is no practical consequence of the Council treating the NSOOS, BOOS and SWSOOS that comprise the Sydney Sewage Reticulation Network as separate and distinct facilities as these ‘facilities’ would remain the subject of a single declaration under Part IIIA of the TPA.

The Council has raised this issue in the Issues Paper on the basis that:⁴

“Section 44B envisages that the service the subject of an application for declaration is provided by a single facility”.

This is not the case. Section 44B of the TPA does not require or envisage that the service the subject of an application for declaration is provided by a single facility. While the term ‘service by means of a facility’ is used in the definition of a service in s 44B of the TPA, this term should be read as a ‘service provided by means of a facility or facilities’. This is clear from s 23(b) of the *Acts Interpretation Act 1901* (Cth), which provides that in any Act, unless the contrary intention appears, words in the singular number include the plural. There is no contrary intention evident within the TPA.

This approach was adopted by the Council in its decision in relation to the application by Carpentaria Transport Pty Ltd for declaration of specified rail transport services provided by Queensland Rail (**Carpentaria decision**). In interpreting s 44B in the Carpentaria decision, the Council stated that:⁵

*“In order to test whether a particular service is a “service” under the Act, it is necessary to determine that the service is provided by a facility **or facilities**.”* (Emphasis added.)

The Council further stated that:⁶

“Part IIIA of the TPA relates to a declared service, not declared facilities. The reason for this distinction is that [...] one service may be provided by a multiple set of facilities.”

The Council recognised that there were several facilities needed to provide the service to which the applicant sought access and that it was open to the applicant to define a service which relied on the use of many facilities.⁷ In doing so, the Council considered the question of the legitimacy of including a number of facilities for the purposes of the application for declaration. The Council

⁴ Issues Paper, page 10.

⁵ *Carpentaria Transport Pty Ltd* (1997) ATPR (NCC) ¶ 70-003 at ¶ 70-268.

⁶ *Carpentaria Transport Pty Ltd* (1997) ATPR (NCC) ¶ 70-003 at ¶ 70-272.

⁷ *Carpentaria Transport Pty Ltd* (1997) ATPR (NCC) ¶ 70-003 at ¶ 70,272.

concluded that such a combination was legitimate as long as it did not push the application of the access regime beyond that intended.

The transmission and interconnection services that are the subject of Services Sydney's Application are provided by means of the NSOOS, BOOS and SWSOOS in combination. These sewers are not substantially physically interconnected, but are functionally integral.⁸ Access to services provided by means of the Sydney Sewage Reticulation Network is not beyond the scope of the access regime in Part IIIA of the TPA and there is no basis upon which Services Sydney's Application must be considered by the Council as three separate applications for access to services in respect of each of the NSOOS, BOOS and SWSOOS.

2.6 What is the current degree of physical interconnection and operational integration and coordination between the NSOOS, BOOS and SWSOOS?

As set out above, the relevant facility should be determined by reference to the purpose for which access is sought, that is, as the 'minimum bundle of assets necessary to provide the relevant services subject to declaration'⁹. There is no legal requirement that the relevant facility should only comprise assets which are physically interconnected. Nor is there any practical reason to require that a facility only comprise assets which are physically interconnected. Accordingly, the Council is not bound by the extent to which the relevant 'minimum bundle of assets' is physically interconnected.

The purposive approach to defining facilities in the context of access regulation is clear from other industries regulated under Part IIIA and Part XIC of the TPA. Examples include the airport, electricity and telecommunications industries as follows:

(a) Airport Infrastructure

In the Sydney Airport decision, the Tribunal found that the relevant facility under s 44B of the TPA was defined to include a set of assets that, while essential to the provision of the relevant services, were not characterised by physical interconnection.¹⁰ In doing so, the Tribunal noted that the relevant physical assets were those required to ensure competition in a safe and commercially sustainable manner.

⁸ In accordance with the Council's finding in *Carpentaria Transport Pty Ltd* (1997) ATPR (NCC) ¶ 70-003 at ¶ 70,269.

⁹ *Re: Review of Declaration of Freight Handling Services at Sydney International Airport* (2000) ATPR ¶ 41-754 at ¶ 192.

¹⁰ *Re: Review of Declaration of Freight Handling Services at Sydney International Airport* (2000) ATPR ¶ 41-754 at ¶ 199.

(b) Electricity networks

The Australian Competition and Consumer Commission (**ACCC**) is empowered to approve industry access codes under Part IIIA of the TPA. Even in network industries, the ACCC has taken the view that a single ‘service’ by means of a single ‘facility’ for the purposes of Part IIIA can comprise more than one network that are not physically connected.

For example, on 16 September 1998 the ACCC approved an access regime as part of the National Electricity Code (**NEC**) in respect of “the electricity transmission and distribution networks that form the *national grid* in southern and eastern Australia” pursuant to section 44ZZAA of the *Trade Practices Act*. That section empowers the ACCC to approve an access regime in respect of “a service”. The relevant definition of ‘service’ under s 44ZZAA of the TPA is the same definition which the Council is to apply in assessing Services Sydney’s Application, that is, ‘a service provided by means of a *facility*’.

The relevant facility in the ACCC’s NEC decision was the national grid comprised networks in NSW, ACT, Victoria, SA and Queensland organised and administered in an integrated way by NECA and NEMMCO applying the NEC.

Although the various networks in NSW, ACT, Victoria and SA were interconnected, the Queensland network was not interconnected. Indeed it was not until 2000 with the construction of a small, unregulated interconnector, Directlink, that there was any linkage between the Queensland networks and the other networks which together formed the relevant ‘facility’. It was not until 2001 that a substantial regulated interconnector (the QNI) was built.

(c) Telecommunications Networks

The telecommunications access regime in Part XIC of the TPA provides service providers with access to several telecommunications services irrespective of the extent to which the assets required to provide these service are physically connected.

For example, the ACCC has declared an unconditioned local loop (**ULL**) service which comprises a set of individual communications wires between a single customer premises and a local exchange. While the telecommunications network as a whole comprises many ULL assets and other network elements, the ULL declaration only concerns services provided by means of a set of ULL assets that are not physically connected to each other.

Consistent with this approach, the sewers that make up the Sydney Sewage Reticulation Network are a set of assets used by Sydney Water to provide sewage collection services in a specific

geographic area. While there is not currently substantial physical interconnection between the sewers servicing the major coastal sewage treatment plants, the history of the development of these sewers demonstrates that they have become increasingly physically interconnected over many years to cater for population growth by extension, addition of sub-mains, new trunk mains and pumping stations.

For example, within the SWSOOS there have been a number of diversions and interconnections to link sewers such as the Coogee Diversion to SWSOOS 1 Trunk Main Sewer in 1930, the North Georges River sub-mains (**NGRS**) and the Main Western Carrier (**MWC**) merging at Arncliffe and currently, the new sub-main connecting the Cecil Park and Daydream Carriers to Liverpool sewage treatment plant, the NGRS and ultimately to the SWSOOS 1 & 2 Trunk Main Sewers. There are also numerous examples of how the NSOOS and BOOS have become increasingly physically interconnected over time. Services Sydney's proposal to interconnect the NSOOS, BOOS and SWSOOS demonstrates the next step in this evolution of the Sydney Sewage Reticulation Network.

From a practical perspective, the set of assets that make up the Sydney Sewage Reticulation Network do form part of a single operational network/facility. These sewers are all fully integrated and coordinated in terms of staffing, operation and maintenance, billing, common products, treatment levels and wastewater strategies for the major ocean plants.

As a result, it is open to, and entirely appropriate for, the Council to adopt Services Sydney's extended definition of the relevant facility as the Sydney Sewage Reticulation Facility as set out in section 2.4 above.

2.7 What (if any) would be the practical consequences of declaring services provided by each of the NSOOS, BOOS and SWSOOS respectively, as opposed to the Services provided by the Sydney Sewage Reticulation Network as a whole?

Services Sydney submits that in terms of the declaration process, there would be no practical consequences in making three separate declarations. Even if the Council treated the Application as relating to transmission and interconnection services provided by three separate facilities, an application of the declaration criteria to these services would result in the Council recommending that these services be declared.

However, there may be consequences of making separate declarations with respect to the NSOOS, BOOS and SWSOOS in terms of Services Sydney's ability to enforce rights of access. This is because separate declarations could result in fragmentation of negotiations between Services Sydney and Sydney Water. This fragmentation could create increased regulatory cost for both parties as a result of duplicated negotiations and the potential for multiple arbitrations in the event of a dispute with respect to access.

3. UNECONOMICAL TO DUPLICATE

3.1 What is the current level and the reasonably foreseeable level of demand for the services provided by the Sydney Reticulation Network?

See section 7.2 of the Application.

3.2 What is the current capacity of the Sydney Sewage Reticulation Network? Does it currently satisfy demand and will it do so in the future given reasonably foreseeable demand? What is the level of spare capacity (if any)?

See section 7.2 of the Application.

3.3 Is it cheaper for one facility to meet this demand than two or more facilities?

Yes. See section 7.2 of the Application.

3.4 If relevant, answer each of the above questions in respect of each of the NSOOS, BOOS and SWSOOS respectively.

Each of the NSOOS, BOOS and SWSOOS are uneconomical to duplicate on the same basis as the Sydney Sewage Reticulation Network. See section 7.2 of the Application.

4. PROMOTION OF COMPETITION

4.1 Is the Sewage Collection Market as defined by Services Sydney in its application an appropriate dependent market for the purposes of criterion (a)?

Yes. See section 7.1 of the Application.

4.2 Are there any other potential dependent markets in which access to the Services may promote competition, for example, markets for treated waste water and bio-solids? If so, explain the nature of these markets and the prospects for competition.

As set out in the Application, Services Sydney proposes to provide at least treated waste water services and bio-solids treatment and disposal services in addition to sewage collection services (section 5 of the Application). Services Sydney considers that declaration will promote competition in the markets in which each of these services are provided.

4.3 Does Sydney Water have the ability and incentive to exercise market power to adversely affect competition in the Sewage Collection Market or any other dependent market?

Yes. See section 7.1 of the Application.

4.4 What (if any) is the potential scope for competition in the Sewage Collection Market or any other potential dependent market (for example, bio-solids and recycled water)?

Services Sydney considers the Sewage Collection Market is inherently contestable. Services Sydney submits that the underlying economics of the Sewage Collection Market are such that more than one supplier can feasibly supply sewage collection services on a competitive basis. See section 7.1 of the Application.

4.5 Can the reasonably foreseeable demand for sewage treatment and waste disposal services for the area serviced by the Sydney Sewage Reticulation Network be satisfied more cheaply by the North Head, Bondi and Malabar treatment plants taken together, than by two or more plants?

There is no reasonable basis upon which to assume that the Sydney Water sewage treatment plants represent natural monopolies. As set out in the Application, the minimum efficient scale of a sewage treatment plant is such that more than one supplier can feasibly supply services in competition with one another (section 7.1 of the Application). The fact that there are many sewage treatment plants throughout Sydney of different sizes and configurations including the three ocean outfalls facilities, practically demonstrates that the North Head, Bondi and Malabar sewage treatment plants are not individually natural monopolies. Further, it makes no sense to bundle them together and ask collectively if they represent a natural monopoly. Services Sydney will in effect compete with each of the North Head, Bondi and Malabar sewage treatment plants, notwithstanding their common ownership.

4.6 Can the reasonably foreseeable demand for sewage treatment and waste disposal services for each of the areas service by the NSOOS, BOOS and SWSOOS be satisfied more cheaply by the North Head, Bondi and Malabar treatment plants respectively, than by two or more plants?

There is no reasonable basis upon which to assume that the treatment and waste disposal elements of a bundled sewage collection service can only efficiently be provided by facilities which are natural monopolies. As set out in the Application, the minimum efficient scale of a sewage treatment plant is such that more than one supplier can feasibly supply services in competition with one another. See section 7.1 of the Application).

4.7 Are there any examples domestically or internationally of competing sewage treatment and disposal facilities sharing a common reticulation system, or of any instances or proposals for sewer mining?

Services Sydney is not aware of examples of competing sewage treatment and disposal facilities sharing a common reticulation system or of instances of sewer mining by competing providers of sewage collection services. The absence of competition in the provision of sewage collection services is explained by the historical context of the provision of sewage collection services. As water and wastewater infrastructure has historically been exclusively government owned and operated, competition in the provision of sewage collection services would not be expected.

However, competition in the provision of sewage collection services has been envisaged in other regulatory jurisdictions, most notably the United Kingdom (UK). The Water Industry Act 1991 (UK)¹¹ opened up the scope for common carriage between companies in the water and sewage markets. Common carriage arrangements are currently limited in scale, and as yet deal only with the supply of clean water, and not sewage collection services. However, the UK Office of Water Services (Ofwat) has noted that:

“opportunities for private water suppliers are limited because of their limited access to water resources and to the public water network ... there is arguably more scope under the current arrangements for competition for the provision of sewerage services than for the provision of a water supply.”¹²

In order to provide for common carriage arrangements, Ofwat has requested water supply and sewage collection operators draft codes setting out the terms on which they would provide access to their reticulation facilities¹³ and has issued a Guidance to these companies on the development of access codes.¹⁴ While the Guidance focuses on the common carriage of clean water, it also provides that:

“if companies are approached for common carriage for sewerage, they must treat it in the same way as an application for water common carriage.”¹⁵

¹¹ The framework for competition was set out in the Water Industry Act 1991. Its scope was extended by the *Competition and Service (Utilities) Act 1992* and the *Competition Act 1998* that came into effect from 1 March 2000.

¹² Ofwat, *Competition in the Water Industry in England and Wales – Consultation Paper* – April 2000 at § 5.21.

¹³ Ofwat, *Competition in the Water Industry in England and Wales – Consultation Paper* at §7.5.

¹⁴ Ofwat, *Access Codes for Common Carriage – Guidance* March 2002.

¹⁵ Ofwat, *Access Codes for Common Carriage – Guidance* March 2002.

4.8 To what extent (if any) does the current regulatory environment envisage or facilitate the prospect of competition in the Sewage Collection Market?

The current regulatory environment does envisage the prospect of competition in the Sewage Collection Market. This is evidenced by the Sydney Water's Operating Licence which is expressly non-exclusive and does not prevent another party from obtaining a licence to provide similar services in the relevant area. See sections 4.1, 5.4 and 7.4 of the Application.

4.9 Would access through declaration result in a promotion of competition in the Sewage Collection Market or any other dependent market? What (if any) are the impediments to this occurring?

Other than obtaining access to services provided by means of the Sydney Sewage Reticulation Network, there are no economic factors that would impede competition in the Sewage Collection Market. To the extent that other impediments exist, such as planning approvals that would need to be obtained, these approvals will be obtained in course of the development of Services Sydney's proposal. See section 5.1 and 7.1 of the Application.

5. NATIONAL SIGNIFICANCE

5.1 Are there any reasons why the Sydney Sewage Reticulation Network should not be considered to be of national significance in satisfaction of criterion (c)?

No. Services Sydney considers the Sydney Sewage Reticulation Network is of national significance for the purpose of the Application. See sections 4.3 and 7.3 of the Application.

5.2 Are each of the NSOOS, BOOS and SWSOOS considered separately, of national significance in satisfaction of criterion (c)?

The NSOOS, BOOS and SWSOOS are each of national significance on the same basis as the Sydney Sewage Reticulation Network. See sections 4.3 and 7.3 of the Application.

6. HUMAN HEALTH OR SAFETY

6.1 What is the nature of the health and safety regulatory regime within which Sydney Water provides sewage services? To what extent would a party seeking access to each of the Services be subject to such regime?

Sydney Water operates each of its sewage treatment plants under an operating licence from the Environment Protection Agency (EPA) (now the Department of Environment and Conservation).

In addition, each sewage overflow point is licensed by the EPA. Services Sydney would be subject to the same regulatory regime. See sections 4.2 and 7.4 of the Application.

6.2 Is there any reason why health and safety matters cannot be dealt with through appropriate terms and conditions of access to each of the Services so as to satisfy criterion (d)?

No. See section 7.4 of the Application.

7. EFFECTIVE ACCESS REGIME

7.1 To what extent (if any) does the regulatory regime applying to Sydney Water and administered by IPART provide an enforceable right of access to either the Transmission Service or the Interconnection Service?

It does not. See section 7.5 of the Application.

7.2 To what extent (if any) does the package of statutory and quasi-contractual instruments conferring rights and obligations on Sydney Water provide an enforceable right of access to either of the Services.

It does not. See section 7.5 of the Application.

8. PUBLIC INTEREST

8.1 Would competition (rather than implementation of Services Sydney's specific business proposal) in the Sewage Collection Market or any other dependent market be likely to deliver environmentally beneficial outcomes?

In assessing the extent to which competition in the Sewage Collection Market is likely to deliver environmentally beneficial outcomes, it is not appropriate for the Council to draw a distinction between competition and the implementation of Services Sydney's proposal. It is clear that there is significant consumer demand for water and sewage collection services that have environmentally positive qualities. Competition for sewage collection services will take place both in dimensions of price and quality, principally being the environmental effects of different treatment and disposal proposals.

Services Sydney proposal, which is based on its superior environmental quality, represents competition to deliver environmentally beneficial outcomes. Accordingly, the competition in the Sewage Collection Market that will be achieved through declaration will lead to environmentally beneficial outcomes. See section 7.6 of the Application.

8.2 In what way (if any) would the applicable regulatory regime need to be revised if each of the Services was declared and what would be the likely costs of such revision?

Services Sydney does not anticipate that any applicable regulatory regime would need to be significantly revised if each of the services was declared.

8.3 To what extent (if any) would the costs of regulating more than one sewage services provider be greater than the cost of regulating Sydney Water alone?

Services Sydney does not anticipate that the cost of regulating more than one service provider would be higher than regulating Sydney Water alone. In fact, as a result of the environmental benefits of Services Sydney's proposal, it is likely that the cost of environmental regulation of the provision of sewage collection services could be significantly lower than its current level.

8.4 In what way (if any) would Sydney Water's sewage reticulation system need to be modified given the prospect of a fall in sewage system flows due to competition? Would such modification be technically feasible and economically viable?

As set out in the Application, Services Sydney's proposal does not envisage any fall in sewage flows through the Sydney Sewage Reticulation Network due to competition. As a result, Sydney Water would merely maintain the Sydney Sewage Reticulation Network on the basis of current sewage flows and reasonably foreseeable demand.

8.5 Is there anything unique or distinctive about the provision of sewage services by Sydney Water such that it is not possible to address issues in relation to universal service delivery, pricing and other relevant concerns, in a manner that is compatible with a competitive market? Would the costs of doing so outweigh the benefits of competition?

No.

8.6 Are there any other reasons why declaration of each of the Services may be contrary to the public interest?

None. See section 7.6 of the Application.

9. DURATION OF THE DECLARATION

9.1 What is an appropriate duration for any declaration of each of the Services and why?

The duration for a declaration with respect to the interconnection service and the transmission service will be influenced by the fact that Services Sydney's competitive business model (and

indeed any competitive business model) involves significant investment in and development of, a new water management platform for the Sydney area. As Services Sydney requires declaration as a precondition to embark on this investment, it is important that the duration of the declaration is sufficient to provide Services Sydney with long term business certainty.

The adoption of a long term declaration is consistent with the nature of facilities under consideration. This is demonstrated by the Sydney Water annual report for 2003 in which Sydney Water adopts depreciation timeframes of 120 to 150 years for sewage mains and 100 years for the civil component of sewage pumping stations.¹⁶

As a result, Services Sydney submits that that an appropriate expiry date for the declaration is 50 years.

9.2 Are there any reasonably foreseeable factors which may materially affect the Council's assessment of Services Sydney's application? What is the time frame for the realisation of such factors?

Services Sydney does not consider there are reasonably foreseeable factors that may affect the Council's assessment of the Application in relation to the expiry date of a declaration. Services Sydney considers it unlikely that technological development, reform initiatives or future market evolution will impact upon the monopoly characteristics of the Sydney Sewage Reticulation Network.

¹⁶ *Sydney Water Corporation Annual Report 2003* Financial Statements – Chapter 1 – Sydney Water Corporation, pp 9-10.