

Application for a Retail Supplier's Licence by AquaNet Sydney Pty Ltd

IPART's report to the Minister

Water — Ministerial report
January 2010

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1 Background

On 1 October 2009 we received a licence application under the *Water Industry Competition Act 2006* (the Act) from AquaNet Sydney Pty Ltd (AquaNet). The application is for a Retail Supplier's licence to supply non-potable water to customers by way of the Rosehill Recycled Water Scheme (Rosehill Scheme). The Rosehill Scheme will supply recycled water that is produced by Veolia Water Australia Pty Ltd and delivered to customers through infrastructure that is owned and operated by SPI Rosehill Network Pty Ltd (SPIRN). Veolia and SPIRN hold network operator licences under the Act

AquaNet proposes to supply customers in the Auburn, Bankstown, Fairfield, Holroyd, Liverpool and Parramatta Local Government Areas. The seven foundation customers include six major industrial/manufacturing customers who will use the recycled water in product manufacture, cooling towers and fire fighting, and an irrigation customer who will use the water for irrigation and fire fighting. Customers targeted for supply from the expanded network will include industrial, commercial and irrigation customers, as well as new developments that are dual piped for recycled water use. AquaNet expects to supply small residential customers in areas such as Bonyrigg and Parramatta as the Rosehill Scheme expands.

The foundation and non-foundation customers are currently supplied with potable drinking water from Sydney Water. The potable water supply system will be maintained as a contingency and, for its foundation customers, to top-up the recycled water system to minimise the risk of loss of supply to the customer. For non-foundation customers, supply may be interrupted in times of peak demand at which point customers will revert to their existing potable water source. For supply to residential areas, AquaNet will arrange potable water back-up with Sydney Water at the entry point to the area rather than to each individual property.

In accordance with the Act, this report sets out our consideration of the application and submissions, in particular in relation to whether the licensing criteria has been satisfied and the licensing principles have been considered. The report concludes with a recommendation to either grant or refuse the licence. Where a recommendation to grant the licence is made the report proposes the conditions (if any) that the licence should be subject.

2 Submissions

We must provide the application to, and invite submissions from, the following Ministers:

- ▼ Minister administering the *Public Health Act 1991* (Minister for Health)
- ▼ Minister administering Chapter 2 of the *Water Management Act 2000* (Minister for Water)

- ▼ Minister administering the *Protection of the Environment Operations Act 1997* (Minister for Climate Change and the Environment)
- ▼ Minister administering the *Environmental Planning and Assessment Act 1979* (Minister for Planning).¹

On 15 October 2009, the application was provided to the Ministers with submissions requested by 18 November 2009.

A submission was received from NSW Health and no submissions were received from the Ministers.

NSW Health was supportive of the proposed scheme and AquaNet's application for a retail supplier's licence, requesting only that certain matters be addressed under a standard retail supplier licence condition relating to NSW Health requirements. These are addressed below (see section 3.1.5).

We must also call for submissions on the application from the public.² On 21 October we advertised in the Sydney Morning Herald and the Daily Telegraph for public submissions, due by 18 November. No public submissions were received.

3 Assessment of application

The Minister is required to determine an application for a licence by granting the licence or refusing the application, and determining the conditions to which the licence (if granted) should be subject.³ The Minister may not grant the licence unless satisfied of certain licensing criteria, namely that the applicant:

- ▼ is not a disqualified corporation (i.e. 'fit and proper' criteria)
- ▼ has, and will continue to have, the technical, financial and organisational capacity to carry out the activities to be authorised by the licence
- ▼ has the capacity to carry out its activities in a manner that does not present a risk to public health or a significant risk of harm to the environment
- ▼ has, and will continue to maintain, appropriate insurance arrangements
- ▼ in the case of a licence to supply water, will supply sufficient quantities of water that have not been obtained from a public water utility
- ▼ such other matters as the Minister considers relevant, having regard to the public interest.⁴

¹ *Water Industry Competition Act 2006*, section 9(1)(b)

² *Water Industry Competition Act 2006*, section 9(1)(c).

³ *Water Industry Competition Act 2006*, section 10(1).

⁴ *Water Industry Competition Act 2006*, sections 10(3) & (4).

In considering whether or not to grant the licence, and what conditions (if any) to impose on the licence, the Minister must also have regard to the following licensing principles:

- ▼ the protection of public health, the environment, public safety and consumers
- ▼ the encouragement of competition in the supply of water and the provision of sewerage services
- ▼ the ensuring of sustainability of water resources
- ▼ the promotion of production and use of recycled water.⁵

The following sections address the licensing criteria and principles outlined above.

3.1 Licensing criteria

3.1.1 Disqualified corporation

In making an assessment of the standing of AquaNet, its related entities, directors and persons concerned in its and its related entities' management, regard was given to:

- ▼ the statutory declaration made by the directors of the applicant corporation, AquaNet, that as far as the directors are aware, neither the applicant corporation, nor any director or person concerned in the management of the applicant corporation is or would be a disqualified corporation or disqualified individual within the meaning of the Act,
- ▼ the letter provided to IPART by the applicant corporation, AquaNet, dated 28 September 2009, detailing the searches undertaken upon which the statutory declaration was based. These were searches of the Disqualified Persons Register at the Australian Investments and Securities Commission (ASIC) and the National Personal Insolvency Index at the Insolvency and Trustee Service Australia (ITSA) of the directors and managers of AquaNet and all its related Australian companies (namely, SPIAA and its subsidiaries) with a direct or indirect interest in the activities to be carried out under the licence (if granted).
- ▼ results of the ASIC and ITSA searches provided in the Dun & Bradstreet report obtained by IPART, and
- ▼ results of IPART's search of the *Water Industry Competition Act* licence database⁶.

IPART notes that AquaNet's related entities have operations outside Australia however IPART and AquaNet searches of relevant databases and registers relate only to the activities of its related entities within Australia.

⁵ *Water Industry Competition Act 2006*, section 7.

⁶ There are currently no disqualified corporations or individuals on the register pursuant to the *Water Industry Competition Act 2006*, section 16(e) and 16(f).

IPART is satisfied that AquaNet has satisfactorily met this criterion based on the statutory declaration, the letter and IPART's searches.

3.1.2 Technical capacity

IPART assessed AquaNet's technical capacity to supply non-potable water to industrial, commercial and irrigation customers as well new developments (including residential developments) that are dual piped for recycled water use. The assessment was based wholly on the information provided in the application.

IPART notes that further detail, specific to AquaNet's retail supply operations, must be provided in its Retail Management Plan to be audited for adequacy prior to its commercial operation. The Retail Management Plan must indicate, among other matters, the events and circumstances that could adversely affect the licensee's ability to supply water and the licensee's response to such circumstances. It is noted that arrangements with Sydney Water for potable water back-up will ensure that interruption of recycled water supply will not adversely affect customers.

While AquaNet is a new company, its relationship to Jemena and access to its considerable resources, and the experience of its key personnel lead IPART to conclude that while it is related to the Jemena group of companies, AquaNet has the necessary technical capacity to retail non-potable water to commercial , industrial and residential customers.

In its application AquaNet states that 'Jemena has in place systems and processes for meter reading, billing and customer response for a market of over 2 million gas and electricity consumers'. Its application includes a number of documents including those listed in the table below:

Name of document	Description of document and AquaNet commitments
Jemena Complaints Procedure Manual	<p>Jemena procedure manual for handling customer complaints that are received directly or through the Ombudsman in relation to its gas and electricity businesses.</p> <p>AquaNet has indicated this manual will be modified to include a water complaint procedure that is consistent with ombudsman requirements, recycled water supply agreements and regulatory requirement.</p> <p>AquaNet has also indicated Jemena's 24 hour call centre and emergency response facilities to respond to customer issues.</p>
Jemena asset management quality policy	<p>AquaNet has identified the key areas for quality assurance for the Rosehill Scheme as recycled water quality, quality of monitoring equipment and metering accuracy.</p> <p>Recycled water quality is to be assured using a multi</p>

	<p>barrier approach.</p> <p>All data will be logged in the Jemena SCADA system, which will be programmed to shut down the distribution system if the water doesn't meet the required quality specification.</p> <p>Water samples will be sent to an external NATA approved laboratory for evaluation to confirm quality and onsite monitoring accuracy.</p>
Draft Jemena Asset Owner Credit Policy	<p>Internal Jemena document outlining its policies on reconciliation, debt collection, dispute resolution in relation to debts and writing off bad debts.</p> <p>AquaNet has indicated it will utilise Jemena's capability for establishing and maintaining customer accounts for its recycled water customers.</p>
Jemena Technical Policy – Residential Gas Meter Service Life	<p>Internal Jemena Policy that establishes a standard for the maintenance, recalibration and replacement of residential metering equipment.</p> <p>AquaNet has indicated that for smaller users, standard residential meters and quarterly meter reading arrangements will be utilised.</p>
Jemena Technical Policy – Metering Equipment Maintenance and Service Life	<p>Internal Jemena Policy that establishes a standard for the maintenance, recalibration and replacement of non-residential metering equipment.</p> <p>AquaNet has indicated that for larger and commercial customers, smart meters will be used that collate data into 15 minute averages and are read automatically every 24 hours. These meters will allow AquaNet to track water usage against the customer agreement and, in the case of non-foundation customers, curtail or interrupt supply to give priority to foundation customers.</p>
Jemena Compliance Policy	<p>Jemena's public commitment to complying with the law.</p> <p>AquaNet has indicated that Jemena has established compliance management systems that can be readily adapted and scaled to manage the additional obligations that will attach to a Retail Supplier's licence under the WIC Act.</p>

IPART considers AquaNet has satisfactorily met this criterion.

3.1.3 Financial capacity

An external financial consultant (Walter Turnbull) undertook a detailed assessment of AquaNet's financial capacity (current and ongoing) to supply non-potable water. Walter Turnbull considered the information provided by AquaNet in the licence application, as well as the results of the ASIC and ITSA searches in the Dun and Bradstreet report provided by IPART. Further information was also requested and provided on a confidential basis, to clarify and separate the cash flows for AquaNet from the Rosehill Scheme as a whole.

Walter Turnbull concluded that AquaNet presented an overall financial risk rating of Low. A Low risk rating is described in the Table below:

Rating	Description
High	The applicant has failed to satisfy the financial capacity criteria. If a licence is to be granted on this factor alone, then the applicant should not be awarded a licence.
Medium	There are some issues identified in relation to the applicant's financial capacity and its ability to undertake the proposed project. If a lower risk rating is to be granted then additional actions are required.
Low	No issues have been identified and the applicant appears to have sufficient financial capacity. If a licence is to be granted on this factor alone, then the applicant should be awarded a licence.

As AquaNet was recently incorporated, it does not have historical financial information that can be assessed. Walter Turnbull's assessment has been based on a review and analysis of the project cash flow forecasts. While historical financial information was provided for AquaNet's parent company, SPI (Australia) Assets Pty Ltd (SPIAA), Walter Turnbull determined that AquaNet and the proposed retail operation is not financially dependent on them and accordingly, did not conduct an assessment of SPIAA's historical trading position.

Walter Turnbull concluded that AquaNet will have sufficient financial capacity to undertake the project predominantly as a result of positive net cash flows⁷ to be generated for the project for the next 20 years. It identified the main variable that presents a risk to AquaNet is its ability to achieve the estimated 10,500kL per day water volume.

IPART is satisfied that this estimate is reasonable given:

- ▼ AquaNet's advice that:
 - the average daily demand of the seven foundation customers to whom AquaNet provides recycled water through Sydney Water is 11,785kL;
 - Sydney Water has contractual commitments with five of the seven foundation customers to take recycled water from the Rosehill Scheme and is working to secure commitments from the remaining customers;
 - All foundation customer agreements will be novated to AquaNet if a 'transition' is agreed between AquaNet and Sydney Water after three years of operation of the Rosehill Scheme; and
 - AquaNet has 17 prospective non-foundation customers who have confirmed interest in the supply of recycled water and is looking to put recycled water sales agreements in place with these prospective customers

⁷ The positive net cash flows are exclusive of the tariff to be paid to SPIRN as part of the pipelines agreement.

- ▼ the publicly available information about the Rosehill Scheme delivering 4.3 billion litres of recycled water a year by 2011.

IPART concludes that AquaNet has demonstrated adequate financial capacity to be granted a retail supplier's licence. However, an assessment of this type is limited to a point in time, and granting of a licence should not be viewed as endorsement of the future viability of the company. The assessment is based on a combination of information sources, none of which is to be regarded as individually determinative. This assessment is done for IPART's own purpose and the conclusion is not to be relied upon for any other purpose by any other person

IPART considers that AquaNet has satisfactorily met this criterion.

3.1.4 Organisational capacity

IPART undertook an assessment of AquaNet's organisational capacity (current and ongoing) to supply non-potable water in manner that would protect public health and the environment.

As previously discussed (3.3.1) AquaNet is not a disqualified corporation.

AquaNet's application included details of:

- ▼ Previous experience of its parent entity and its subsidiaries (within Australia) and specific personnel nominated to the project.
- ▼ Corporate structure (including organisational diagram).

AquaNet is a new company that is owned by SPI (Australia) Assets Pty Limited, who also owns the Jemena group of companies. Jemena is an established and experienced owner, manager and operator of infrastructure in the gas and electricity industries. AquaNet draws on the experience of Jemena and its General Manager who has worked for the Jemena (formerly Alinta and AGL) group of companies for 25 years.

IPART recommended, and the Minister approved, a licence condition requiring a project (financial and technical) support deed in support of SPI Rosehill's application for a network licence. However, such a condition is not considered necessary for a retail licence. While the technical aspects of supply of recycled water were new to the Jemena group of companies, they have considerable experience in retail supply of utility services.

IPART considers that AquaNet has satisfactorily met this criterion.

3.1.5 Public health

The capacity of Aquacell to supply non-potable water by means of water industry infrastructure in a manner that protects public health was considered as part of the technical, financial and organisational capacity assessments.

NSW Health provided a supportive submission on AquaNet's application, requiring that the following matters be addressed as part of the general licence condition (B4) relating to licence holders carrying out activities in accordance with NSW Health's requirements:

- ▼ that AquaNet develops an Incident and Emergency Response Protocol in consultation with NSW Health and its customers; and
- ▼ that AquaNet provides education to its customers on the appropriate use of the recycled water.

AquaNet will be formally advised of NSW Health's requirements following the grant of licence and has indicated it will accept these requirements.

IPART considers that AquaNet has satisfactorily met this criterion and licensing principle.

3.1.6 Environment

The environmental impacts of the Rosehill Scheme are primarily associated with the construction and operation of the network and have been addressed through the network operator licences granted to Veolia Water Australia Pty Ltd and SPI Rosehill Network Pty Ltd. IPART considers there are no additional environmental impacts arising from the AquaNet's proposed activities as a retail supplier on this network.

IPART considers that AquaNet has satisfactorily met this criterion and licensing principle.

3.1.7 Insurance

An assessment was made of AquaNet's existing arrangements with respect to insurance arrangements. The assessment was based wholly on the information provided as part of AquaNet's application including the certificates of currency. It is noted that additional, scheme specific, insurance cover may be obtained following the commencement of the project activities.

We recommend the standard ministerially imposed licence condition be included in the licence, which requires the licensee to obtain and maintain appropriate insurance as determined by an independent reputable insurer registered with the Australian Prudential Regulation Authority or registered under the *Insurance (Agents and Brokers) Act 1992*.

IPART considers that AquaNet has satisfactorily met this criterion and licensing principle subject to the proposed licence condition being imposed.

3.1.8 Source of water

In the case of a retail supplier's licence, the Minister is required to be satisfied that the applicant will supply sufficient quantities of water that have not been obtained from a public water utility.

The non-potable water AquaNet will supply will be sourced from wastewater that would otherwise be discharged via the ocean outfalls.

IPART considers that AquaNet has satisfactorily met this condition.

3.2 Licensing principles

Consideration was given to each of the licensing principles in making an assessment of the licence criteria as follows:

- ▼ Protection of public health, environment, public safety and consumers was considered inherent to the technical assessment. In particular IPART and the Department of Health considered whether AquaNet has the technical capacity to undertake the activities in a way that would manage the risk to public health, public safety and consumers at an acceptable level. Full details of the assessment are outlined above.
- ▼ Encouragement of competition. The Scheme proposes to supply non-potable water to industrial, commercial and residential customers by way of the Rosehill Scheme. The non-potable water will be supplied to customers in direct competition to the existing drinking water supply.
- ▼ Ensuring sustainability of water resources. The non-potable water will be sourced from wastewater that would otherwise be discharged via the ocean outfalls, in direct substitution of potable water.
- ▼ Promotion of production and use of recycled water is fundamental to the proposed scheme.

IPART is satisfied that the grant of a Retail Supplier's licence to AquaNet is consistent with the licensing principles.

4 Recommendations

In determining the licence application the Minister must consider, but is not bound to accept, any advice or recommendation in this report and may, if circumstances so require, seek further advice from IPART in relation to the application.⁸

IPART is satisfied that AquaNet Sydney Pty Ltd has adequately addressed the licensing criteria under section 10 of the Act, having regard to the licence application, submissions made and the licensing principles under section 7 of the Act.

IPART recommends that the Minister grants a Retail Supplier's licence to AquaNet Sydney Pty Ltd, subject to the conditions as set out in licence number and 10_01R.

On making a decision whether or not to grant the licence, the Minister is required to provide IPART with a notice of the decision and of the reasons for the decision.⁹ IPART will then make the information in the notice available to the public on IPART's internet website in accordance with the requirements of the Act.¹⁰

⁸ *Water Industry Competition Act 2006*, section 10(2).

⁹ *Water Industry Competition Act 2006*, section 10(5).

¹⁰ *Water Industry Competition Act 2006*, section 10(6).

