



Independent Pricing and Regulatory Tribunal

Application for a Network Operator's Licence by Veolia Water Australia

IPART's report to the Minister

Water — Ministerial report
February 2009

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1 Background

On 7 October 2008 IPART received its first licence application under the *Water Industry Competition Act 2006* (the Act) from Veolia Water Australia Pty Ltd (Veolia). The application is for a Network Operator's licence to construct, operate and maintain a recycled water treatment plant located within the Fairfield local government area for the purpose of recycling water for industrial and commercial uses.

The proposed recycled water treatment plant will form part of the Rosehill Recycled Water Scheme (the Scheme) involving Veolia (treatment plant), AquaNet Sydney Pty Ltd (future retailer), Rosehill Assets Joint Venture (recycled water distribution network) and the Sydney Water Corporation (SWC) (retailer). The scheme proposes to treat secondary treated effluent from SWC's Liverpool to Ashfield pipeline (LAP) and then distribute the recycled water to customers.

Veolia's proposes to treat the water to a standard suitable for the following purposes:

- ▼ cooling tower make-up
- ▼ industrial process
- ▼ wash-down
- ▼ fire fighting
- ▼ irrigation
- ▼ toilet flushing
- ▼ washing machine (cold water tap only)

The proposed customers are existing customers of Sydney Water and are currently supplied with potable drinking water for the uses described above. The recycled water project proposes to maintain the potable water supply system as a contingency and, where required, top-up to the recycled water system, under an agreement with Sydney Water, to minimise the risk of loss of supply to the proposed customers.¹

In accordance with the Act, this report sets out IPART's 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.

¹ Note: Section 10(4)(d) of the Act does not apply to the assessment of applications for a Network Operator's licence and is relevant only to an application for a Retail Supply licence.

2 Submissions

IPART 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).²

On 23 October 2008, the application was provided to the Ministers with submissions requested by 28 November.

IPART received submissions from the Minister for Health and the Minister for Planning. A submission was also received from the Department of Environment and Climate Change.

The content of these submissions were supportive of the proposed scheme and the application for a network operator's licence made by Veolia. The Minister for Health raised several matters for consideration and these are addressed below (see section 3.1.5).

IPART must also call for submissions on the application from the public.³ On 29 October IPART advertised in the Sydney Morning Herald and the Daily Telegraph for public submissions. On 26 November public submissions closed. 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.⁴ 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

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

³ *Water Industry Competition Act 2006*, section 9(1)(c).

⁴ *Water Industry Competition Act 2006*, section 10(1).

- ▼ 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 be obtained from a public water utility
- ▼ such other matters as the Minister considers relevant, having regard to the public interest.⁵

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.⁶

The following sections of this report are structured to address each of the licensing criteria and principles outlined above.

3.1 Licensing criteria

3.1.1 Disqualified corporation

The applicant corporation, Veolia Water Australia, its related entities, directors and the persons concerned in its management are NOT disqualified pursuant to the Act. In making an assessment of the standing of Veolia, its related entities, directors and persons concerned in its management regard was given to:

- ▼ The statutory declaration made by the Chief Executive Officer and the Director
- ▼ Dun and Bradstreet report
- ▼ The *Water Industry Competition Act* licence database⁷

IPART considers that Veolia Water Australia has satisfactorily met this criterion.

⁵ *Water Industry Competition Act 2006*, sections 10(3) & (4).

⁶ *Water Industry Competition Act 2006*, section 7.

⁷ There are currently no disqualified corporations pursuant to the *Water Industry Competition Act 2006*, section 16(e) and 16(f), this being the first application.

3.1.2 Technical capacity

IPART, the Department of Health and a qualified external (engineering) consultancy (GHD) undertook a detailed assessment of Veolia's technical capacity (current and ongoing) to construct, operate and maintain water industry infrastructure for the purpose of supplying non-potable water in manner that would protect public health and the environment.

The assessment was based wholly on the information provided as part of Veolia's application including:

- ▼ Previous technical experience of the corporation (within Australia) and specific personnel nominated to the project.
- ▼ Preliminary and draft reports and plans for the proposed scheme to demonstrate the technical capacity of the corporation to safely and reliably construct, operate and maintain water industry infrastructure.
- ▼ Examples of final reports and plans required to demonstrate the technical capacity of the corporation to safely and reliably construct, operate and maintain water industry infrastructure prepared for a similar project.
- ▼ Technical details of the proposed water industry infrastructure including the preliminary design and the operating and maintenance plans and procedures.

Minimal additional requests for information were made to Veolia as part of the technical assessment. However comments from the technical assessment will be provided to Veolia to assist them in meeting their licence obligations, if granted.

IPART, the Department of Health and GHD concluded that Veolia has, and will continue to have, the technical capacity to carry out the activity for which a licence has been sought subject to the inclusion of specific licence conditions. The conditions including reasons for their inclusion are summarised as follows:

- ▼ Proposed standard ministerially imposed condition – B9 (attachment B). Delineating responsibilities for interconnections. The proposed Scheme will include a number of network operators and retail suppliers. This licence condition aims to manage the complexity of interactions between the various parties, including the responsibility and allocation of risk, by requiring the preparation of provisions to outline the processes and procedures for all areas of interaction.
- ▼ Proposed standard ministerially imposed condition – B7 (attachment B). NATA certified or accepted equivalent lab. All monitoring performed as a requirement of the Water Quality Plan must be undertaken by a NATA accredited lab or equivalent acceptable to NSW Health. This licence condition aims to ensure all water quality monitoring is undertaken by a reputable laboratory with the appropriate quality control procedures in place.

IPART considers that Veolia Water Australia has satisfactorily met this criterion subject to imposition of the proposed licence conditions.

3.1.3 Financial capacity

A qualified external financial consultant (Walter Turnbull) undertook a detailed assessment of Veolia’s financial capacity (current and ongoing) to construct, operate and maintain water industry infrastructure for the purpose of supplying non-potable water.

Walter Turnbull considered the information provided by Veolia in the licence application, as well as the results of any ASIC and ITSA searches provided with the application (undertaken by Dun and Bradstreet).

Walter Turnbull concluded that Veolia presented an overall financial risk rating of medium. A medium risk rating is described in Table 3.1 below.

Table 3.1 Risk Rating Matrix

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.

Walter Turnbull note that based on the historical performance of the Veolia Group and cash flow forecasts provided, it appears that the applicant has sufficient financial capacity to undertake the project and rated the application as a medium risk. Walter Turnbull’s medium risk assessment rating was due in part to the weak level of assurance surrounding the cash flow forecasts provided by the company when taken in isolation.

IPART sought further clarification from Veolia regarding their internal rate of return for this project. Based on the information provided by Veolia, IPART is now satisfied that the medium level risk rating is acceptable in this case when taking into account the historical financial standing of the applicant, its cash position and its decision to fund this project internally.

Further, it is worth noting that Veolia are undertaking this scheme as part of the successful tender team following a competitive tender process conducted by Sydney Water which included financial checks and cash flow analysis.

IPART considers that Veolia Water Australia has satisfactorily met this criterion.

3.1.4 Organisational capacity

IPART undertook a detailed assessment of Veolia's organisational capacity (current and ongoing) to construct, operate and maintain water industry infrastructure for the purpose of supplying non-potable water in manner that would protect public health and the environment.

The assessment was based wholly on the information provided as part of Veolia's application including:

- ▼ Previous experience of the corporation (within Australia) and specific personnel nominated to the project.
- ▼ Corporate structure (including interests in Australia and organisational diagram).
- ▼ Project delivery resource plan.

No issues were identified by IPART regarding the applicant's organisational capacity to hold a WICA network operator's licence.

IPART considers that Veolia Water Australia has satisfactorily met this criterion.

3.1.5 Public health

The capacity of Veolia to construct, operate and maintain water industry infrastructure in manner that protects public health was considered inherently as part of the technical, financial and organisation capacity assessments.

In addition the Department of Health comprehensively assessed the public health aspects of Veolia's application. To this end, the Department of Health supports the granting of a licence to Veolia Water Australia subject to the following conditions:

- ▼ the NSW Department of Health be notified of any incidents of potential public health risk including significant deviation to water quality and unintended exposure to the recycled water (e.g. cross connection). This licence condition is included in the *Water Industry Competition (General) Regulation 2008* and will be a requirement of all network operator licence holders.
- ▼ the NSW Department of Health is to be notified of any changes to the proposed treatment train and end use. Two standard ministerially imposed conditions have been proposed:
 - Proposed standard ministerially imposed condition - B8 (attachment B). Provision of copy of plans. Whenever the Licensee makes a significant change to any of its mandatory plans (required by the legislation), the Licensee is to provide a copy of the amended plan to IPART at the same time it provides a copy to the approved auditor engaged to provide a report as to the adequacy of the changed plan as required under the Regulation.

- Proposed standard ministerially imposed condition - B10 (attachment B). Notification of changes to end-use. If the Licensee proposes to commence supply or distribution of water for an end-use which is not set out in the Licensee's Water Quality Plan, being the Water Quality Plan most recently provided to IPART, the Licence Holder must notify IPART in writing at least 3 months prior to commencing the supply or distribution.

In both of the instances above IPART will notify Health and seek their advice on any proposed changes.

- ▼ the NSW Department of Health is to be provided with the quantitative microbial risk assessment (QMRA) for review. An updated QMRA was received from Veolia and forwarded to the Department of Health. No further action is required.

IPART considers that Veolia Water Australia has satisfactorily met this criterion subject to imposition of the proposed licence conditions.

3.1.6 Environment

As detailed above, the proposed recycled water treatment plant and associated works form part of a broader proposal for the Rosehill Recycled Water Scheme. The Scheme will be assessed and determined by the Minister for Planning under Part 3A of the *Environmental Planning and Assessment Act 1979*.

At this time there has been no Environmental Assessment for the Scheme submitted to the Department of Planning. If an Environmental Assessment is submitted in future, it will be publicly exhibited for comment before the Minister for Planning determines the application.

Submissions received by IPART from the Minister for Planning and the Department of Environment and Climate Changes state that there are no objections to issuing a network operator's licence to Veolia.

IPART considers that Veolia Water Australia has satisfactorily met this criterion. Development approval from the Minister for Planning is an existing regulatory requirement prior to Veolia commencing construction of the recycled water treatment plant.

3.1.7 Insurance

An assessment was made of Veolia's existing arrangements with respect to insurance arrangements. The assessment was based wholly on the information provided as part of Veolia'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.

IPART recommends the following licence condition be included in the licence:

- ▼ Proposed standard ministerially imposed condition – B2 (attachment B). Before commencing to operate water industry infrastructure commercially, the Licensee must; obtain appropriate insurance sufficient for the size and nature of the activities authorised under this licence. In addition the Licensee must demonstrate that the insurance obtained is appropriate by providing a report to IPART from an independent person with expertise in insurance setting out the nature and scope of the insurance obtained by the Licensee and stating/certifying that in that person’s opinion the type and level of insurance obtained by the Licensee is appropriate for the size and nature of the activities authorised under this licence. The Licensee must provide, to IPART, a copy of each certificate of currency of insurance obtained.

IPART considers that Veolia Water Australia has satisfactorily met this criterion subject to the proposed licence condition being imposed.

3.1.8 Additional public interest considerations

No public submissions were received as part of the assessment process.

The proposed location of the treatment plant is currently zoned for water infrastructure (and is located adjacent to an existing stormwater treatment plant). A detailed planning assessment will be undertaken as part of the Part 3A development assessment application made to the Minister for Planning. The development assessment process is ongoing.

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, the Department of Health and the expert consultant considered whether Veolia had the technical capacity to undertake the activities in a way that would manage the risk to public health and the environment at an acceptable level. Full details of the assessment are outlined above.
- ▼ Encouragement of competition. The Scheme proposes to supply non-potable water to several foundation customers with the capacity for future expansion. 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 secondary treated sewage 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. Veolia highlights the potential for the scheme to be extended and expanded to meet demand growth as opportunities arise to allow access to customers who otherwise would not have been able to use recycled water.

IPART is satisfied that the grant of a Network Operator’s licence to Veolia for the Rosehill Scheme 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 Veolia Water Australia 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 Network Operator’s licence to Veolia Water Australia Pty Ltd, subject to the conditions as set out in the attached licence number 09_001 (Attachment B).

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).