



Independent Pricing and Regulatory Tribunal

Application for a Network Operator's Licence from SPI Rosehill Network Pty Limited

IPART's report to the Minister

Water — Ministerial report
April 2009

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1 Background

On 29 October 2008 IPART received an application for a Network Operator's licence under the *Water Industry Competition Act 2006* (the Act) from joint applicants SPI Rosehill Network Pty Limited (ACN 131 213 691) and Rosehill Water Network Pty Limited (ACN 132 481 077), together referred to as the Rosehill Assets Joint Venture (RAJV).

On 7 April 2009], RAJV notified IPART that SPI Rosehill Network Pty Limited (SPI Rosehill) alone was now applying for the licence and attached an amended licence application that only related to SPI Rosehill. A decision was made to consolidate the two companies into one (by winding up the Rosehill Water Network Pty Limited company), as the need for a joint venture structure was historical and no longer relevant to the project. Such a change did not alter the substance of the original licence application or the basis upon which the applicant has been assessed against the licensing criteria and principles in determining whether or not to recommend the licence be granted. This is because both companies forming RAJV were newly incorporated, wholly-owned subsidiaries of Jemena Limited (Jemena) and the capacity of both companies (separately or jointly) to hold the licence relied upon the services and support to be provided by the parent company, Jemena, and its subsidiary Jemena Asset Management Pty Ltd (JAM).

Jemena is a wholly owned subsidiary of the Australian parent company SPI (Australia) Assets Pty Ltd (SPIAA), which is a subsidiary of the ultimate parent company of the applicant, Temasek Holdings (Private) Limited (a Singaporean-based multi-national company)(Temasek).

SPI Rosehill propose to construct, maintain and operate a recycled water distribution network in the Rosehill-Camellia-Smithfield area of Sydney. This is part of the Rosehill Recycled Water Scheme involving AquaNet Sydney Pty Ltd (AquaNet), Veolia Water Australia Pty Ltd (Veolia), SPI Rosehill and the Sydney Water Corporation (Sydney Water). SPI Rosehill will transfer secondary treated effluent through a Feed Effluent Pipeline from Sydney Water's Liverpool to Ashfield pipeline (LAP) to the Fairfield Recycled Water Treatment Plant (operated by Veolia) and then distribute the high quality recycled water from the Plant via a recycled water distribution network to supply customers.

The 20km recycled water distribution network to be constructed, maintained and operated by SPI Rosehill will take recycled water from the Veolia Plant to initially supply Sydney Water's seven foundation customers in Smithfield and Rosehill. The entire pipeline network will be below ground in roads and public land. Some of the network utilises Jemena Gas Networks (NSW) Ltd's isolated gas mains (ie, no longer form part of the "live" gas network) as conduits for the recycled water reticulation, and is designed to allow for geographic expansion to supply non-foundation customers of AquaNet in the areas of Parramatta/Westmead, Wetherill Park/Bonnyrigg and Liverpool.

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. (Dual piped new development areas will be supplied at one bulk supply point and the internal recycled water network supplying individual customers is not the subject of this application. Individual residential consumers will not be connected to the network.)

Supply to foundation customers is scheduled to commence on March 2011 and supply to customers on the expanded areas of the network is expected to commence progressively from late 2011 to approximately 2013.

The network also includes the construction and operation of the Feed Effluent Pipeline from Sydney Water's LAP to the Plant, two storage reservoirs, and various water storage tanks and pumping facilities.

The foundation customers are currently supplied with potable drinking water from Sydney Water. The recycled water scheme proposes to maintain the potable water supply system as a contingency and, where required, top-up to the recycled water scheme 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. This 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) to which the licence should be subject.

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* (POEO Act)(Minister for Climate Change and the Environment)
- ▼ Minister administering the *Environmental Planning and Assessment Act 1979* (EP&A Act)(Minister for Planning).²

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

IPART must also call for submissions on the application from the public.³ On 17 November 2008 the application was provided to the Ministers, and on 19 November 2008 it was advertised in the Sydney Morning Herald for public submissions. On 17 December 2008 submissions closed.

IPART received late submissions from the Minister for Health and the Minister for Planning, and a letter from the Minister for Climate Change and the Environment advising that no submission would be made as the project will not be subject to a licence under the POEO Act. No public submissions were received.

The content of these submissions were supportive of the proposed scheme and the application for a network operator's licence made by SPI Rosehill. The Ministers for Planning and Health both provided some comments and raised some matters for consideration, and these are addressed below (see sections 3.1.5 and 3.1.6).

3 Assessment of application

The Minister for Water 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 (ie, '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 (ie, only applicable to a Retail Supplier's 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.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

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

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

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

- ▼ 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

In making an assessment of the standing of SPI Rosehill, 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, SPI Rosehill, that 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, SPI Rosehill, dated 7 April 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 SPI Rosehill 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 database⁷.

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

3.1.2 Technical capacity

IPART, NSW Health and a qualified external (engineering) consultancy (GHD) undertook a detailed assessment of SPI Rosehill's technical capacity (current and ongoing) to construct, operate and maintain water industry infrastructure for the

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

⁷ 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), this being the second application.

purpose of supplying non-potable water in a manner that would protect public health and the environment.

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

- ▼ Previous technical experience of Jemena, as SPI Rosehill is a newly formed corporation that is a wholly owned subsidiary of Jemena and Jemena and its subsidiary JAM will be providing the resources, skills and expertise to undertake the activities to be licensed.
- ▼ Preliminary and draft reports and plans for the proposed scheme to demonstrate the technical capacity of SPI Rosehill to safely and reliably construct, maintain and operate water industry infrastructure.
- ▼ Copies of Jemena's risk management procedure, framework and guidelines to demonstrate the technical capacity of SPI Rosehill to safely and reliably address and manage the risks in relation to constructing, maintaining and operating water industry infrastructure.
- ▼ Technical details of the proposed water industry infrastructure including the preliminary design and the operating and maintenance plans and procedures.

As a result of this assessment, additional requests for information were made to SPI Rosehill concerning the following matters:

- ▼ Further information to demonstrate that the proposed reuse of existing isolated gas mains for parts of the recycled water network was technically feasible and that hydrocarbon (or other) contamination in the gas mains would not impact on recycled water quality.
- ▼ Further development of critical control points (CCPs) for the network and the provision of a completed preliminary HACCP analysis identifying key CCPs.
- ▼ Updated information regarding the qualifications and experience of the new directors of SPI Rosehill (appointed after the application was made but before consideration of the application was concluded).

SPI Rosehill provided this further information to the satisfaction of IPART. In particular, this further information explains that the "pipe bursting" construction method proposed for the Woodville Road network main involves inserting a slightly larger diameter pipe inside the existing gas main pipe. The smaller gas main pipe splits and is replaced by the larger new water pipe. There is potential for the pipe bursting works to provide a pathway for any contaminants left in the gas pipeline to be transferred to the soil surrounding the gas main. However, prior to bursting, any water, sludge material and sediment in the pipes is to be removed and disposed of appropriately to minimise any such potential. As the isolated gas main is cleaned prior to pipe bursting and then replaced by a new pipe, any contaminants that may have been present in the old main cannot come in contact with the recycled water and/or affect recycled water quality.

In other sections of the isolated gas mains a “pipe insertion” or “pipe lining” construction method will be used. Pipe insertion involves the installing of a new pipe inside the existing larger gas main pipe. Pipe lining is where an existing gas pipe is lined with a sleeve which has structural integrity. As a result, the recycled water does not come into contact with the existing pipe and any contaminants in the old gas main pipe cannot affect the recycled water quality. All of these construction methods have been previously used and have been demonstrated to be technically feasible, and there are a number of contractors in Australia who are experienced in these techniques.

IPART, NSW Health and GHD concluded that SPI Rosehill has, and will continue to have, the technical capacity to carry out the activities to be licensed subject to the inclusion of a number of proposed licence conditions. The conditions, including reasons for their inclusion, are summarised as follows:

- ▼ Proposed standard Ministerially-imposed condition – Schedule B, condition B9 (Attachment B). Delineating responsibilities for interconnections. The proposed scheme will involve interconnections with a public water utility and a number of licensed network operators and retail suppliers. This licence condition aims to manage the complexity of interactions between the various parties by requiring arrangements to be agreed between the parties in relation to each party’s responsibilities and liabilities concerning interconnections, water quality, infrastructure failure, unavailability of water and customer complaints.
- ▼ Proposed standard Ministerially-imposed condition – Schedule B, condition B7 (Attachment B). Monitoring. All monitoring performed as a requirement of the licence or any plans required under the Regulation (eg, Water Quality Plans) must be undertaken by a National Association of Testing Authorities (NATA) accredited laboratory 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.
- ▼ Proposed standard Ministerially-imposed condition – Schedule B, condition B1 (Attachment B). Ongoing capacity to operate. This licence condition requires the licensee to have the technical (as well as financial and organisational) capacity to carry out the activities authorised by the licence, and to notify IPART immediately should it cease to have this capacity. The SPI Rosehill application demonstrated through the experience of its directors, Jemena and its subsidiaries, strong experience in energy and gas networks, but the experience of personnel in the water area was not as extensive. However, as indicated in the application, IPART recognises that SPI Rosehill personnel will need to be expanded to include supplementary personnel with specific water recycling design, construction, management and maintenance experience before the activities to be licensed can be undertaken. IPART was therefore satisfied of SPI Rosehill’s technical capacity in this regard, subject to this licence condition being imposed.

IPART is satisfied that SPI Rosehill has satisfactorily met this criterion subject to the imposition of the proposed licence conditions.

3.1.3 Financial capacity

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

Walter Turnbull considered the information provided by SPI Rosehill in the licence application, as well as the results of the Dun and Bradstreet report on SPI Rosehill provided by IPART. Further information was also requested and provided on a confidential basis, namely the financial model and cash flows of SPI Rosehill.

Walter Turnbull concluded that SPI Rosehill presented an overall financial capacity risk rating of Medium. A Medium risk rating is described in Table 3.1 below.

Table 3.3.1 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.

As SPI Rosehill was recently incorporated, it does not have historical financial information that can be assessed. SPI Rosehill is a wholly-owned subsidiary of Jemena. Therefore, Walter Turnbull's assessment of the capacity of SPI Rosehill was based on the historical financial information of its parent entity, Jemena (formally known as Alinta LGA Ltd).

Based on an assessment of the financial capacity of Jemena, Walter Turnbull concluded that SPI Rosehill appear to have sufficient financial capacity to undertake the proposed scheme. This was also assisted by the detailed cash flow projections provided for the scheme which return a positive Net Present Value (NPV) for the project. However, Walter Turnbull's risk rating was contingent upon a deed of guarantee from the parent company, Jemena, to the subsidiary, SPI Rosehill, being executed as a condition of granting the licence. This involves the parent company guaranteeing the debts of the wholly-owned subsidiary upon the winding up of the subsidiary.

Walter Turnbull's recommended licence condition was based on a number of factors, including:

- ▼ the positive NPV for the project was contingent on a number of factors and therefore presented some level of risk;
- ▼ funding for the project is to be sourced from a combination of Jemena's operating cash flows and existing debt facilities;
- ▼ as SPI Rosehill was recently incorporated and has no trading or financial history, the capacity of SPI Rosehill to provide the services (ie, the activities to be licensed) relies upon their parent entity Jemena; and
- ▼ the Dun & Bradstreet report raises some minor concerns over the soundness of SPI Rosehill (stemming largely from their lack of trading history).

IPART considered the options available to impose a licence requirement for a deed of guarantee to be in place from Jemena. IPART's key policy concern does not directly relate to creditors of SPI Rosehill, but rather to ensuring SPI Rosehill has the capacity to carry out the activities that the licence (if granted) would authorise.⁸ As such, IPART formed the view that the policy objective of ensuring that SPI Rosehill has the financial, technical and organisational capacity to undertake the scheme would best be achieved by requiring Jemena (as the parent company) to enter into a Project Support Deed (the Deed) with SPI Rosehill. The Deed requires Jemena to provide or procure the financial, technical and organisational support necessary for SPI Rosehill to undertake the scheme.⁹

This in effect formalises the position as presented in SPI Rosehill's licence application, namely that Jemena and its subsidiary JAM are providing the financial, technical and organisational resources to enable SPI Rosehill to carry out the project. IPART believes requiring the Deed to be entered into substantiates the financial capacity of the applicant and provides greater assurance that the scheme has the necessary backing to proceed, thereby protecting the interests of customers, and promoting recycled water production/usage and the sustainability of NSW's water resources, which are key policy concerns of the Act.¹⁰

IPART also identified that the period of highest risk that the scheme may not proceed or would fail is the construction period and the first three years of operation of the network. By the end of this period SPI Rosehill would have at least 5 years of trading and financial history, the foundation network would be built (to Smithfield and Rosehill) and customers established.

It is worth noting that SPI Rosehill 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. It is also worth noting that the customers of the scheme are initially six major industrial/manufacturing customers and an irrigation customer, and under expansion plans will be to

⁸ See section 10(4)(a) *Water Industry Competition Act 2006*.

⁹ *Water Industry Competition Act 2006*, section 13(2)(a).

¹⁰ *Water Industry Competition Act 2006*, preamble, sections 7 and 10.

commercial, industrial and irrigation customers, as well as bulk supply to dual piped developments (but not to individual residential customers).

IPART has determined that SPI Rosehill has, and will continue to have, the financial capacity to undertake the activities to be licensed subject to the inclusion of a specific licence condition requiring a 'Project Support Deed' to be entered into. The condition is summarised as follows:

- ▼ Proposed Ministerially-imposed condition – Schedule A, condition A2 (Attachment B). Project Support. This licence condition requires SPI Rosehill, prior to undertaking any activities authorised under the licence (ie, construction etc of the network) to enter into an agreement with its parent company Jemena (a 'Project Support Deed') that Jemena, when requested by SPI Rosehill, will promptly make sufficient funds available and supply or otherwise procure sufficient personnel with technical expertise and other management and support services to SPI Rosehill, to enable SPI Rosehill to undertake the construction of the network and its associated works, and to commission, operate, maintain and repair the network and its associated works. The Project Support Deed is to be binding on the parties until the third anniversary of the construction of the foundation project (to Smithfield and Rosehill) of the scheme, cannot be varied without IPART's consent and must be on terms satisfactory to IPART. SPI Rosehill is required to enforce the Deed against Jemena to the extent necessary to undertake its licensed activities.

IPART is satisfied that SPI Rosehill has satisfactorily met this criterion subject to the imposition of the proposed licence condition.

3.1.4 Organisational capacity

IPART undertook a detailed assessment of SPI Rosehill'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 SPI Rosehill's application, including supplementary information provided on 18 February 2009, including:

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

The only issue identified was in relation to the water industry experience of personnel undertaking the activities to be licensed, but has been addressed through

the recommended standard Ministerially-imposed condition – Schedule B, condition B1 – Ongoing capacity to operate (Attachment B) as detailed in section 3.1.2.

IPART has determined that SPI Rosehill has, and will continue to have, the organisational capacity to undertake the activities to be licensed subject to the inclusion of licence conditions A2 and B1 (detailed above in sections 3.1.2 and 3.1.3).

IPART is satisfied that SPI Rosehill has satisfactorily met this criterion.

3.1.5 Public health

The capacity of SPI Rosehill to construct, operate and maintain water industry infrastructure in a manner that does not present a risk to public health was considered inherently as part of the technical, financial and organisational capacity assessments.

In addition NSW Health comprehensively assessed the public health aspects of SPI Rosehill's application. The Minister for Health supported the granting of a licence to SPI Rosehill subject to the following conditions:

- ▼ that as part of the subsequent submission to IPART of a water quality plan (as required under the Regulation), that SPI Rosehill demonstrate its plan complies with the *Australian Guidelines for Water Recycling: Managing Health and Environmental Risks* (2006) (AGWR); and
- ▼ that NSW Health be notified of any incidents of potential public health risk including significant deviation to water quality and unintended exposure to the recycled water (eg. cross connections).

IPART believes the Minister's requirements have already been addressed by the standard licence conditions imposed by the *Water Industry Competition (General) Regulation 2008* (the Regulation). Under these conditions a licensee's water quality plan must be consistent with the AGWR¹¹ and a licensee must also immediately notify the Minister for Health (amongst others) of any incident that could threaten water quality, public health or safety¹². In addition, IPART is recommending the Minister for Water impose a standard licence condition on all licences issued under the Act which would require licensees to carry out licensed activities in compliance with any requirements of NSW Health that IPART has agreed to and are notified from time to time in writing to the licensee (see Schedule B, condition B4 of Attachment B). Should the Minister have any additional requirements, for example arising from a review of the water quality plan in due course, these requirements will be imposed via this licence condition.

¹¹ *Water Industry Competition (General) Regulation 2008, Schedule 1, clause 7.*

¹² *Water Industry Competition (General) Regulation 2008, Schedule 1, clause 1(2).*

IPART is satisfied that SPI Rosehill has satisfactorily met this criterion subject to the proposed licence conditions.

3.1.6 Environment

The capacity of SPI Rosehill to construct, operate and maintain water industry infrastructure in a manner that does not present a significant risk of harm to the environment was considered inherently as part of the technical capacity assessment. The principle environmental impacts of the activities to be licensed are mostly associated with the construction stage. These will include disruption to property access, construction noise and traffic congestion. While trade waste from the network is unlikely to be generated, any trade waste generated will be discharged (from scour points) to sewer under a trade waste licence with Sydney Water. Other environmental impacts associated with the construction and operations of the network, such as potential contamination of soil from the use of isolated gas mains, have been discussed above in section 3.1.2.

Environmental impacts of the scheme during construction and operation will also be assessed, and environmental protection measures necessary to address these impacts will be imposed, as part of the planning approval process required for the scheme under Part 3A of the EP&A Act. Currently the Environmental Assessment for the scheme required under Part 3A of the EP&A Act is on public exhibition on the Department of Planning's website and provides an extensive discussion of environmental impacts and proposed mitigation measures.

The Minister for Planning's submission advised that she had no objection to the issue of a licence to SPI Rosehill provided the terms of such a licence do not pre-empt or conflict with the determination under the EP&A Act. The Department of Planning and IPART have established administrative arrangements to ensure that any licences under the Act and approvals under the EP&A Act are complementary and consistent, where relevant. IPART has liaised with the Department in relation to the proposed licence conditions IPART is recommending the Minister for Water impose, and has been advised that the Department has no concerns with these proposed conditions.

IPART believes SPI Rosehill have satisfactorily met this criterion subject to the standard licence condition imposed on all network operators by the Regulation (see Schedule 1, clause 4) that requires a licensee, in regard to any activities undertaken under the licence, to comply with the requirements of the EP&A Act and any environmental planning instruments under that Act, and the POEO Act and any regulations under that Act, in relation to protection of the environment.

IPART is satisfied that SPI Rosehill has satisfactorily met this criterion.

3.1.7 Insurance

An assessment was made of SPI Rosehill's insurance arrangements. The assessment was based wholly on the information provided as part of SPI Rosehill's application, including the insurance requirements of the Project Agreement with Sydney Water and the certificates of currency provided in Appendix 16. SPI Rosehill have stated that insurances have been or will be arranged in accordance with the requirements of the Project Agreement for the construction and operational phases of the scheme, and will include Professional Indemnity Insurance, Public Liability Insurance, Workers' Compensation, Construction Works Liability and Construction Works Material Damage and Motor Vehicle Insurance. It is noted that the certificates of currency provided provide insurance for Jemena and specified subsidiaries (but not including SPI Rosehill) or JAM.

Generally speaking, at the time of making a licence application, IPART does not expect applicants will have obtained all appropriate insurances needed to undertake the proposed licensed activities, as the applicant would not yet be in a position to undertake the activities and will not want to incur such expenses until necessary.

IPART is satisfied on the information provided that SPI Rosehill has demonstrated that it has made, and will continue to maintain, appropriate arrangements in respect to insurance, subject to the following recommended licence conditions being imposed:

- ▼ Proposed standard Ministerially-imposed condition – Schedule B, condition B2 (Attachment B). Before commencing activities authorised under the licence, the licensee must obtain appropriate insurance sufficient for the size and nature of the activities authorised under the licence; demonstrate that the insurance obtained is appropriate by providing a report to IPART from an insurance expert certifying that in the expert's opinion the type and level of insurance obtained by the licensee is appropriate for the size and nature of the activities authorised under the licence; and provide a copy of each certificate of currency of insurance obtained to IPART. An insurance expert must be an independent reputable insurer registered with the Australian Prudential Regulation Authority (APRA) or an independent reputable insurance broker registered under the *Insurance (Agents and Brokers) Act 1984 (Cth)*. The report must identify the key risks of undertaking the activities authorised under the licence; set out the types and levels of insurance obtained; provide reasons as to why the types and levels of insurance obtained are appropriate for the size and nature of the activities being undertaken; and, if any risks arising from the activities remain uninsured, provide reasons as to why.

- ▼ Proposed standard Ministerially-imposed condition – Schedule B, condition B3 (Attachment B). This condition requires the licensee to maintain appropriate insurance sufficient for the size and nature of the activities authorised under the licence. Whenever there is a change in the type, level or period of insurance held by the licensee, the licensee must provide a copy of the certificate of currency to IPART within 10 days of the change being made. From time to time when requested by IPART, the licensee must provide further reports from an insurance expert certifying that in the expert’s opinion the type and level of insurance obtained by the licensee is appropriate for the size and nature of the activities authorised under the licence.

IPART is satisfied that SPI Rosehill has satisfactorily met this criterion subject to the proposed licence conditions being imposed.

3.1.8 Additional public interest considerations

The licence application does not identify any additional public interest considerations. No public submissions were received as part of the assessment process. However, the licensing principles discussed below encapsulate a number of areas of public interest which have been considered by IPART (see section 3.2). IPART has not identified any further matters of public interest.

IPART is satisfied that SPI Rosehill has satisfactorily met this criterion.

3.2 Licensing principles

Each of the following licensing principles were considered in making a recommendation as to whether or not the licence should be granted and what licence conditions to impose:

- ▼ Protection of public health, environment, public safety and consumers.
- ▼ Encouragement of competition.
- ▼ Ensuring sustainability of water resources.
- ▼ Promotion of production and use of recycled water.

Risks to public health from the scheme through the possibility of misuse of or exposure to the recycled water is to be managed in a number of ways, including:

- ▼ The water is of a very high quality and poses a very low health risk.
- ▼ Persons proposing to inject water into the network will be required contractually to meet the quality specifications for the network and the water quality will be monitored and controlled at point(s) where water is received into the network, as well as throughout the network.

- ▼ Network connections are intended to be provided to commercial and industrial premises only, thereby limiting the potential for public exposure to the recycled water. Connections to the network will not be provided for individual residential customers.

As noted previously, the scheme must obtain approval under Part 3A of the EP&A Act before it can proceed and will be subject to conditions imposed under that approval. This involves an extensive consideration of the environmental impacts of the scheme and proposed mitigation measures.

The principle risk to public safety will be during the construction phase of the scheme. Jemena and its subsidiaries have extensive experience in the safe management of infrastructure construction projects for gas, electricity and water throughout Australia.

A distinguishing feature of the scheme is that it involves large scale centralised production and delivery of recycled water. Compared with the alternative of small scale stand-alone recycling operations, the network approach offers the benefit of economies of scale where average costs decline as the network is expanded and extended and the number of customers and throughput increase. A network can also provide recycled water to consumers who would not otherwise use recycled water, and can relieve consumers of the burden of operating and maintaining stand-alone recycling facilities (where that is an option).

The scheme is the product of a competitive tender process conducted by Sydney Water and will provide a competitive alternative to potable water and small scale stand-alone recycling facilities for industrial and commercial consumers along the route of the proposed network. As owner of the network, SPI Rosehill has indicated that it will negotiate in good faith on terms and conditions of access with public water utilities or other licensed network operators and/or retail suppliers that may seek access to the network under Part 3 of the Act.

The water to be distributed by the scheme will, for the most part¹³, be derived from treated sewage that would otherwise be discharged to the ocean and will, in most instances¹⁴, be used in direct substitution for potable water that would otherwise be supplied by Sydney Water. The scheme will initially provide 4.3 GL per annum of recycled water to Sydney Water to supply the foundation customers and could generate more than 7 GL per annum under future expansion plans. The project will therefore generate considerable potable water savings for Sydney businesses, and possibly residents. It will form part of the planned Sydney Recycled Water Grid and will make a significant contribution towards meeting the NSW Government's target of recycling 70 GL per annum of water by 2015.

¹³ The scheme provides for a back-up supply of potable water from Sydney Water for foundation customers to cover shortfalls in the supply of recycled water. There is also provision for Sydney Water to supply potable water as a top-up supply at the 2 reservoirs on the network.

¹⁴ In some instances, recycled water may substitute for water from other sources or may contribute to an increase in total water consumption.

IPART is satisfied that the grant of a Network Operator’s licence to SPI Rosehill is consistent with the licensing principles.

3.3 Additional matters considered

Under section 6 of the Act, the licence should authorise the licensee, *and any other person specified in the licence*, to undertake the licensed activities. IPART believes it is necessary to specify in the licence third parties where IPART has relied on the services being provided by the third party to the applicant to be satisfied that the applicant has the technical, financial and/or organisational capacity to carry out the activities the licence would authorise.

In relation to the present application, the applicant corporation (SPI Rosehill) is a newly formed wholly-owned subsidiary company of Jemena, relying on Jemena and its subsidiary JAM to provide the technical, organisational and financial resources, skills and expertise to undertake the activities to be authorised under the licence. IPART therefore recommends that Jemena and its subsidiary JAM be specified in the licence as authorised to undertake the licensed activities as proposed in the Ministerially-imposed licence condition - Schedule A, condition A1, Table 1 (Attachment B).

Under section 11 of the Act, the licence should authorise the area within which it authorises the activities to be carried out. In this case, the initial network location and foundations customers are located in the local government areas of Bankstown, Fairfield, Holroyd and Parramatta. At present there are three planned expansions to the network (Phases 1-3, as depicted in Appendix 7 of the application) which will be located in these local government areas, as well as the local government area of Liverpool (Phase 3). Potential customers will also be located in the local government area of Auburn, which the foundation network will also run very close to. SPI Rosehill has sought to have the area of operations under the licence defined to include each of these local government areas on the basis that licences are not exclusive (see ss.11(2) of the Act) and that this would be more administratively efficient than requiring an amendment to the licence each time the network is extended.

IPART concurs with SPI Rosehill’s reasoning, and accordingly recommends that the area of operations be defined in the licence as the Auburn, Bankstown, Fairfield, Holroyd, Liverpool and Parramatta Local Government Areas as proposed in the Ministerially-imposed licence condition - Schedule A, condition A1, Table 5 (Attachment B).

Under clause 8 of the Regulation, a network operator’s licence for the construction, maintenance and operation of water industry infrastructure for the supply of non-potable water must specify the purposes for which the water may be used (the “authorised purposes”) as determined in accordance with the AGWR. Based on the assessment made by IPART and NSW Health, IPART and NSW Health have agreed

that the recycled water to be distributed by SPI Rosehill is suitable to be used by customers for the following “authorised purposes” without presenting a risk to human health or a significant risk to the environment:

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

IPART therefore recommends that these “authorised purposes” be specified in the licence as proposed in the Ministerially-imposed licence condition - Schedule A, condition A1, Table 3 (Attachment B).

IPART recommends that the Network Operator’s licence granted to SPI Rosehill should:

- ▼ **authorise Jemena Limited and its subsidiary Jemena Asset Management Pty Ltd to undertake the licensed activities,**
- ▼ **prescribe the area of operations as the Auburn, Bankstown, Fairfield, Holroyd, Liverpool and Parramatta Local Government Areas, and**
- ▼ **be subject to the proposed “authorised purposes”.**

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.¹⁵

IPART is satisfied that the applicant SPI Rosehill Network Pty Ltd (ACN 131 213 691) has satisfactorily met 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 therefore recommends that the Minister grants a Network Operator’s licence to SPI Rosehill Network Pty Ltd (ACN 131 213 691), subject to the conditions as set out in licence No. 09_002 (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.¹⁶

¹⁵ *Water Industry Competition Act 2006*, section 10(2).

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.¹⁷

¹⁶ *Water Industry Competition Act 2006*, section 10(5).

¹⁷ *Water Industry Competition Act 2006*, section 10(6).