

# **Application for a Network Operator's Licence from Veolia Water Solutions and Technologies (Australia) Pty Ltd**

**IPART's report to the Minister**

Water — Ministerial report  
September 2010



## Contents

<b>1</b>	<b>Background</b>	<b>4</b>
<b>2</b>	<b>Submissions</b>	<b>5</b>
<b>3</b>	<b>Assessment of application</b>	<b>5</b>
3.1	Licensing criteria	6
3.2	Licensing principles	10
3.3	Additional matters considered	11
<b>4</b>	<b>Recommendations</b>	<b>12</b>

## 1 Background

On 22 April 2010 IPART received a licence application under the *Water Industry Competition Act 2006* (the Act) from Veolia Water Solutions and Technologies (Australia) Pty Ltd (Veolia) for the Bingara Gorge Golf Course residential development at Wilton, NSW. The application is for a network operator's licence to construct, operate and maintain non-potable water infrastructure and sewerage infrastructure to serve the Bingara Gorge Golf Course, the residential lot subdivision and the accompanying school and light commercial areas.

Delfin Lend Lease (DLL) is the owner and developer of the site and has engaged Veolia to provide this service. This is because Sydney Water does not currently provide sewerage services to the Wilton area, hence the provision of sewerage infrastructure has to be provided by a private corporation if the development is to proceed. DLL and Sydney Water are in discussion regarding the possible future take over of the non-potable water and sewerage infrastructure in the Bingara Gorge development. However, no agreement currently exists whereby Sydney Water will be the long-term provider of sewerage services for this development.

The ultimate number of lots in this development is 1165 which will be staged. Veolia's licence application only covers infrastructure that will service the first stages of the development. In order to construct, operate and maintain infrastructure to service the later stages of development, a licence variation or a new licence will have to be obtained. Alternatively, if an agreement with Sydney Water is reached to provide services for the ultimate development, the infrastructure will be included under Sydney Water's Operating Licence.

The construction of water infrastructure at Bingara Gorge commenced prior to 8 August 2008, and hence is considered to be existing infrastructure under the Act. The activities Veolia applied to be licensed for are –

- ▼ the construction, operation and maintenance of sewerage infrastructure that will collect and transport sewage produced within the Bingara Gorge development to a Recycled Water Treatment Plant (RWTP);
- ▼ the construction, operation and maintenance of an on-site RWTP that will treat the sewage generated within the development so it is suitable for irrigation on the golf course; and
- ▼ the construction, operation and maintenance of a non-potable water reticulation network that will supply lots within the development with water for use in toilet flushing and garden watering applications. However, initially, until a variation to the licence is obtained allowing the RWTP to produce non-potable water for these end uses, only drinking water from Sydney Water's system will be supplied in the network. Supplying drinking water in a non-potable water network is standard practice in the start-up phase of these types of schemes.



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* (Minister for Climate Change and the Environment)
- ▼ Minister administering the *Environmental Planning and Assessment Act 1979* (Minister for Planning).<sup>1</sup>

On 18 May 2010, the application was provided to the Ministers with submissions requested by 15 June 2010.

IPART received submissions from the Minister for Water, the Minister for Climate Change and the Environment, and the Department of Environment, Climate Change and Water (DECCW). Submissions were also received from NSW Health.

The content of these submissions were generally supportive of the proposed scheme and the Veolia application. All three Ministers and NSW Health raised several matters for consideration. These are addressed in sections 3.1.2, 3.1.5 and 3.1.6.

IPART must also call for submissions on the application from the public.<sup>2</sup> On 25 May and 26 May, IPART placed advertisements in the Sydney Morning Herald, the Daily Telegraph, and the Macarthur Chronicle (Wollondilly Edition) inviting public submissions on the application. The closing date for submissions was 23 June 2010. Only Sydney Water provided a submission and this is discussed in Section 3.1.8.

## 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

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<sup>1</sup> *Water Industry Competition Act 2006*, section 9(1)(b)

<sup>2</sup> *Water Industry Competition Act 2006*, section 9(1)(c).

licence (if granted) should be subject.<sup>3</sup> 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.<sup>4</sup>

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.<sup>5</sup>

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 Veolia, its related entities, directors and persons concerned in its and its related entities' management, regard was given to:

- ▼ the statutory declaration made by the Chief Executive Officer and the Director
- ▼ Dunn and Bradstreet Report
- ▼ The *Water Industry Competition Act* licence database<sup>6</sup>.

**IPART considers Veolia Water Solutions and Technologies (Australia) Pty Ltd has satisfactorily met this criterion.**

<sup>3</sup> *Water Industry Competition Act 2006*, section 10(1).

<sup>4</sup> *Water Industry Competition Act 2006*, sections 10(3) & (4).

<sup>5</sup> *Water Industry Competition Act 2006*, section 7.

<sup>6</sup> 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.



### 3.1.2 Technical capacity

#### Network Operator Licence

We 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 and to construct, operate and maintain a sewerage infrastructure in a manner that would protect public health and the environment.

The assessment was based on the information provided by Veolia including:

- ▼ Previous technical experience of the corporation (within Australia) and specific personnel nominated to the project.
- ▼ 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 and sewerage infrastructure prepared for a similar project.
- ▼ Technical details of the proposed water industry infrastructure and sewerage infrastructure, including the preliminary design and the operating and maintenance plans and procedures.
- ▼ A response to our specific questions regarding the application in the form of an updated application and supplementary information

On the basis of the above documents and other site specific documents provided by Veolia, including a Preliminary Risk Assessment, a Preliminary Validation Report, and Water Balance Assessment, we were able to assess the proposed non-potable water infrastructure and sewerage infrastructure, the associated health and environmental risks and the measures intended to manage such risks.

The final submission received from the Minister for Water advised that while he had no concerns regarding the Applicant's technical capacity and was satisfied that issues raised by NSW Office of Water would be dealt with in the next stage of the assessment process. This stage includes the development of scheme specific Water Quality, Sewage Management and Infrastructure Operating Management Plans which are to be audited after the granting of a Network Operator's licence and prior to the commencement of commercial operations.

NSW Health provided submissions on the application which are detailed in section 3.1.5 Public Health.

The Minister for Climate Change and the Environment and DECCW provided submissions, which are detailed in section 3.1.6 Environment.

**IPART considers that Veolia has satisfactorily met this criterion.**

### 3.1.3 Financial capacity

A comprehensive assessment of VWS was undertaken in May 2010 for its Darling Walk WICA application by an external financial consultant, Vincents (Chartered Accountants). We did not consider a further detailed financial assessment of VWS's current and on-going financial capacity was warranted.

Vincents' previous financial assessment for the Darling Walk project suggests that VWS has the capacity to fund the working capital requirements of projects of this size.

Further, it is noted that the project is being fully funded by Delfin Lend Lease (DLL - for details of this company see the next section of this report).

DLL expects to recoup costs from connection fees and billing at a rate slightly higher than Sydney Water, as well as from the ongoing sale of the residential lots in the development. As the lots cannot be sold without the provision of sewerage services, it is unlikely the funding for the essential service will not be provided.

In conclusion, we consider that the applicant has the financial capacity to undertake this project and should therefore be granted a network operator's licence.

However, we would like to emphasise that 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 for the Minister's purposes in assessing the Applicant's application and the conclusion is not to be relied upon for any other purpose by any other person.

**IPART considers that Veolia has satisfactorily met this criterion.**

### 3.1.4 Organisational capacity

We undertook an 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 and providing sewerage services in a 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.

Veolia has undergone significant expansion (more than 20%) every year within the past 3 years, across both its Design and Build and Solutions divisions.

The Applicant has provided details of non-potable water schemes it is currently operating that are similar to the proposed scheme which is the subject of the Application. These include the Darling Walk Recycled Water Treatment Plant



(NSW), the Brompton Island Sewage Treatment Plant (Queensland), the Bundamba Advanced Water Treatment Plant (Queensland), the Gibson Island Advanced Water Treatment Plant (part of major Western Corridor Recycled Water Project (Queensland)), the Illawarra Water Recycling Plant (NSW) and the Kwinana Water Reclamation Plant (WA) and a number of other schemes implemented in golf courses throughout Australia.

Veolia has been operating in Australia and New Zealand for over 70 years and is a world leader in the design & build of water and wastewater treatment plants. It is a fully integrated operation undertaking manufacturing, installation, plant commissioning, sales and marketing. In the process it has recruited many new staff members, increasing its organisational capacity to construct, maintain and operate water infrastructure and to supply non-potable water by means of this infrastructure.

DLL will be constructing the sewerage reticulation and non-potable water reticulation for Veolia under a third party agreement. DLL is a major property developer with over 50 years experience in Australia. Recently, it has developed a number of communities in the Sydney Region including the Ropes Crossing, Nelson Ridge and New Rouse Hill residential estates. DLL will be nominated as an authorised person to undertake these activities for Veolia.

We identified no issues regarding the Applicant's current organisational capacity to hold WICA a network operator's licence.

**IPART considers that Veolia has satisfactorily met this criterion.**

### **3.1.5 Public health**

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

In addition NSW Health assessed the public health aspects of Veolia's application. To this end, NSW Health supports the granting of a licence to Veolia Water Australia subject to the standard conditions and NSW Health's review of the Water Quality Plan for the non-potable water supply prior to the commencement of commercial operation.

**IPART considers that Veolia has satisfactorily met this criterion.**

### **3.1.6 Environment**

The submission received from the Minister for Climate Change and the Environment stated that the DECCW had some concerns regarding the application. These related to the possible need for Veolia to obtain an environment protection licence under the provisions of the *Protection of the Environment Act 1997* (POEO Act) and a number of water quality and ecological issues that it considered needed to be addressed.

In respect to the first issue it is proposed to cap the maximum treatment capacity of the RWTP in the WICA licence at a capacity less than the threshold level in Schedule 1 of the *POEO Act*, which triggers the requirement for an environmental protection licence. If the capacity of the plant is to be increased, the licensee would have to apply for a licence variation and then also for an environmental protection licence.

The water quality issues raised will be addressed in the Water Quality Plan, which will be audited and the infrastructure assessed as being able to operate safely, prior to the Minister approving the commencement of commercial operation.

DECCW advised in its final submission noted that the ecological issues were considered by Wollondilly Council when issuing the development consent for the project, and that no further assessment of the ecological impacts of the project would be appropriate.

**IPART considers that Veolia has satisfactorily met this criterion.**

### **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.

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 Veolia has satisfactorily met this criterion.**

### **3.1.8 Additional public interest considerations**

Sydney Water provided a submission stating that despite on going discussions between DLL and itself regarding this proposal, there are no current plans in place for Sydney Water to provide these services. This issue does not impact the activities that would be licensed, it impacts future infrastructure that would need to be assessed in a licence variation or a new licence at a later stage.

**IPART considers that Veolia has satisfactorily met this criterion.**

## **3.2 Licensing principles**

Consideration was also 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 NSW Health 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.
- ▼ Encouragement of competition. The non-potable water will be supplied to the golf course in direct competition to the existing drinking water supply. Veolia will be supplying sewerage services, which traditionally would have been provided by Sydney Water.
- ▼ Ensuring sustainability of water resources. The non-potable water will be sourced from wastewater generated within the development and be beneficially reused, thereby offsetting the need to use potable water sourced from Sydney Water.
- ▼ Promotion of production and use of recycled water is fundamental to the proposed scheme.

**IPART is satisfied that the grant of a Network Operator's licence to Veolia is consistent with the licensing principles.**

### **3.3 Additional matters considered**

VWS have applied for a licence for both sewerage infrastructure and non-potable water infrastructure. Specific licence conditions have been included in the licence to authorise VWS to undertake multiple types of activities. The conditions including reasons for their inclusion are summarised as follows:

- ▼ Proposed special ministerially-imposed condition – A1 Activities authorised – sewerage services. The licence condition allows the licensee to provide sewerage services through the treatment of sewage up to 400 kL/day and through a collection system of unlimited capacity. The limit is to ensure that when the infrastructure is expanded from what has been assessed under this application, the environmental issues of treating larger amounts of sewage are addressed as part of a licence variation or a new licence. The collection system is unlimited to allow the installation of the network as the development expands, even though the lots will not require sewerage services until they are built on later in the development.
- ▼ Proposed special ministerially-imposed condition – A2 Activities authorised – water supply. The licence condition allows the licensee to construct, operate and maintain the non-potable water network to the lots within the development for the purposes of toilet flushing and garden irrigation. However, the condition does not allow the licensee to treat non-potable water to supply these end uses. This is because the current plant would need to be upgraded to provide water of sufficient quality to be fit for this purpose. Any upgrading of the plant would need to be assessed as part of a licence variation or new licence application. In the interim, the licensee will have to source water considered fit for purpose to supply water through the non-potable water network. Initially, this will be drinking water from Sydney Water.



- ▼ Proposed special ministerially-imposed condition – A3 Activities authorised – water supply. The licence condition allows the licensee to construct, operate and maintain the non-potable water system including the recycled water treatment plant and the network to the golf course for the purpose of golf course irrigation.

DLL will be constructing the sewerage reticulation and non-potable water reticulation under a third party agreement with Veolia. Hence DLL will be nominated as an authorised person to undertake these activities for Veolia.

## 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.<sup>7</sup>

**We are satisfied that Veolia 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.**

**We recommend that the Minister grants a Network Operator's Licence to Veolia Water Solutions and Technologies (Australia) Pty Ltd subject to the conditions as set out in licence numbers 10\_012.**

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.<sup>8</sup> 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.<sup>9</sup>

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<sup>7</sup> *Water Industry Competition Act 2006*, section 10(2).

<sup>8</sup> *Water Industry Competition Act 2006*, section 10(5).

<sup>9</sup> *Water Industry Competition Act 2006*, section 10(6).