

Rosehill Camellia Recycled Water Project

Contract Summary

26 June 2009

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1 Introduction

In the 2006 Metropolitan Water Plan, the NSW Government commits to increasing the amount of water recycled in Sydney to 70 billion litres a year by 2015. The Rosehill-Camellia Recycled Water Project (the Project) is identified in the Metropolitan Water Plan as one of the projects to achieve this quantity of recycling. The Project will supply recycled water to a number of industrial and irrigation users in the Camellia and Smithfield areas of Western Sydney with the potential to expand the recycled water service to surrounding areas. The private sector has previously expressed interest in providing recycled water to users in the Camellia area.

Sydney Water Corporation (Sydney Water) undertook a tendering process for the Project. On the 11 August 2008, Sydney Water signed a Project Agreement with AquaNet Sydney Pty Ltd (AquaNet). The conditions precedent in the Agreement were all satisfied on 26 June 2009.

This Project is the first to be delivered by the private sector in accordance with the NSW Water Industry Competition Act 2006 (WICA). The WICA act encourages competition in relation to the supply of water and the provision of sewerage services and to facilitate the development of infrastructure for the production and reticulation of recycled water.

This report has been prepared for the Project by Sydney Water in accordance with the Working with Government Guidelines for Privately Financed Projects, December 2006. It provides a high level summary of key features of the Project Agreement and other project documents dated 11 August 2008 and amendment and restatement documents dated 11 June 2009, which have been entered into for the delivery of the Project.

This contract summary has been submitted to the Auditor-General who have certified the accuracy of this contract summary before it is tabled in Parliament. The contract summary does not disclose commercially sensitive information, including the private sector parties' information relating to the financing facilities, cost structures, profit margins, intellectual property or any other information which might place them at a disadvantage with their competitors.

This report should not be relied upon for legal advice and is not intended for use as a substitute for the Project Agreement and other project documents. It is based on the amendment and restatement Project Agreement and other project documents as at 26 June 2009. Subsequent amendments of or additions to these contracts, if any, are not reflected in this report.

1.1 Background

The Project is part of a suite of recycling measures under the NSW Government's Metropolitan Water Plan that promises to provide 70 billion litres of potable water savings annually by 2015. The Metropolitan Water Plan encourages the development of initiatives that would increase the use of recycled water by commercial, industrial and residential customers in the Sydney region.

The key objectives for the Project include the following:

- To support the Government's 2006 Metropolitan Water Plan to reduce the demand on Sydney's potable water supplies by the supply of recycled water to industry and commerce for non-potable water purposes.
- To support the Government direction in encouraging the development of cost effective projects (such as the Camellia Recycled Water Project) to increase the use of recycled water by industry and commerce in Sydney.
- To support the Government direction by providing opportunities for private sector to invest in and provide cost effective recycled water systems.
- To structure the Project so that it is capable of being expanded by the successful proponent.

NSW Cabinet Standing Committee on Energy and Metropolitan Water approved on 22 November 2005 that the Project be progressed by Sydney Water as a Registration of Interest.

Sydney Water invited the private sector to submit detailed submissions to finance, plan, design, construct and commission the project works and to own, operate, maintain and repair the plant and pipelines and to provide recycled water to Sydney Water. Sydney Water will then on-sell the recycled water to seven customers called the Foundation Customers. Initially, the recycled water costs will be recovered through revenue from the major recycled water customers as well as drinking water charges. The recovery through drinking water charges will reduce as drinking water prices increase and customers use more recycled water.

1.2 Project Description

The Project comprises the following major infrastructure components:

- A connection to source secondary effluent from the Liverpool to Ashfield Pipeline (LAP);
- construct a pilot plant;
- construct a recycled water treatment plant and associated assets;
- construct a 20 km recycled water distribution system comprising 2 reservoirs and 2 pump stations; and
- supply of recycled water to the seven Foundation Customers located in Camellia and Smithfield.

In return for the associated infrastructure and services, Sydney Water will obtain the recycled water under a 20 year agreement. Under the agreement, Sydney Water will pay for the volume of recycled water taken with an obligation to pay for a minimum volume of 10.5 megalitres per day (90% of average daily demand) whether taken or not by the Foundation Customers.

1.3 Structure of this contract summary

This contract summary is structured as follows:

- Section 1 provides a background to the project;
- Section 2 summarises the process for selecting and contracting with the private sector parties;
- Section 3 summarises the evaluation criteria and weighting;
- Section 4 provides a contract structure summary;
- Section 5 provides a description of services;
- Section 6 summarises the payments, total net present value and contingent liabilities;
- Section 7 summarises the results of the public interest evaluation; and
- Section 8 summarises the key terms and conditions of the agreement.

2. Procurement and Tendering Methods

Sydney Water has followed a staged approach to the delivery of the Project as follows:

- Stage 1 – Request for Registration of Interest;
- Stage 2 – Request for Detailed Submissions;
- Stage 3 – Request for Detailed Proposals;
- Stage 4 – Finalisation of Project Agreement with Successful Participant; and
- Stage 5 – Project Implementation and Delivery of Services.

A Public Sector Comparator (PSC) was developed in accordance with the NSW Government Working with Government Guidelines for Privately Financed Projects. The Public Sector Comparator provided an estimate of the expected whole-life cost to Sydney Water of delivering the project under traditional procurement methods. It provided a quantitative benchmark against which private sector bids can be assessed in order to determine value for money. The PSC was audited by KPMG Corporate Finance (Australia) Pty Ltd (KPMG) and BurnVoir Corporate Finance Ltd (BurnVoir) conducted the comparison.

Tender evaluations were undertaken by a panel of Sydney Water officers and external advisors. Sydney Water panel members included staff with experience in contract management, strategic planning, asset management, regulatory strategy, finance, recycled water market development, environmental approvals and customer and community relations. The Tender Evaluation Panel was chaired by a senior Sydney Water staff member. External advisors included representatives from NSW Treasury, the Premier's Department and legal and financial consultants for the Project. The legal advisors for the Project are Clayton Utz. Finance consultants were BurnVoir and Evans & Peck Pty Ltd (Evans & Peck) who specifically advised on value for money.

Project Tender Evaluation Plans were developed to ensure the tender assessments was fair and equitable. The project tender evaluation plans detailed clear criteria and weightings for assessing the submissions as well as agreed upon evaluation process and guidelines for scoring submissions prior to the tenders closing. A selection process was based on the best scores against weighted criteria. Short-listed tenderers were (if required) to submit further information. This information was considered with the original tenders for final scoring and selection of the preferred tenderer/s. Negotiation, in line with the NSW Government Code of Practice for Procurement was undertaken with short-listed tenderers (where required) to ensure quality and value for money, given the risks involved and the level of performance and deliverables required.

Probity Plans were also developed to ensure the tender evaluation satisfied probity expectations. The Probity Plan described the principles to be applied, the processes to be used and the controls to be implemented. Both a Probity Advisor and Probity Auditor were appointed for the Project.

Probity Advisors, Ernst & Young were engaged during the tendering process to provide advice on the management of probity risks and issues. Probity Auditors, Deloitte Touche Tohmatsu were engaged during the tendering process to determine whether the evaluation process was conducted in a fair and equitable manner with due regard for Sydney Water's probity processes and the probity principles and guidance material of the NSW Independent Commission Against Corruption.

2.1 Registration of Interest

The Cabinet Standing Committee on Energy and Metropolitan Water approved on 22 November 2005 that the Project be progressed by Sydney Water as a Registration of Interest.

Sydney Water's Board on 14 December 2005 approved the Request for the Registration of Interest for the Project.

A Registration of Interest for the Project was issued on 12 December 2005. A Pre Submission briefing session was held on 20 December 2005. The Registration of Interest proposals were to include:

- an outline of their proposed scheme;
- the proposed capacity and area to be serviced;
- the preferred source of raw sewage;
- ability for expansion; and
- which party would take on the role of retailer.

Responses were received by the closing date of 2 February 2006 from eight consortia:

- Australian Gas Light Company joined by Agility Management and Veolia Water Australia (Veolia);
- Barry Bros Specialised Services;
- Earth Tech Engineering joined by McConnell Dowell;
- MPI Group Australia, Waterfresh, CVC Sustainable Investments and CLM Excavations Consortium;
- Sydney Olympic Park Authority;
- Theiss Services joined by MWH Australia Pty Ltd;
- United Group Infrastructure and GE Insurance Water & Process Technologies Joint Venture joined by Kellogg Brown and Root; and
- United Utilities and Transfield Joint Venture joined by Tenix Alliance and Sinclair Knight Merz.

In January 2006 Sydney Water prepared a Tender Evaluation Plan for the Request for the Registration of Interest stage. The tender evaluation plan was endorsed by the Tender Evaluation Panel, Probity Auditor and Sydney Water's General Manager Sustainability and Managing Director.

The Registration of Interest responses were evaluated by Sydney Water's Tender Evaluation Panel in accordance with the endorsed tender evaluation plan. Three of the respondents were short-listed to submit detailed submissions. These include Australian Gas Light joined by Agility Management and Veolia, Earth Tech Engineering joined by McConnell Dowell and United Utilities and Transfield Joint Venture joined by Tenix Alliance and Sinclair Knight Merz.

Subsequent to the Registration of Interest, Earth Tech Engineering requested a change in the membership of their consortium. Legal and probity advice was sought and the Tender Evaluation Panel agreed to the change. This consortium was referred to as the joint venture between Earth Tech Engineering and Mitsui & Co (Australia) Ltd joined by McConnell Dowell as their major sub-contractor.

The Probity Auditor concluded that the Registration of Interest process was conducted in a fair and equitable manner with due regard to probity.

In March 2006 a Tender Evaluation Report was prepared by Sydney Water documenting the Registration of Interest procurement stage.

Sydney Water's Board on 15 March 2006 approved the shortlisting of Australian Gas Light joined by Agility Management and Veolia, Earth Tech Engineering joined by McConnell Dowell and United Utilities and Transfield Joint Venture joined by Tenix Alliance and Sinclair Knight Merz to submit detailed submissions.

2.2 Request for Detailed Submissions

A Request for Detailed Submissions was issued in May 2006 to the three short-listed participants and closed on 27 July 2006. These shortlisted participants were asked to submit proposals on a common base case to finance, plan, design, construct and operate a scheme to provide recycled water to Sydney Water for on-sale to Foundation Customers. The participants were asked to provide detailed proposals for each of the following schemes:

- Scheme 1: delivery of recycled water to four Foundation Customers located at Camellia; and
- Scheme 2: delivery of recycled water to four Foundation Customers located at Camellia plus two Foundation Customers located at Smithfield.

The participants were provided with:

- a Terms Sheet which set out the commercial terms that Sydney Water proposed to be included in the Project Agreement; and
- a Risk Allocation Table which set out Sydney Water's preferred risk allocation for the Project.

The participants were also asked to provide the "Base Price" (to be escalated by CPI) that they would charge Sydney Water for the supply of recycled water to the Foundation Customers.

Sydney Water would enter into a Project Agreement with the successful participant whereby Sydney Water would agree to a take or pay amount for recycled water delivered to the Foundation Customers over a period of 20 years. The take or pay amount under Scheme 1 was 4.8 megalitres per day and under Scheme 2 was 9.5 megalitres per day. The proposals were also required to provide details on market development beyond the Foundation Customers.

All three short-listed participants lodged detailed submissions before the closing date and time. The detailed submissions outlined their technical proposals on the method of delivery of recycled water and included the base price payable for recycled water based on these proposals.

In July 2006 Sydney Water prepared a Tender Evaluation Plan for the Request for Detailed Submission stage. The tender evaluation plan was endorsed by the Tender Evaluation Panel, Probity Auditor and Sydney Water's General Manager Sustainability.

The detailed submissions were evaluated in accordance with Sydney Water's procurement guidelines and the endorsed Tender Evaluation Plan. The submissions were reviewed against a draft PSC.

Sydney Water selected two participants to submit final proposals. These two short-listed consortiums were Australian Gas Light joined by Agility Management and Veolia and United Utilities and Transfield Joint Venture joined by Tenix Alliance and Sinclair Knight Merz.

The Probity Auditor concluded that the Request for Detailed Submissions process was conducted in a fair and equitable manner with due regard to probity.

In October 2006 a Tender Evaluation Report was prepared by Sydney Water documenting the Request for Detailed Submissions stage.

Sydney Water's Board on 15 November 2006 approved the shortlisting of Australian Gas Light joined by Agility Management and Veolia and United Utilities and Transfield Joint Venture joined by Tenix Alliance and Sinclair Knight Merz to submit final proposals.

On 30 November 2006, Alinta Asset Management Pty Ltd informed Sydney Water that the Australian Gas Light Company and AGL Gas Networks Ltd had changed their names to Alinta LGA Ltd and Alinta AGN Ltd respectively. Despite these changes the corporate entities of the AVA consortium remained the same.

Prior to the request for final proposal, Sydney Water identified a fifth industrial customer at Camellia to take recycled water so the Foundation Customers increased to seven.

2.3 Request for Detailed Proposals

On 15 December 2006, Sydney Water issued a Request for Detailed Proposal. It was intended to evaluate the detailed proposals and negotiate the terms of the Project Agreement with each participant. The PSC would be revised to the new project arrangement and used to evaluate the proposals offer for value for money.

The detailed proposals were based on Sydney Water's preferred project arrangement (build, own and operate) and have a certainty of price with evidence of underwritten financing. The project arrangements included the following:

- Recycled water initially supplied to seven major industrial and irrigation users located at Camellia and Smithfield to replace potable water usage, and average demand of 11.7 megalitres per day; and
- Build, own, operate a recycled water system to supply recycled water to the seven customers.

Sydney Water would facilitate the scheme by:

- Making secondary effluent available in the LAP for the successful participant to access as influent to their recycled water system;
- The sale of land at Fairfield Storm Sewage Treatment Plant (SSTP) for the location of the recycled water plant;
- Assisting the successful participant obtain the necessary approvals; and
- Being supplier of 'last resort' under defined circumstances.

During the Request for Detailed Proposal tendering stage, the United Utilities and Transfield joint venture withdrew. Sydney Water received one proposal from Alinta in partnership with Veolia by the tender closing date of 5 April 2007.

On 5 April 2007 Sydney Water prepared a Tender Evaluation Plan for the Request for the Detailed Proposal stage. The tender evaluation plan was endorsed by the Tender Evaluation Panel, Probity Auditor and Sydney Water's Sustainability General Manager and Managing Director.

The detailed proposal received from the Alinta consortium was assessed against the tender evaluation plan and was considered to comply with the requirements of the Request for Detailed Proposal. The Tender Evaluation Panel, with its technical advisors carried out a full assessment of the Detailed Proposal. This included a technical and capability assessment to ensure the proposal would provide a reliable supply of recycled water to Sydney Water and its customers. Alinta's detailed proposal was also assessed against the PSC Reference Project. Clarifications were sought from Alinta and Veolia during the assessment.

The Tender Evaluation Panel recommended the Alinta consortium as the preferred tenderer to finance, plan, design, construct, operate and maintain the Project and to manufacture and provide recycled water to Sydney Water.

The Probity Auditor concluded that the Request for Detailed Proposals process was conducted in a fair and equitable manner with due regard to probity.

Sydney Water's Board on 21 November 2007 approved the Alinta consortium as the preferred tenderer.

In April 2008 a Tender Evaluation Report was prepared by Sydney Water documenting the Request for Detailed Proposal stage.

2.4 Public Sector Comparator Reference Project

A Reference Project was developed for the PSC assessment. The Reference Project represented the most likely and efficient method of Sydney Water delivery of the Project and was designed to deliver the same outcomes as asked of the private sector under a Privately Financed Project arrangement.

The Reference Project was developed by Sydney Water with input from several consultants. The following organisations have contributed towards the development of the PSC:

- GHD Pty Ltd (GHD) in the development of the PSC Reference Project;
- Evans & Peck estimated the capital and operating costs for the Reference Project and valuation of risk-adjustments; and
- BurnVoir in the development of the risk-adjusted PSC financial model.

The PSC has been costed on the basis of Sydney Water meeting the requirements set out in the project's Request for Detailed Proposal and was based on the most efficient form of government procurement. In conjunction with NSW Treasury and KPMG, costs and associated risks were identified in addition to those normally included in Sydney Water project budgets. These items were included in the risk based costs estimate to produce a competitively neutral PSC that served as a benchmark for testing value for money in the private sector proposal.

A risk and opportunity workshop was undertaken on 3 April 2007 to review and quantify the risks involved in the PSC Reference Project. The major risks, which exhibit an inherent cost variance, included the costs of key recycled water plant components, high voltage power supply upgrade, pipe laying and road reinstatement rates. A further workshop was held on 16 April 2007 to assess additional commercial risks required to be included in the PSC.

2.5 Finalisation of Project Agreement with Successful Participant

Sydney Water was engaged in negotiations with the Alinta consortium on major matters of risk allocation within the Project Agreement including site conditions, effluent supply and approvals.

In November 2007, the Alinta consortium advised Sydney Water that the consortium was now to be called AquaNet with Veolia. AquaNet is part of the Alinta corporate group of companies. Alinta changed its name to Jemena in August 2008.

On 11 August 2008 the Project Agreement was signed between Sydney Water and AquaNet with Veolia. The Project Agreement between Sydney Water and the Project Company encompassed the principal rights and obligations of Sydney Water and the Project Company in relation to the project.

The Project Agreement and other project documents were amended and restated on 11 June 2009 in connection with a restructure by the Jemena corporate group of its equity holdings in the project.

2.6 Project Implementation and Delivery of Services

The Project Agreement between Sydney Water and AquaNet became effective when all the conditions precedent were satisfied on 26 June 2009.

The AquaNet consortium propose to construct a recycled water treatment plant with a capacity of 20 megalitres per day. This plant would be owned and operated by Veolia. SPI Rosehill Network Pty Ltd would own and operate a 20 kilometre network including 9.7 megalitres of storage to distribute recycled water to the seven Foundation Customers. In their expansion strategy, SPI Rosehill Network Pty Ltd and Veolia intends to utilise the off-peak capacity of the scheme to supply other customers. These include customers located near the network (up to 3.5 megalitres per day) and extending the network to Parramatta (2.5 megalitres per day), Wetherill Park/Fairfield (1.5 megalitres per day) and Liverpool (1 megalitre per day). SPI Rosehill Network Pty Ltd and Veolia propose to expand the plant by 5 megalitres per day as demand increases.

The Project works is divided into two portions. Portion 1 involves all the work that is necessary to enable the recycled water plant to be ready for commissioning excluding the installation of the membranes. Portion 2 involves the installation of reverse osmosis and ultrafiltration membranes and other works to produce recycled water.

Under the Project Agreement Sydney Water agrees to undertake the following:

- Make secondary effluent available from the LAP for AquaNet to access;
- Sell land at Fairfield SSTP to AquaNet for the recycled water treatment plant;
- Purchase recycled water from AquaNet at the seven Foundation Customer's boundaries;
- Retail the recycled water to seven Foundation Customers at Camellia and Smithfield; and
- Continue to pay, if transition occurs any shortfalls between the revenue from recycled water and the cost of provision for the seven Foundation Customers to the end of the term.

At the end of the 20 year term, it is expected that the AquaNet will be in a position to take over the retail role to the Foundation Customers (as well as continue to service its own customers) without requiring any further support from Sydney Water.

Under the build, own and operate procurement strategy, the AquaNet and Veolia will continue to own the recycled water plant, pipelines and associated infrastructure at the end of the Project Agreement term and therefore be in a position to service any recycled water market that it had developed together with any Foundation Customers. Under the Project Agreement AquaNet and Veolia are not required to transfer infrastructure to Sydney Water at the end of the term.

3. Evaluation criteria and weightings

The tender evaluation criteria has been determined using Sydney Water’ procedure from the Contract Management Manual. The procedure apportioned weighting of between 40% and 50% for price.

3.1 Registration of Interest, Request for Detailed Submissions and Request for Detailed Proposals Evaluation Criteria

The eight Registration of Interest respondents were evaluated under the criteria in Table 1.

Table 1: Registration of Interest Evaluation Criteria

| | Evaluation Criteria | Weighting |
|---|---|------------------|
| 1 | <p>Capability to deal with the Complexity and Opportunities of the Project:</p> <ul style="list-style-type: none"> • Full description of proposed recycled water system including staging (if any). • Secure supply of recycled water to customers at Camellia as a minimum. • Proposed system will reliably meet the service requirements. • Flexibility for expansion or replication. • Services to be provided – planning to retailing. • Opportunity for structuring an innovative financing/commercial framework. | 50% |
| 2 | <p>Experience and Capability to Deliver the Required Outcomes.</p> <ul style="list-style-type: none"> • Experience in project and service delivery management. • Experience in planning of recycled water system – both treatment facility and distribution system. • Experience in the design and construction of recycled water system – both treatment facility and distribution system. • Experience in operation and maintenance of recycled water system – both treatment facility and distribution system. • Experience in retail and customer interface relating to utility provision. • Depth of experience with at least five recent relevant projects/programs. Experience of individual key team members in recycled water schemes. | 30% |
| 3 | Financial | 20% |

| | Evaluation Criteria | Weighting |
|--|--|------------------|
| | <ul style="list-style-type: none"> Financial capacity to deliver proposed recycled water system. Funding structure/commercial framework for delivery of the services. Experience in financing projects of similar size and complexity | |

The Detailed submissions were evaluated in terms of the criteria in Table 2.

Table 2: Request for Detailed Submissions Evaluation Criteria

| | Evaluation Criteria | Weighting |
|---|--|------------------|
| 1 | <p>Price</p> <ul style="list-style-type: none"> The base price (expressed in 2006 dollars per kL) to include all costs to procure, build, finance, operate and maintain for the 20-year term. The component of the base price for the recovery of the capital investment and operating and maintenance costs. The discount applicable to the base price payable for recycled water for an extension of 10 year period beyond the term. The estimated total capital cost underlying the base price and a breakdown of the estimated construction costs for the treatment plant, pumping systems, pipelines, service reservoir and the cost of interest during construction. The estimated annual operating costs for the term. The discount rate to be used to calculate the compensation payable by Sydney Water if it elects to terminate the Project Agreement prior to expiration of the term. | 40% |
| 2 | <p>Compliance with Risk Allocation Table and Terms Sheet</p> <ul style="list-style-type: none"> Divergence or variations to the terms of and the principles and the risk allocation set out in the Terms Sheet and Risk Allocation Table. | 20% |
| 3 | <p>Expansion of the project over time</p> <p>Strategy for expansion. Cost and price for expansion including details on the:</p> <ul style="list-style-type: none"> Expected residual value of the Plant after the initial 20-year term. Participant's strategy and commitment to develop the recycled market in Sydney and increase customer base. Size of each output expansion module of the Plant expressed in kL/day Time required to construct and commission each expansion module. Extent of any additional land requirements or sewage input requirements for each expansion module. Maximum capacity of the Plant. Estimated cost of each expansion module of the Plant expressed as dollars/kilolitres and the estimated cost of additional delivery pipelines expressed in dollars/kilolitres of pipeline. Participant's methodology for revising the base price because of | 20% |

| | Evaluation Criteria | Weighting |
|---|---|------------------|
| | new customers. | |
| 4 | <p>Technical merit</p> <p>Merit of the recycled water scheme, treatment plant, pumping systems, storages and reticulation and approvals. The Participant is required to provide a detailed description of its proposed scheme including:</p> <ul style="list-style-type: none"> • Through technical description. • Planned operating characteristics. • Proposed design of the Plant including identification of whether the Plant will produce both recycled industrial and recycled irrigation water. • Identification of areas of the proposed sites required for construction and operation of the Plant. • Identification of the pipeline corridor from the Plant to each delivery point (meter) for each Foundation Customer. • How the specified water quality will be maintained in the reticulation system • How the Participant intends to maintain security and reliability of supply. • Any assets or rights which it owns or controls and which will form part of the scheme. • Identification of expected and possible approvals including environmental and others. | 10% |
| 5 | <p>Certainty of delivery</p> <p>Project Organisational Structure for construction and operation. Community consultation plan. Funding plan. The Participant is required to provide a detailed description of the:</p> <ul style="list-style-type: none"> • Arrangements it would use to ensure the satisfactory and timely construction of the project and operation of the Plant. • Intended contract arrangements with respect to construction with its main contractor. • Intended contract arrangements with respect to operation with its main operator. • Organisational chart for environmental and communications teams with nominated personnel, roles and responsibilities with how they will interface details with stakeholders such as Sydney Water. Government agencies, community and other stakeholders during the planning and approvals phase, construction phase and operation and maintenance phase. • Funding arrangements including any special purpose vehicles and evidence of support is required from a creditworthy parent entity. | 10% |

The Detailed Proposals were evaluated in terms of the criteria in Table 3.

Table 3: Request for Detailed Proposal Evaluation Criteria

| | Evaluation Criteria | Weighting |
|---|---|------------------|
| 1 | <p>Price</p> <ul style="list-style-type: none"> The price to include all costs to produce, build, finance, operate and maintain for the 20-year term. The participant's details of various components of the price – the capital investment recovery component and the operating maintenance component. The price per kL of recycled water for supply in accordance with Sydney Water's demand. | 45% |
| 2 | <p>Compliance with Project Agreement and Risk Allocation Table</p> <ul style="list-style-type: none"> Divergence or variations to the draft project agreement and the risk allocation table. | 10% |
| 3 | <p>Transitioning Plan</p> <ul style="list-style-type: none"> Compliance with the requirements of the transition plan. | 10% |
| 4 | <p>Technical Sufficiency</p> <ul style="list-style-type: none"> The technical evidence of robustness, operability, flexibility and maintainability of the treatment plant, pumping stations, storage and reticulation to deliver recycled water to Sydney Water's desired outcomes. | 15% |
| 5 | <p>Certainty of Delivery</p> <ul style="list-style-type: none"> The major attributes and experience of management team and key project team members. Project organisational structure, sourcing of labour and percentage of subcontract work. Identification of appropriate approvals including environmental, property and others. Risk management plan and proposed use and integration of systems (eg. Planning, occupational health safety and reporting, quality and environmental). | 10% |
| 6 | <p>Potential for Expansion of Project</p> <ul style="list-style-type: none"> Flexibility to amplify the project/assets over time. The identified potential market/growth opportunities for expansion, how the additional capacity will be developed and the capital investment programme, including timescales. | 10% |

The results of the evaluations against these weighted criteria were then compared to the PSC to obtain a value for money assessment. The PSC was developed to meet the same criteria as the Request for Detailed Submissions.

3.2 Cost Benefit Analysis and Value for Money Assessment

A PSC was developed to estimate a recycled water price, which assisted the Sydney Water in the evaluation of the AquaNet proposal. Consultants Evans and Peck were engaged to prepare a risk based cost estimate of the total project budget requirement and annual operating and maintenance costs and this was used to estimate a recycled water price.

Costs were developed on the basis that Sydney Water would deliver a Reference Project via a traditional Design, Construct and Operation procurement strategy, with NSW Government finance being provided. In conjunction with NSW Treasury and KPMG, costs and associated risks were identified in addition to those normally included in Sydney Water project budgets. These items were included in the risk based costs estimate to produce a competitively neutral PSC that served as a benchmark for testing value for money in the private sector proposal.

The PSC included a cost assessment for both:

- Inherent risk – the risk due to uncertainty in scope, metrics and pricing, as made by Evans & Peck based on the assumptions applied during the estimation process and the likely accuracy of the information provided by Sydney Water, GHD, suppliers and subcontractors; and
- Contingent risk- risk to the project developer associated with events that may or may not occur.

Risk workshops were facilitated by Evans & Peck on 3 April and 16 April 2007 to identify those risks which were material to the Project and should be quantified as part of the PSC. The workshop included representatives from Sydney Water, GHD, BurnVair, NSW Treasury and KPMG. The aim of these workshops was to review the base estimate (capital and operating cost inputs) and evaluate and quantify the inherent and contingent risks outside of the assumptions made by Evans & Peck in the base estimate. A list of contingent risks and opportunities were developed during the first workshop and reviewed and finalised during the second workshop. The risks opportunities were evaluated individually in order to estimate the likelihood of occurrence and also the consequence. The information recorded was used by Evans & Peck to carry out an @Risk analysis (Monte Carlo simulation) of the data to produce probability distributions. This information was feed into the developing a budget for the Reference Project.

Subsequent to receiving the tender from AquaNet, the PSC was revised to reflect the risk allocation outlined in their proposal. There were no changes to the PSC for the inherent risk transfer as there had been no change in the scope, metrics and pricing certainty. There were however some minor changes to the contingent risks.

A series of meetings were held between Sydney Water, Clayton Utz, Evans & Peck and BurnVair to assess the revised risk allocation in AquaNet's proposal compared with the contingent risk assessment in the original PSC. Evans & Peck analysed the revised information and performed another @Risk analysis to determine the total budget for the Reference Project.

AquaNet's proposal presented value for money when compared with the PSC because:

- For the projected average demand of the seven Foundation Customers, AquaNet's average price was lower than an estimated PSC average price;
- The Consortium had a high level of capability as it comprises a leading operator worldwide of reverse osmosis plants and a leading Australian operator of pipe networks;
- AquaNet had a proposed strategy to expand the recycled water market beyond the seven Foundation Customers; and
- AquaNet's proposal supported the NSW Government's objective for private sector to invest and operate in the recycled water market.

4. Contract structure and overview

4.1 Project Company Structure

Sydney Water is a state owned corporation constituted under the State Owned Corporations Act 1989 (NSW) and the Sydney Water Act 1994.

AquaNet (the "Project Company") is the counter party to the Project Agreement signed with Sydney Water. SPI Rosehill Network Pty Ltd (Rosehill Asset Company) and Veolia Water Australia are parties to side deeds with the Project Company and Sydney Water.

The Project Company is wholly owned by SPI (Australia) Assets Pty Limited ABN 60 126 327 624 of "Axxess park", 321 Ferntree Gully Road, Mount Waverley VIC 3149.

Figure 1 provides a schematic of the contract structure and related parties.

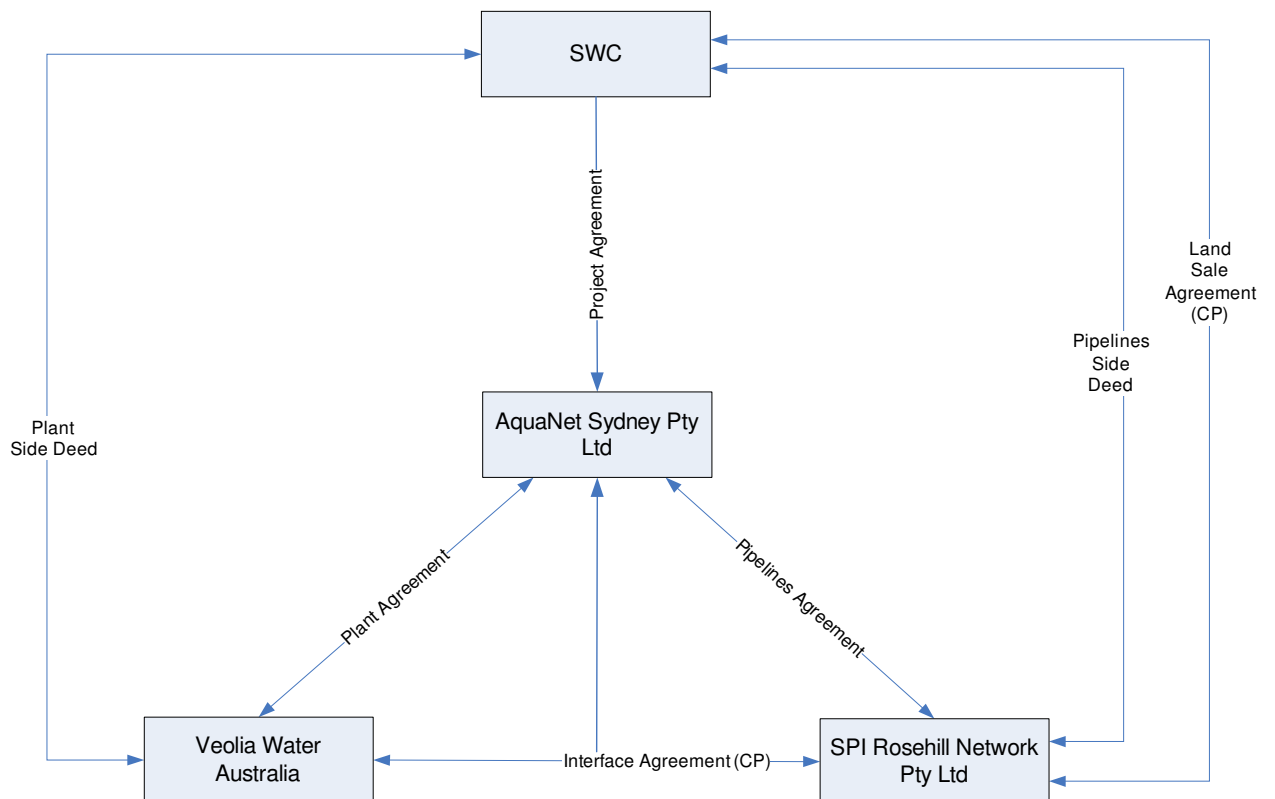


Figure 1 Overview of Contract Structure

4.2 Participants in the Project

Sydney Water understands that the relationship of the main private sector parties to the Project Documents are:

- (a) AquaNet Sydney Pty Ltd A.C.N 11 131 235 124 of “Axxess park”, 321 Ferntree Gully Road, Mount Waverley VIC 3149.
- (b) SPI Rosehill Network Pty Ltd A.C.N 131 213 691 of “Axxess park”, 321 Ferntree Gully Road, Mount Waverley VIC 3149
- (c) Veolia Water Australia Pty Ltd A.C.N: 061 161 279 of Level 4, Bay Centre, 65 Pirrama Road, Pyrmont NSW 2009.

4.3 Project Documents

There are a number of project documents including:

(a) Project Agreement

The Project Agreement between Sydney Water and the Project Company encompasses the principal rights and obligations of Sydney Water and the Project Company in relation to the project. It sets out:

- requirements for meeting conditions precedent;
- agreed property access procedures;
- the Project Company's rights in respect of extraction and use of effluent from the LAP;
- the Project Company's design and construction obligations;
- the Project Company obligations in respect of the completion, testing and commissioning of pilot and full scale treatment plant;
- the Project Company obligations in respect of the development of operational plans, protocols and documentation;
- the agreed regime for payment for services; and
- a transition plan for the transition of the retail role from Sydney Water to the Project Company.

(b) Land Sale Agreement

This agreement between Sydney Water and Rosehill Asset Company relates to the sale of land at Fairfield SSTP for the location of the recycled water plant. The sale involves the land on the corner of East Parade and North Street of approximately 1.4 hectares.

(c) Side Deeds, the Plant Agreement and the Pipelines Agreement

A number of side agreements and deeds are in place to which Sydney Water is a party. These include the following:

- a Plant Side Deed between the Project Company, Veolia and Sydney Water;
- a Plant Agreement between the Project Company and Veolia;
- a Pipelines Side Deed between the Project Company, Rosehill Asset Company and Sydney Water; and
- a Pipelines Agreement between the Project Company, and Rosehill Asset Company.

(d) Deed of Appointment of Independent Verifier

This deed governs the relationship between Sydney Water, the Project Company and Kellogg Brown & Root Pty Ltd (the Independent Verifier). Under this deed, the independent verifier is appointed in order to verify compliance with certain aspects of the design and construction obligations of the Project Company under the Project Agreement and to certify completion and commissioning of the facilities.

(e) Original Deed of Disclaimer and Deed of Disclaimer

This deed details the documentation provided by Sydney Water to proponents for the purposes of submitting a detailed proposal for the Project and includes disclaimers of any warranties by Sydney Water in respect of all information contained in these documents.

4.4 Term

The Project Term is 20 years commencing on the Completion Date of Portion 2 and ending on the Expiry Date.

Clause 34.10 of the Project Agreement provides for the extension of the Term of the Project Agreement in the event that the Project Company's obligation to supply Recycled Water is suspended due to an Uninsurable force majeure event (by a number of days equal to the period of suspension).

An Uninsurable force majeure event is a force majeure event as detailed in the Project Agreement (see below), where the risk of the occurrence of that force majeure event is uninsurable under the contract works or construction risks insurance and property, machinery and business interruption insurance required under the Project Agreement.

The major timeframes for the Project include the following (in order of occurrence):

Satisfaction Date – means 26 June 2009 as the day on which all of the conditions precedent have been satisfied or waived, as confirmed in writing by each Party to the other.

Date for Completion of Portion 1 - means 31 August 2010, as that date may be extended in accordance with the Project Agreement.

Availability Date – the date on which Sydney Water complies with obligations to provide effluent in the LAP. This means 31 August 2010 or the Date for the Completion of Portion 1, whichever date is the later to occur.

Date for Completion of Portion 2 means the date which is 6 months after the Date for Completion of Portion 1 ie 28 February 2011 (based on Date for Completion of Portion 1 being 31 August 2010).

Sunset Date means the date which is 12 months after the Date for Completion of Portion 2.

Completion Date – means the date specified in a Certificate of Completion issued by the Independent Verifier (for Portion 1 or Portion 2).

Expiry Date means the date which is 20 years after the Completion Date of Portion 2.

4.5 Risk Sharing

The risk sharing arrangement is generally as follows:

Planning phase

AquaNet bears the risk of:

- financing the Project Works;
- development approvals (with some assistance from Sydney Water as a last resort); and
- designing the Project Works,

subject to, and in accordance with the terms of the Project Agreement.

Construction phase

AquaNet bears the risk of:

- site conditions (existing ground conditions and contamination of the land used in the Project excluding the site of the recycled water plant);
- land access for the recycled water pipeline network;
- construction cost;
- schedule during the construction phase;
- interest rates during the construction phase;
- technical capability with the construction and commissioning of the Project Works and the Pilot Plant; and
- completion of the Connection Points, the Plant and the Pipelines and the installation of Flow Meters (other than the Back-up Meter),

subject to, and in accordance with the terms of the Project Agreement.

Operational Phase

AquaNet bears the risk of:

- operation and maintenance of the Pilot Plant;
- operation, maintenance and renewal of the Recycled Water System (treatment plant, pipe network and associated infrastructure);
- extraction and use of effluent from the LAP;
- technical capability during the operational phase;
- manufacture of Recycled Water;
- interest rates during the operation phase;
- demand of additional customers; and
- handover of the Return Facilities to Sydney Water,

subject to, and in accordance with the terms of the Project Agreement.

There are some shared risks that are borne by Sydney Water and AquaNet including:

- quality and quantity of the effluent supplied in the LAP;
- force majeure;
- change in law that will require additional capital or operating expenditure; and
- consent for discharge of trade waste is not granted,

subject to, and in accordance with the terms of the Project Agreement.

In addition, Sydney Water for the duration of the Project bears the:

- inflation risk;
- demand risk of Foundation Customers; and
- availability of effluent in LAP risk,

subject to, and in accordance with the terms of the Project Agreement.

5. Description of services

AquaNet propose to access secondary effluent from the LAP from 1 September 2010, and to build, own and operate recycled water facilities and sell recycled water to Sydney Water to provide to Foundation Customers. Sydney Water will retail recycled water to seven major industrial and irrigation customers located at Camellia and Smithfield to replace potable water usage.

The seven Foundation Customers include Shell Refining (Australia) Pty Ltd, LyondellBasell Australia Pty Ltd, James Hardie (Australia) Pty Ltd, Boral Australian Gypsum Pty Ltd and Sydney Turf Club at Camellia and Visy Paper Pty Ltd and Marubeni Australia Power Services Pty Ltd in Smithfield. The average demand for recycled water by the customers is 11.7 megalitres per day with expected peak day demand of 21 megalitres.

AquaNet and Veolia proposes an expansion strategy to service additional demand over time (up to 8.5 megalitres per day). AquaNet and Veolia agree that after a period of successful operation of the Project, AquaNet will consider taking over the retail role of the Foundation Customers.

Sydney Water will facilitate the scheme by:

- making 32 megalitres per day of secondary effluent available in the LAP for AquaNet to access as influent to their recycled water system;
- the sale of land at Fairfield SSTP for the location of the recycled water plant;
- assisting AquaNet in obtaining the necessary approvals; and
- being supplier of 'last resort' under defined circumstances.

AquaNet will, at their own risk and at anytime, expand the scheme beyond the Foundation Customers at no additional cost to Sydney Water.

6. Payment and total net present value

The Project Agreement provides for payment to be made on a monthly basis, linked to the recycled water produced, the recycled water consumed by the Foundation Customers as well as the potable water top up and back up volumes. Sydney Water has agreed to take or pay for an agreed 'base volume' of recycled water. The charge payable by Sydney Water is indexed by reference to increases in CPI.

6.1 Payment Mechanism

The payment mechanism is specified in Clause 26 and Schedule 10 of the Project Agreement. Sydney Water has agreed to pay a charge per kilolitre to AquaNet for the delivery of recycled water. The charge has two components – a fixed charge for the base volume and a variable charge for volume supplied in excess of the Base Volume.

A financial model was developed by the Project Company as part of the Request for Detailed Proposals tender stage to determine the Fixed Base Price and the Variable Base Price charges. The financial model provides financial projections on a quarterly basis during the Construction Period and annually during the Operating Period. The financial model is considered confidential.

Sydney Water will pay the fixed charge of the base volume regardless of the recycled water actually demanded by the Foundation Customers during each month. The base volume has been set at 10.5 megalitres per day, equivalent to 90 per cent of the expected average demand of the seven Foundation Customers. The base volume may be reduced each month if there is a shortfall in the amount of recycled water produced by the treatment plant.

The price of recycled water to be paid by the Foundation Customers has been set at 90 percent of the potable water price.

6.2 Total Net Present Value

Sydney Water based the cost comparison between the PSC and the privately financed bids on a price per kilolitre of recycled water rather than a total net present value basis. During the detailed submissions and detailed proposal tender stages the successful tenderers were requested to submit a base price on a per kilolitre basis. The base price was to include all costs to produce, build, finance, operate and maintain the Project for the 20-year term

An estimate of the whole-of-life cost to Sydney Water of delivering the Reference Project under traditional government procurement methods was evaluated and expressed as a cost per kilolitre.

This provided a quantitative benchmark against which private sector bids can be assessed in order to determine value for money. When compared to the PSC price, AquaNet's base price was lower.

Sydney Water in November 2007 estimated the net present value of the financial costs of the Project over 20 years at \$60M.

6.3 Project Financing

As at the Satisfaction Date, the Project Company was meeting its funding obligations for the Project through equity capital and without external project and non-recourse debt financing by the Project Company for the establishment of the Project.

In accordance with clause 21 of the Project Agreement, the Project Company gave Sydney Water a performance bond for the purpose of ensuring the due and proper performance of its obligations under the agreement. The performance bond was in the form of an unconditional bank guarantee for \$500,000.

6.4 Contingent Liabilities

Liabilities of the Crown

On 04 July 2008 the Treasurer granted approval under section 20(1) of the Public Authorities (Financial Arrangements) Act 1987 for the entry of Sydney Water into a joint financing arrangement with AquaNet (A.C.N: 131 235 124) and Veolia Water Australia Pty Limited (A.C.N: 061 161 279). No guarantee of Sydney Water's obligations under the Project Agreement was given by the State under the Public Authorities (Financial Arrangements) Act therefore the Crown has no liability under the Project Agreement.

Liabilities of Sydney Water under the Project Agreement

Aside from any potential liability to the Project Company for breach of contract or in tort, Sydney Water:

- (a) is obliged to make payments to the Project Company for the provision of an agreed 'base volume' of recycled water (on a 'take or pay' basis);
- (b) is potentially liable to the Project Company for certain land remediation costs or land upon which the recycled water treatment plan will be built and operated;
- (c) must indemnify the Project Company against any claims by Foundation Customers for loss or damage to property, economic loss, personal injury, illness and death to the extent that the loss was directly caused by the presence of an Unforeseen Contaminant in the Recycled Water which could not have been removed by the Project Company (acting competently). However, this indemnity will be reduced to the extent that the Project Company's act, omission or breach contributed to that loss;
- (d) must indemnify the Project Company for loss or damage caused by a negligent or unlawful act or omission by a Foundation Customer, to the extent that those acts or omissions cause or contribute to loss or damage to the Project Works or the recycled water plant

and/or Pipelines, and Sydney Water is indemnified by such Foundation Customer against such loss or damage or Sydney Water has elected not to seek an indemnity from such a Foundation Customer, provided that the indemnity will not include loss or damage to the reservoir to be constructed and operated by the Project Company at the Camellia Reservoir Site (by agreement between the Project Company and the owner of that Site); and

- (e) as one of the Parties to the Project Agreement, must indemnify the expert appointed under dispute resolution clause of the Project Agreement from and against all claims, except in the case of fraud on the part of the expert, which may be made against the expert by any person in respect of his or her appointment to determine disputes between the parties.

The aggregate liability of the Project Company to Sydney Water and the indemnified parties namely NSW Government, Sydney Water's contractors (other than the Project Company and its Associates), officers, employees and agents involved in the Project, was capped as follows:

- during the period and up until Completion of Portion 2, in aggregate to \$40 million;
- during the period after the Completion of Portion 2, in aggregate to \$2.3 million per annum;
and
- for the period after Completion of Portion 2, in aggregate to \$16 million.

7. Public interest evaluation

During the Project's development consideration was given to public interest criteria related to effectiveness, value for money, community consultation and consumer rights, accountability and transparency and health and safety. A summary of the public interest evaluation in relation to the above criteria is provided in Table 4.

Table 4: Summary of Public Interest Evaluation

| Criteria | Mechanism to Address the Criteria |
|---|--|
| Whether the project is effective in meeting Government's objectives | <p>The Project is being developed in accordance with the NSW Government Working with Government Guidelines for Privately Financed Projects (December 2006).</p> <p>The Project is specifically identified in the 2006 Metropolitan Water Plan as a mechanism to achieve the 2015 recycled water target of 70 billion litres per year of recycled water supplied to replace drinking water.</p> <p>The Project is the first to be delivered by the private sector in accordance with the WICA act which encourages competition in relation to the supply of water and the provision of sewerage services and to facilitate the development of infrastructure for the production and reticulation of recycled water.</p> |
| Value for money | AquaNet's average price is lower than an estimated PSC average price. |
| Community Consultation | <p>The 2006 Metropolitan Water Plan is a public document that sets out how the NSW Government will provide a secure supply of water that can meet the long term needs of Sydney. Progress on achieving this 2015 target and the project status is documented in the 2007 and 2008 Annual Progress Reports.</p> <p>Sydney Water consulted with some industrial customers and Local Councils in Western Sydney to canvas interest in recycled water and their potential involvement of the Project. In addition community consultation was conducted by AquaNet as part of planning approval process.</p> |
| Consumer rights | <p>The Project Company must supply sufficient recycled water to the Foundation Customers as its first priority before supplying recycled water to any other person. The development of operational plans and protocols and documentation for the Project will assist with ensuring the Foundation Customers are reassured that appropriate management systems are in place to monitor, document and respond to incidents related to recycled water quality and quantity.</p> <p>In addition, AquaNet is looking at expanding beyond the Foundation Customers, therefore providing an opportunity for other consumers to access recycled water in the future.</p> <p>Secondary effluent in the LAP is available for others to access.</p> |
| Accountability and transparency | There were comprehensive probity plans and measures to ensure transparency of the procurement process. |

| Criteria | Mechanism to Address the Criteria |
|-------------------|---|
| | <p>The focus of the probity process was on:</p> <ul style="list-style-type: none"> • Accountability of process; • Transparency of process; • Maintenance of confidentiality; • Addressing conflicts of interests; and • Attaining value for money in the procurement process. <p>Clear responsibility and accountability for project reporting was put in place in the planning phase. External advisors were engaged to assist development of the probity plans and the PSC.</p> <p>The tendering process followed Sydney Water's procurement guidelines and NSW Government codes of practice for procurement in the evaluations, award of work and the final contract.</p> <p>During the Project's operational phase, SPI Rosehill Network and Veolia will be required to monitor and report on their performance in accordance with their respective WICA licences.</p> |
| Health and Safety | <p>The Project Company must design and operate the recycled water system to provide all the agreed quantity and quality specifications. The recycled water needs to meet the National Water Recycling Guidelines (November 2006).</p> <p>The Project has provisions for back-up and top-up water for the Foundation Customers to provide an alternative water supply for their industrial processes should the recycled water supply be interrupted.</p> |

8. Key terms and conditions of the contract

8.1 The Sites

Access to Sites

Clause 5 of the Project Agreement details rights and obligations with respect to access to, possession and use of Sydney Water's land and the Project Company's recycled water system. In addition Schedule 7, the Access Schedule outlines the Project Company's obligations to obtain access to the property of private landowners affected by the proposed recycled water network system. If the Project Company makes reasonable endeavours to obtain access to other land although is unsuccessful, Sydney Water may obtain access on the Project Company's behalf and at their cost.

Sydney Water is required to obtain access for the Project Company to the Foundation Customers' lands under the Recycled Water Agreements between Sydney Water and the Foundation Customers.

Site Conditions

The Project Company bears the risk of site conditions (geotechnical and contamination) for the land used in the Project excluding the land Sydney Water has sold to the Rosehill Asset Company for the construction of the recycled water plant (plant land). Sydney Water will reimburse the Project Company's costs of remediation of the plant land which exceed \$200,000 for unidentified contamination (not including asbestos) which exceeds the known pre-existing levels as documented in the site assessment reports entitled:

- "Stage 1 and 2 Environmental Site Assessment on a Portion of Land within the Fairfield Sewage Treatment Plant, Fairfield" prepared by Coffey Environments Pty Ltd and dated 9 March 2007; and
- "Environmental Investigation Report" for Lots 7-10 and 15-16 of Fairfield SSTP prepared by Parsons Brinkerhoff and dated August 2007 together with memorandum accompanying that report.

8.2 Development Approvals

The Project Company must obtain (and comply with) planning approval and all other approvals required to construct, use and operate the recycled water system, extract effluent and supply recycled water. Obtaining the necessary planning approval is a condition precedent.

The required approvals are known (by Sydney Water) to include the following:

- Development approval for the pilot plant (located at Liverpool Sewage Treatment Plant) in accordance with Sydney Water's environment policy and the Environmental Impact

Assessment (EIA) requirements of the Environmental Planning and Assessment Act 1979 (EPAA) under Part 5 of the EPAA;

- Development approval under Part 3A of the EPAA for the recycled water system;
- Network Operator's Licences for the construction and operation of the recycled water treatment plant and distribution network for the recycled water under the Water Industry Competition Act 2006;
- Provisional Trade waste consents to be obtained from Sydney Water; and
- a statement of no objection by the Foreign Investment Review Board.

The Project is classified as a major project under State Environmental Planning Policy (Major Projects) 2005 and requires approval from the NSW Minister for Planning under Part 3A of the Environmental Planning and Assessment Act 1979.

In October 2007 the Director-General of the Department of Planning issued environmental assessment requirements for the scheme. The environmental assessment report was submitted to the NSW Department of Planning in January 2009. The environmental assessment report was on public exhibition from Monday 14 January to Tuesday 27 February 2009. Planning approval was granted on 1 June 2009.

8.3 The Works

Construction of pilot plant

The installation of a pilot plant at Sydney Water's Liverpool Sewage Treatment Plant commenced on 13 January 2009 and was completed on 9 February 2009. The licence granted to the Project Company to operate the pilot plant will expire on 31 December 2009.

Site Preparation

The Project Company is locating the water recycling plant at Fairfield on the corner of North Street and East Parade. This location is next to Sydney Water's SSTP and is zoned for water infrastructure. This site is close to the LAP connection that will provide influent to the plant and is close to Foundation Customers in Smithfield for the supply of recycled water.

In order to build the recycled water plant, reshaping of the site and trenching is required for pipework. Excavated material will be disposed as solid waste to an EPA licensed solid waste landfill.

The Recycling Water Plant

The recycled water treatment plant site will comprise buildings to house filtration and reverse osmosis equipment, indoor chemical storage tanks, outdoor water storage tanks, paved areas suitable for delivery vehicles and landscaped areas.

Water Storage Reservoirs

Two reservoirs are needed across the network to store recycled water. It is proposed to construct these reservoirs in South Granville and Rosehill. The proposed sites have sufficient undeveloped land to accommodate a reservoir.

The Distribution Network

The proposed distribution network for the recycled water will be constructed under roads, through public reserves and under creeks (Duck and Prospect creeks) and railway crossings (near Clyde and Yennora railway stations). The recycled water distribution network will cross the local government areas of Fairfield, Bankstown, Holroyd and Parramatta.

The alignment of the network will be chosen to link the proposed water recycling plant at Fairfield with the customers in the Rosehill and Smithfield areas and incorporates the use of disused gas mains.

8.4 Provision of Services

The Project Company must provide recycled water of the quality and quantity detailed in the project documents, specifically the Performance Specification document. The treatment plant will be designed to produce a net continuous output of 20 megalitres per day over a minimum twenty year operational life cycle.

The Project Company must design and operate the recycled water system to provide all the agreed quantity and quality specifications including peak hourly demand requirements. The Project Company must supply sufficient recycled water to the Foundation Customers as its first priority before supplying recycled water to any other person. Recycled water must be supplied at a pressure no less than 20 metres head at the customer connection. Where possible, AquaNet must provide recycled water to match the existing drinking water main pressure with a maximum pressure within the recycled water system of 60 metres.

The recycled water must meet the National Water Recycling Guidelines (November 2006). The Project Agreement specifies water quality targets for the recycled water produced. The project documents specify the maximum levels for four recycled water quality parameters (total dissolved solids, pH, chlorine residual and turbidity) that are to be monitored continuously. Additional recycled water quality levels are developed for other parameters such as metals, organics, viruses and coliforms. The targets for these water quality parameters are measured as 95 percentile levels.

Operating Protocols will be developed by the Project Company in consultation with Sydney Water which will detail monitoring of water quality, the status of supply and demand, reporting, incident management and contingency planning between the Project Company, Sydney Water and the Foundation Customers. The Project Agreement requires that the Operating Protocols be developed within three months after the Satisfaction Date.

8.5 Performance Assessment

Monitoring

Plant and network monitoring will be centrally managed and resourced using the AquaNet staff and laboratory services. A monitoring system will be implemented to ensure performance specifications

are met, membrane systems are protected to maximise their life and that the environment and human health are protected.

On line instrumentation will be installed to manage effluent quality risk, monitoring recycled water quality, identifying trends and provide early warning of any technical problems and troubleshooting problems. In addition to on line monitoring there will be scheduled and random manual sampling undertaken to verify monitoring results. On-site and off-site laboratory services will be used to test samples from various process streams. Both on-site and off-site analysis and sampling will be NATA accredited.

Reporting

The Project Agreement details reporting requirements between the Project Company and Sydney Water. This includes daily and monthly reporting on the aggregate volume of Recycled Water manufactured at the Plant. The operational protocols will detail the reporting requirements between the Project Company, Sydney Water and the Foundation Customers with regards to water quality monitoring and system operations data for routine operations and event based incidents.

In addition a Project Control Group is set up to monitor the operating performance of the Project Company and review issues associated with compliance with the operational protocols, the Service Delivery Outcome Specification and the Management Plans. The Project Control Group comprises representatives from Sydney Water and the Project Company. The Project Control Group meets monthly prior to the commissioning of the recycled water treatment plant and quarterly after the Completion Date of Portion 2.

8.6 Payments

Payments to the Project Company commence on a monthly basis from the Completion Date of Portion 2 (from commissioning of the recycled water system) until the end of the Project term. The Project Company must submit to Sydney Water a claim for payment of the charge within 10 Business Days after the end of each month. Each claim for payment must be accompanied by a duly completed signed subcontractor's statement and current certificate of workers compensation insurance.

Sydney Water must, within 10 Business Days of receiving a compliant Payment Claim issue to the Project Company a payment statement that sets out Sydney Water's determination of the charge, the amount Sydney Water believes to be payable to the Project Company and:

- if the amount Sydney Water proposes to pay to the Project Company is less than the claim for payment submitted by the Project Company, the reason why the amount is different; or
- if Sydney Water proposes to retain, deduct, withhold or set-off payment, the reason for Sydney Water retaining, deducting, withholding or setting-off payment.

Within the following 10 business days, Sydney Water must pay to the Project Company the amount set out in the payment statement. In the case that Sydney Water does not issue a payment statement, the payment claimed by the Project Company is taken to be approved by Sydney Water and payment of the amount claimed by the Project Company must be made within 20 days.

Sydney Water is not obliged to accept or pay for recycled water which falls below the recycled water quality requirements in the Service Delivery Outcome Specification (unless due to a defined "effluent quality event" which occurs up stream of the treatment plant).

8.7 Refinancing

The Project Company must notify Sydney Water in respect of any proposed refinancing and provide a Refinancing Report to Sydney Water in respect of any proposed Refinancing. The Project Agreement details the information that needs to be provided as part of the Refinancing Report. In addition, the Project Agreement includes a preferred form of Financier's Tripartite Deed between Sydney Water, the Borrowing Company and trustees of any financier to a Borrowing Company.

The Project Agreement also provides that Sydney Water may share in the benefit of Refinancing Gains achieved by the Project Company in respect of certain Refinancing events.

A "Refinancing" is defined as:

- (a) any amendment to any Financing Agreement;
- (b) the exercise of any right, or the request for any waiver or consent, under any Financing Agreement;
- (c) any other step or arrangement that has a substantially similar effect to (a) or (b); or
- (d) the entry into any Financing Agreements or other financing arrangements in relation to the Project, after the date of this Agreement.

8.8 Intervening Events

Renegotiation Event

A Renegotiation Event will occur if:

- (a) the sampling program identifies that the effluent water quality does not meet the 50 percentile value or a 90 percentile value for the parameters as set out in Project Agreement's Effluent Quality Schedule;
- (b) an Investigative Program detects the presence of an unforeseen contaminant which can be reasonably demonstrated not to have been added at the recycled water plant; or
- (c) the Sampling Program detects the presence of substances in the effluent or recycled water plant discharge waste stream which can be reasonably demonstrated not to have been added at the recycled water plant, and the event has an adverse recycled water plant effect.

If Sydney Water or the Project Company becomes aware of any matter or circumstance which it believes gives rise to, or may give rise to, a Renegotiation Event, it must give notice to the other party, and the parties must meet in good faith to investigate and agree upon whether a Renegotiation Event has occurred or, if the parties cannot agree on whether a Renegotiation Event has occurred, refer the matter to dispute resolution.

If the parties agree that a Renegotiation Event has occurred, or it is determined in dispute resolution that a Renegotiation Event has occurred, the parties must meet to agree upon:

- the measures Sydney Water can take in relation to the Sewerage System or LAP to overcome the Renegotiation Event;
- any upgrades to the recycled water plant or changes to the Base Case Operating Methodology;
- the allowable capital or operating costs to be incurred by the Project Company in overcoming the Renegotiating Event; and
- any adjustment to the Fixed Charge as a result of the Renegotiation Event.

Force Majeure

The Project Agreement lists a number of potential 'Force Majeure Events', which are events:

- beyond the reasonable control of the Project Company;
- which prevent or delay the Project Company's compliance with non-financial obligations under the Project Agreement;
- which have not resulted from the Project Company's breach; and
- which could not have been prevented, remedied or overcome by the Project Company taking steps that a prudent, experienced and competent designer, constructor and maintainer of water recycling plants and associated facilities would have taken.

As soon as the Project Company becomes aware of the force majeure event it is obliged to inform, provide details and updates to Sydney Water. Within 5 days, a meeting between Sydney Water and the Project Company will be held to determine whether a force majeure has occurred, the estimated duration and the extent to which the event is covered by insurance.

If it is agreed that the force majeure event has occurred, the Project Company's obligations under this Agreement which are affected by the force majeure event will be suspended, but only to the extent and for so long as the force majeure event prevents or delays the Project Company from performing those obligations. Following the force majeure event, the Project Company must recommence the performance of its obligations.

If the force majeure event prevents the Project Company from performing its material nonfinancial obligations for a continuous period of 1 year then, Sydney Water and the Project Company may terminate this Agreement by giving 20 Business Days' notice to the other Party.

Sydney Water may suspend the Project Company's right to terminate by giving a suspension notice within 20 Business Days of receipt of the Project Company's termination notice. Sydney Water must then pay the Project Company the Charge which would have been payable (based on recent and projected performance) less an amount equal to the costs which the Project Company would have incurred but for the suspension of its obligations during the relevant period. In return the Project Company must continue to use its best endeavours to mitigate the effect of the force majeure. The Project Agreement will not terminate until Sydney Water notifies the Project Company that it is ending the suspension of the Project Company's right to terminate.

Other than the payment related to the suspension notice, there is no obligation for Sydney Water to pay any compensation to the Project Company due to the occurrence of a force majeure event or to provide any financial relief (other than relief from payment of the Back-up Charge) to the Project Company during the period of suspension.

In the event that the Project Company's obligation to supply Recycled Water is suspended due to an Uninsurable force majeure event, the Term of this Agreement will be extended by a number of days equal to the period of suspension.

Change in law

The Project Company has a general obligation to comply with law including any change of law.

The Project Company may be entitled to compensation for the increases in operating and maintenance costs arising from a Qualifying Change in Law (being a change in law which is discriminatory against the Project Company or the project or a change in law which requires the Project Company to incur additional capital cost or operating expense to meet the agreed performance requirements).

The occurrence of a Qualifying Change in Law may entitle the Project Company to suspend operation of the recycled water system to enable further works to be procured and carried out or an operational change to be implemented.

Clause 29 in the Project Agreement provides details on the mechanism for the Project Company to claim compensation and for Sydney Water to redress the issue.

8.9 Variations

Right to propose variations

Either party may propose variations to the Works at any time during the term by following the detailed procedure set out in Clause 12 of the Project Agreement. Variations can be in the form of a change to the Project works including any increase, decrease, omission, deletion, demolition or removal to or from the Project works.

Variations directed by Sydney Water

During the construction phase, Sydney Water may request the Project Company to provide an estimate of the Variation Costs which will be reasonably incurred by the Project Company in carrying out the project. Within a reasonable time, the Project Company must provide Sydney Water with a notice containing the estimate of the Variation Costs, detailed particulars, if an extension of time is required and details of the effect of the proposed Variation on the Project Company's ability to supply Recycled Water. Sydney Water may direct any Variation during the construction phase which does not reduce the capacity of the recycled water plant or pipeline network or materially compromise the ability of the Project Company to serve an expanded customer base.

Variations proposed by Project Company

The Project Company can propose a variation by giving notice to Sydney Water with details of the proposed variation, justification, the effects of the variation on the project works and program and other supporting information. Sydney Water should provide a response within 20 Business Days regarding the variation or the length of additional time required to provide a written response. Sydney Water is not obliged to consent to any such variation.

Costs of variations

The estimated cost of variations is calculated and paid in accordance with detailed provisions set out on clause 12.4.

8.10 Loss or Damage

Risk of loss or damage

The Project Company bears the risk of loss or damage to the project works, and upon completion bears the risk of loss or damage to the recycled water plant and the Pipelines. From the date of completion, Sydney Water bears the risk of the loss or damage to the returned facilities (being the recycled water meter and top-up meter, the water mains connection up to the top-up meter and the sewer connections and associated infrastructure and pipe work) to the extent that loss and damage is not caused by the Project Company.

To the extent that Sydney Water breaches the Project Agreement or the negligent or unlawful act or omission of Sydney Water or its contractors causes or contributes to loss or damage to the project works, Sydney Water must pay to the Project Company the costs of making good any such loss of or damage to the project works, the recycled water plant or the Pipelines. There are provisions under the Project Agreement for the Project Company to claim payment by Sydney Water.

However, if the breach of the Project Agreement by the Project Company or a negligent or unlawful act or omission of the Project Company or its contractors causes or contributes to the loss of or damage to real or personal property of Sydney Water, the Project Company must compensate Sydney Water for the costs of making good any such loss or damage to Sydney Water's real or personal property.

If a negligent or unlawful act or omission by a Foundation Customer causes or contributes to loss or damage to the project works or the recycled water plant or Pipelines and Sydney Water is indemnified against such loss or damage by the Foundation Customer or has elected not to seek an indemnity from that Foundation Customer, Sydney Water will indemnify the Project Company for that loss or damage. However, that indemnity will not cover loss or damage to the reservoir at the Camellia Reservoir Site.

The Project Agreement also sets out a process for the management of Third Party claims (where Sydney Water considers that the Project Company is liable for the claim under the Project Agreement) between the Project Company and Sydney Water.

Repair and reinstatement

The Project Company must, in accordance with clause 32.5 of the Project Agreement, make good any loss of or damage to the project works, the recycled water plant or the Pipelines (as applicable) that prevents the supply of Recycled Water caused during the period in which it bears the risk of loss or damage. Clause 32.5 details rectification, repair or replacement (allowing reasonable time for inspection by insurers) activities which, complying with the specifications, provide required notifications to Sydney Water and minimise the impact on the Recycled Water System, Sydney Water and the Foundation Customers.

The Project Company may not be obliged to reinstate such loss and damage in circumstances where it is not practicably or economically feasible to do so.

Exclusive Remedy for Volume

The Project Company's sole liability for any failure to supply the required volume in accordance with the Performance Requirements is limited to:

- (a) the Back-up Water Charge (an agreed amount for potable water used where recycled water could not be supplied);
- (b) any charge for Top-up Water pursuant to a standard customer contract for the supply of potable water entered into by the Project Company and Sydney Water; and
- (c) the agreed reduction to the Charges payable to the Project Company by Sydney Water.

Note the Project Company shall have no liability for any failure to supply the required volume of Recycled Water in accordance with the Performance Requirements during an Outage Period.

Exclusive Remedy for Delay

If the Project Company fails to achieve Completion of Portion 2 by the Date for Completion of Portion 2, then the Project Company shall reimburse Sydney Water for the direct costs actually and reasonably incurred by Sydney Water as a direct result of such delay (Delay Damages) to a maximum amount of A\$1,000 per day for each day of delay after the Date for Completion of Portion 2 until the first to occur of:

- (a) the Completion Date of Portion 2; or
- (b) the termination of the Project Agreement.

The Project Company's obligation to compensate Sydney Water is subject to Sydney Water providing evidence that Delay Damages have been suffered or incurred by Sydney Water. The agreed Delay Damages payable by the Project Company on Sydney Water's sole remedy and right to compensation with respect to any delay in the Project Company achieving Completion of Portion 1 or Portion 2.

Exclusive Remedy for Quality

The Project Company's liability for supplying Recycled Water which does not meet one or more of 4 agreed key parameters in is limited to:

- (a) any Back-up Water Charge (an agreed amount for potable water used where recycled water could not be supplied);
- (b) any charge for Top-up Water pursuant to a standard customer contract for the supply of potable water entered into by the Project Company and Sydney Water;
- (c) the agreed reduction to the Charges payable to the Project Company by Sydney Water; and
- (d) subject to the general liability and indemnities clauses (see below), any Claim, Loss or Liability suffered or incurred by the Indemnified Parties (Government, Sydney Water and its contractors, officers, employees and agents) caused by, arising out of, as a consequence of or in any way in connection with:
 - any injury to, or disease or death of, natural persons; or
 - loss of, destruction of or damage to, any real property or personal property (excluding intangible property and property belonging to Sydney Water), limited to the costs of repairing or replacing that property in connection with a breach by the Project Company of the Project Agreement or any negligent or unlawful act or omission by the Project Company or any of its contractors, except to the extent to which such Claim, Loss or

Liability is caused or contributed to by the breach of the Agreement by, or the negligent or unlawful act or omission of, Sydney Water or its contractors,
provided that an effluent quality event will not constitute a breach of the Agreement by, or a negligent or unlawful act or omission by Sydney Water or its contractors.

The Project Company shall have no liability to indemnify Sydney Water for supplying Recycled Water which does not meet one or more of the parameters in Table 2 of the Service Delivery Outcome Specification. However, in these circumstances the Project Company is obliged to comply with its obligations in the Service Delivery Outcome Specification to enable the Recycled Water to meet the parameters in Table 2 of the Service Delivery Outcome Specification

8.11 Indemnities and releases

The Project Company indemnifies the Indemnified Parties (being the Government, Sydney Water and its contractors (other than the Project Company and its Associates), officers, employees and agents) against any claim, loss or liability suffered by the Indemnified Parties in respect of:

- (a) any injury to, or disease or death of, natural persons;
- (b) the loss of, or destruction or damage to, any real or personal property (excluding intangible property and property belonging to Sydney Water); or
- (c) any Third Party Claims for economic loss.

caused by, arising out of, or in any way in connection with the use or occupation of the site or the project land by the Project Company or its contractors, the Company's Work, the O&M Work, or any failure by the Project Company to comply with its obligations under this Agreement, except to the extent to which such Claim, Loss or Liability is caused or contributed by:

- (d) the breach of this Agreement by, or the act or omission of, Sydney Water or its contractors;
or
- (e) an upstream event or an effluent quality event.

The Project Company also releases the indemnified parties from any liability to the Project Company in respect of such loss or damage relating to the performance of its obligations under the Project Agreement. However, this release will be reduced to the extent that an act or omission of the Indemnified Parties, or a breach or default by Sydney Water, contributes to the liability.

8.12 Insurance

The Project Company is required to maintain the following types of insurance:

- (a) public and products liability insurance with a limit of indemnity of not less than \$50 million for each occurrence or series of occurrences arising out of the one event and in the aggregate per annum;
- (b) workers compensation insurance;

- (c) property, machinery and business interruption insurance with a limit of indemnity of not less than the full reinstatement value of the Recycled Water System plus an amount for demolition and removal of debris and professional and other fees;
- (d) motor vehicle insurance with a limit of indemnity of not less than \$20 million per vehicle or plant for each occurrence or series of occurrences arising out of the one event;
- (e) during the construction phase only:
 - i. contract works all risks insurance during the construction phase only;
 - ii. public and products liability insurance with a limit of indemnity of not less than \$50 million for each occurrence or series of occurrences arising out of the one event and in the aggregate per annum;
 - iii. professional indemnity insurance with a limit of indemnity of not less than \$20 million for each claim and in the aggregate;
 - iv. motor vehicle insurance with a limit of indemnity of not less than \$10 million per vehicle or plant for each occurrence or series of occurrences arising out of the one event.
 - v. asbestos liability insurance, to be effected by an authorised subcontractor, if required by Sydney Water to cover risks with asbestos decontamination work and have a limit of indemnity of not less than \$20,000,000 million for each occurrence or series of occurrences arising out of the one event and in the aggregate per annum.

All required insurances must be on terms satisfactory to Sydney Water with approval not to be unreasonably withheld. In the event that a risk that is required to be insured becomes uninsurable, then the Project Company will be relieved from its obligations under this Agreement to insure that risk.

In addition, the Project Company is required to ensure that certain specified insurance policies include:

- (a) a provision that the insurance policies extend to include Sydney Water, Sydney Water's Representative and each Subcontractor for their respective rights, liabilities and interests under the project;
- (b) a provision for notification to Sydney Water prior to the lapsing of insurance policies; and
- (c) are maintained from an insurer authorised by the Australian Prudential Regulation Authority (APRA) or the United Kingdom Financial Services Authority or an insurer acceptable to Sydney Water.

The Project Company is responsible for paying all premiums and deductibles in relation to the required insurances and must provide evidence that required insurances are in effect.

8.13 Dispute Resolution

Disputes must sequentially follow a pre-determined dispute resolution process. Firstly the matter must be negotiated. Either Party may request that the dispute is referred for resolution between the chief executive officers of Sydney Water and the Project Company or their representatives. The representatives must use reasonable endeavours acting in good faith to resolve the dispute within 15 days. If the dispute remains unresolved then the matter must be referred to an independent expert for determination. The independent expert will either be agreed between the parties or must be engaged following nomination by the National President of the Institute of Arbitrators and

Mediators Australia. The expert must make a determination within 20 business days of being engaged.

The parties may challenge any determination based on the amount awarded by the expert. The decision of the expert determines which party is responsible for covering the costs incurred by the dispute including legal and ancillary costs such as consultants and subcontractor's fees. In instances when the decision is not entirely in the favour of one party, the responsibility for the incurred costs are shared between Sydney Water and the Project Company.

8.14 Project default

Project Default

The following events will constitute an Event of Default by the Project Company:

- (a) the Project Company failing to commence and diligently progress the project works from the Satisfaction Date;
- (b) at any time after the Completion Date of Portion 2, the Project Company:
 - stops operating the Recycled Water System for more than 3 consecutive months unless directed in writing to do so by Sydney Water; or
 - otherwise displays an intention to abandon the Recycled Water System or the Project;
- (c) The Back-up Water and Top-up Water measured during 3 consecutive months or 4 or more months within a 12 month period exceeds 10% of the volume of Recycled Water measured at the Recycled Water Meters during each of those months (unless the Project Company's failure to meet this target was due to an outage event or force majeure event);
- (d) an Event of Insolvency occurs in relation to the Project Company, the Rosehill Asset Company or the Veolia Company;
- (e) the Project Company fails at any time during the Term to achieve any of the minimum quality or pressure standards for Recycled Water to be supplied to Sydney Water or the Foundation Customers specified in the Service Delivery Outcome Specification:
 - for any continuous period of 3 months; or
 - in any 4 or more months within a 12 month periodbut not if due to the occurrence of an effluent quality event, an upstream event or a force majeure event;
- (f) the Project Company breaching in a material way a representation or warranty given by it in the Project Agreement;
- (g) a material breach of a material obligation under this Agreement by the Project Company (other than the obligation to supply Recycled Water in accordance with the Performance Requirements) which is not rectified by the Project Company within a reasonable period of not more than 20 Business Days specified in a notice from Sydney Water to rectify, or
- (h) the Project Company breaches in a material way the same obligation (other than the obligation to supply Recycled Water in accordance with the Performance Requirements) more than 3 times in any 12 month period and Sydney Water has given written notice of each such breach promptly after Sydney Water became aware of such breach.

Default Notice

If Sydney Water considers that an Event of Default has occurred, Sydney Water may give the Project Company a written notice specifying a reasonable period (not exceeding 6 months) for the Project Company to:

- (a) remedy the Event of Default, to the extent that the Event of Default is capable of rectification; or
- (b) mitigate the effects of the Event of Default, to the extent that the Event of Default is incapable of rectification.

In response to the written notice the Project Company must comply with the notice and give Sydney Water a program for performing the things necessary to comply with the notice.

If the Project Company fails to comply with written notice, Sydney Water may take any action it considers appropriate to rectify that Event of Default or mitigate the effects of the Event of Default. In such circumstances the Project Company must indemnify Sydney Water against any Loss or Claim suffered or incurred by Sydney Water in respect of that action, except to the extent that the Loss or Claim arises from the negligence or willful default of Sydney Water.

There is a mechanism in the Project Agreement to allow the Project Company to resolve timeframes set by Sydney Water to rectify the Event of Default which it considers are unreasonable.

8.15 Termination rights

Termination by Sydney Water

Sydney Water may terminate this Agreement by giving the Project Company 10 Business Days written notice if:

- (a) the Event of Default is capable of being rectified, the Project Company does not rectify an Event of Default within the period specified in a notice or an extended period under the Project Agreement; or
- (b) if an Event of Default is incapable of rectification, the Project Company does not provide to Sydney Water a mitigation plan satisfactory to Sydney Water (acting reasonably) within the required time period (as extended (if at all)) or having provided a mitigation plan, does not comply with such mitigation plan; or
- (c) the Project Company has not achieved Completion of Portion 2 by the Sunset Date,

and such termination takes effect on the expiry of the 10 Business Day period.

Voluntary Termination

Sydney Water may at its sole discretion, and without giving any reason, terminate this Agreement at any time by giving not less than 1 month's written notice ("Notice Period") to the Project Company. The Project Agreement will terminate and Sydney Water's obligations under this Agreement will cease upon the Voluntary Termination Date.

Force Majeure Termination

If the force majeure event prevents the Project Company from performing its material non-financial obligations for a continuous period of 1 year then, either Party may terminate this Agreement by giving 20 Business Days' notice to the other Party.

Sydney Water may suspend the Project Company's right to terminate for a force majeure event by giving a suspension notice within 20 days of receiving a force majeure termination notice from the Project Company. For the period during which the Project Company's right to terminate is suspended, Sydney Water must pay the Project Company the Charge which would have been payable less an amount equal to the costs which the Project Company would have incurred but for the suspension during the relevant period. During that period the Project Company must continue to use its best endeavours to overcome or mitigate the effects of the force majeure event, and the Agreement will not terminate until Sydney Water notifies the Project Company of the end of the suspension period.

8.16 Compensation on termination

Termination by Sydney Water

Any termination of this Agreement by Sydney Water under this will not in any way prejudice Sydney Water's rights to claim and recover damages for any prior breach by the Project Company; and entitle Sydney Water to recover all Loss that Sydney Water may suffer or incur arising out of the termination of this Agreement.

Upon termination of this Agreement, Sydney Water's obligations under this Agreement will cease.

Voluntary Termination

Upon Voluntary Termination by Sydney Water, the Project Company may submit a statement showing the Site's estimate of the Voluntary Termination Amount calculated in accordance with Schedule 16 of the Project Agreement.

The Voluntary Termination Amount will be calculated based on the capital expenditure incurred by the Project Company (adjusted in accordance with CPI), the reasonable costs and expenses incurred by the Project Company in expectation of completing its work, the redundancy payments for employees of the Project Company and other demobilisation costs incurred as a result of the termination (provided that evidence of those costs is provided to Sydney Water, and the Project Company makes reasonable attempts to mitigate the costs) and any amounts reasonably and properly payable by the Project Company to its subcontractors as a result of the termination (which may include reasonable costs incurred in expectation of completing the work under the subcontract and redundancy payments for the subcontractor's employees).

Following receipt of a statement, Sydney Water must, within 10 Business Days, determine the amount payable and issue a certificate to the Project Company setting out that determination and showing Sydney Water's assessment of the Voluntary Termination Amount. Sydney Water must pay the Project Company the amount certified within 40 Business Days after receipt of the statement. The Project Company is not entitled to any other Compensation as a result of Sydney Water exercising its rights to Voluntary Termination.

8.17 Step in rights

Sydney Water may exercise its contractual right to step-in and assume all or some of the service delivery obligations of the Project Company, to carry out the Project Company's work if an Event of Default occurs. Sydney Water may only step-in to the extent reasonably necessary having regard to the Event of Default and for a maximum period of 180 days. If Sydney Water elects to exercise its Step-In rights it will not render Sydney Water liable for the relevant event or any cure or remedy or mitigation of the event nor does it affect its right to terminate the Project Agreement or other claims or powers.

If Sydney Water exercises its Step-In Rights, then:

- (a) Sydney Water must give the Project Company 2 Business Days' written notice of the date on which Sydney Water is to commence to exercise its Step-In Rights, but need not give prior notice if an Emergency;
- (b) Sydney Water will use reasonable endeavours to operate the recycled water plant in a manner which is consistent with the provision of the operation and maintenance work as required by the Project Agreement to the extent practicable having regard to the reasons for the exercise of the Step-In Rights and the circumstances subsisting at that time;
- (c) Sydney Water must use reasonable endeavours not to cause damage to any part of the recycled water plant or the Site or cause the Project Company to materially breach any of its contracts with Additional Customers, provided that the Project Company has provided the terms and conditions of the contracts to Sydney Water in writing; and
- (d) to the extent Sydney Water incurs any direct Loss by reason of the exercise of any Step-In Rights (other than where such direct Loss is incurred by Sydney Water acting in bad faith, negligently or without reasonable care), such direct Loss must be paid by the Project Company upon demand and may, at the discretion of Sydney Water, be deducted from any payment then due by Sydney Water to the Project Company which may otherwise become due (provided that to the extent that Sydney Water incurs any Loss, Sydney Water must use reasonable efforts to mitigate such direct Loss).

There are also obligations for the Project Company to co-operate and ensure that its agents, licensees, Subcontractors and employees co-operate with Sydney Water in exercising any Step-In Rights including by:

- (a) permitting Sydney Water to take possession of the Recycled Water System and the Project Land;
- (b) providing the Operations and Asset Management Plan to Sydney Water as they are completed or updated;
- (c) ensuring that all Intellectual Property Rights related to the Recycled Water System and the process of manufacturing Recycled Water is able to be utilised by Sydney Water and its agents, licensees, contractors and employees to the extent necessary for the exercise of Step-In Rights;
- (d) making available to Sydney Water insurance proceeds or claims payable in respect of costs incurred or work done by Sydney Water in exercising its Step-In-Rights; and
- (e) ensuring that all project documents to which the Project Company is a party expressly contemplate and permit the exercise of Step-In-Rights under this Agreement to the extent required

Sydney Water will cease to exercise its Step-In Rights if:

- (a) there is no subsisting Event of Default;

- (b) the Project Company has provided an undertaking in a form acceptable to Sydney Water that the Project Company will immediately recommence full performance of its obligations under this Agreement; and
- (c) full payment is made, or arrangements satisfactory to Sydney Water exist for full payment to be made, of any Loss incurred by Sydney Water arising from an Event of Default.

Upon ceasing to exercising its Step-In Rights, Sydney Water must notify the Project Company of that event, return possession of the recycled water plant and the Site to the Project Company and ensure that all Intellectual Property received by Sydney Water relating to the Project is returned to the Project Company.

8.18 Assignment and proprietary rights

Any change of control (as defined in section 9 of the Corporations Act) of the Project Company, the Veolia Company, the Rosehill Asset Company will be deemed to be an assignment by the Project Company of its interest in the Project Agreement. The Project Company is unable to sell, transfer, assign or otherwise dispose of, or deal with its interest in the recycled water plant or the Pipelines or its rights and obligations under any of the project documents within the first 12 months of the recycled water being provided to the Foundation Customers (satisfaction date).

After the required 12 months has lapsed, the Project Company may sell, transfer, assign or otherwise dispose of, or deal with its interest in the recycled water plant or the Pipelines or its rights and obligations under any of the project documents with prior written consent of Sydney Water (such consent not to be unreasonably withheld) where:

- (a) Sydney Water has been provided with written details of the proposed incoming party, and the terms and conditions of the proposed novation or appointment;
- (b) the proposed incoming party is a reputable corporation;
- (c) in Sydney Water's reasonable opinion, the proposed incoming party has sufficient expertise and ability and is of sufficiently high financial and commercial standing, to properly carry out the obligations of the Project Company under the relevant project documents;
- (d) all terms and conditions of the proposed novation or appointment are reasonably acceptable to Sydney Water;
- (e) the proposed incoming party has agreed to be bound by the term of their project documents; and
- (f) a person other than Sydney Water bears all reasonable costs and expenses (including legal costs and expenses).

The restrictions on the Project Company's rights to assign as outlined above do not apply where such a disposal is to Veolia or other Permitted Entity (being an entity in which at least 50% of equity interests are held by SPI (Australia) Assets Pty Ltd or a related entity). In addition the clause does not extend to interest or rights over effluent.

8.19 Transition arrangements

The Project Agreement has provisions which allow for the transition of the retail role from Sydney Water to the Project Company through the implementation of the Transition Plan. Transition will not occur until construction of the Project has been completed and the Project has been operated for a minimum period of 3 years. Transition will occur at the election of either Sydney Water or the Project Company but only after certain commercial pre-conditions have been satisfied.

8.20 End of term arrangements

Sydney Water's obligations under this Agreement will cease on the Expiry Date, except for any obligations incurred prior to the Expiry Date. The Project Company is not required to transfer any infrastructure to Sydney Water at the end of the term.

8.21 Records and Audits

The parties acknowledge that the project documents will be made available to the Auditor General in accordance with the Public Finance and Audit Act 1983, and the project documents and any related documents and information may be tabled in Parliament and will be published in accordance with the Working with Government Guidelines for Privately Financed Projects Guidelines.