

# ***Partnerships Victoria*** **Project Summary**

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## **Victorian Desalination Project**



**Artist's impression: General View to the West - Victorian Desalination Plant**

**November 2009**

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## Foreword

The Project Summary series provides information about the procedural and contractual nature of *Partnerships Victoria* projects.

The Victorian Desalination Project (the **Project**) represents the largest public sector investment in water infrastructure in Australia's history. The Project is being delivered within the *Partnerships Victoria* framework. It represents a major non-rainfall dependant addition to Melbourne's and regional Victoria's urban water supply. The Project is a key step in the implementation of the State's Water Plan: *Our Water Our Future – The Next Stage of the Government's Water Plan (Water Plan)*, announced in June 2007.

*Partnerships Victoria* is part of the Victorian Government's strategy to provide better services to all Victorians by expanding and improving Victoria's public infrastructure.

Since 2000, 19 *Partnerships Victoria* projects have been contracted with a total value of \$9.5 billion of capital investment, including \$3.5 billion of capital investment for the Project.

This project summary is divided into two parts. The first part provides a broad overview of the Project, including the rationale for undertaking it under the *Partnerships Victoria* policy, a summary of the tender process, the value for money calculation, the public interest considerations for the project and the project timetable. The second part provides more detail on the key commercial features of the Project, including the main parties and their general obligations, the broad allocation of risk between the public and private sectors, the treatment of various key project issues including the payment mechanism and the finance and security arrangements.

NB: This summary should not be relied on as a complete description of the rights and obligations of the parties to the project and is not intended for use as a substitute for the contracts.

# Part One: Project overview

## 1.1 Victorian Desalination Project

### The Project

The Project is the largest seawater desalination plant currently being developed in Australia. It will supply up to 150 gigalitres (GL) of water a year to Melbourne, Geelong and, via other connections, South Gippsland and Western Port towns, with the capacity to upgrade to supply up to 200 GL in future. The Project's production capacity represents approximately one third of Melbourne's annual water usage from a source that is entirely independent of rainfall. The Project will assist in providing water security for Melbourne.

The marine intake and outlet tunnels, transfer pipeline, and the power supply will all be built for 200 GL per annum capacity from the outset. This way, if the State requires the additional capacity, only the plant would be required to be upgraded.

The Project is the world's largest Public Private Partnership (PPP) project undertaken in the last 12 months. It is a landmark transaction conducted in the most adverse financial markets since the Great Depression. The Project will be delivered by the AquaSure consortium, comprising Degrémont SA, Suez Environnement, Thiess Pty Ltd and Macquarie Group, in partnership with the Capital Projects Division of the Department of Sustainability and Environment.

The Project capital cost of \$3.5 billion will be fully funded by the private sector. The bank group has committed to seven to ten year funding. The State Government has acted as lender of last resort for an initial bank syndication process run by AquaSure to seek additional long term investors for \$1.7 billion of debt funding. This syndication process has now been completed, within the first two months of a three year syndication support period. The State's syndication support liabilities are now no longer required.

The success story of this Project bears testament to the robustness of the Australian PPP market and the ability of the State and leading Australian banks to structure PPP transactions which continue to attract significant international investment and offer value for money to the tax payer.

### Project Objectives

In the context of the overarching objectives of the Water Plan to provide water security for Victoria's growing population and economy in the face of drought and the challenge of climate change, the State's objectives for the Project are:

#### **Time:**

- to commence delivery of Desalinated Water from the Project to Victoria's water supply system by 19 December 2011;

#### **Scope:**

- to provide Victoria with a non-rainfall dependent supply of initially up to 150 GL per annum;
- to allow for the efficient future expansion of the Project to supply up to 200 GL per annum;

- to ensure desalinated water delivered meets the State's water quality requirements;
- to retain flexibility to vary supplies over time to support optimisation of Victoria's water supply network;
- to deliver the Project in a manner consistent with the State's policy of retaining ownership and management of water resources in public hands;

**Value for money:**

- to deliver innovative solutions and overall value for money to the State, water users and the general public, through a whole of life approach to service delivery, risk management and the design, construction, operation and maintenance of the Project;

**Environmental:**

- to minimise the environmental impact of the Project through design and appropriate risk management and mitigation measures and in particular, to minimise adverse impacts on the coastal and marine environment from construction activity, visual intrusion, noise and waste discharge and disposal;
- to protect the beneficial uses of the coastal and marine environment, including the landscape and recreational values of the adjacent coastal reserve;
- to optimise energy efficiency and ensure that 100% of the electricity used in operating the Desalination Plant and associated infrastructure will be offset by the purchase of renewable energy credits;

**Social:**

- to maximise benefits to the local community and wider economy within relevant State Government policy frameworks;
- to establish and maintain the highest levels of health, safety and aesthetics throughout the delivery and operation of the Project; and
- to minimise disruption to the surrounding area during construction.

**Water Security**

The Transfer Pipeline will be supplying the water from the plant into the Melbourne Water network near Soldiers Road in Berwick, and water will then flow to consumers directly, or to the Cardinia Reservoir.

The 1.9m diameter Transfer Pipeline has also been designed to operate as a 'two way' pipe, which means that when the plant is not running, water from Cardinia Reservoir can flow down the Transfer Pipeline to supply off-takes along the pipeline, including to supply the Wonthaggi area. This creates an 85km extension to the Melbourne Water network, providing water security to regional towns in South Gippsland and WesternPort, which can be supplied with desalinated water when the plant is running and with water from the Melbourne Water network at other times.

A number of water authorities have already requested connections along the Transfer Pipeline – six connections in all. South East Water has requested three connections, South Gippsland Water two connections and WesternPort Water one connection. South Gippsland Water is also currently constructing a new pipeline from the Transfer Pipeline near the plant site, to supply Wonthaggi, Inverloch and Cape Paterson.

## **Water Quality**

Melbourne's consumers currently receive some of the best water quality in the world. The quality of the water produced by the Project will continue to match the high expectations of Victorian water consumers.

## **Flexible Water Supply**

Water will be ordered annually by the State Government. AquaSure will supply water to the State only when requested to do so. AquaSure is not entitled to sell water to third parties.

The State has flexibility to order water between 0 GL and 150 GL per annum, generally in 25 GL increments (0, 50, 75, 100, 125 and 150).

Each year on 1st April, an order is placed for the water to be supplied in the following financial year i.e. between 1 July of that year and 30 June of the following year. There is scope for the State to restrict supply during wet winter months or to increase supply (subject to plant capacity) during any year.

Payment for water will be in two components – a water security payment reflecting the security of having the Desalination Plant producing or able to produce water and a water usage payment which reflects the variable costs of producing such water as is required.

The water security payment is made on the condition that AquaSure is capable of delivering the water that is ordered, to the required quantity and quality. If no water is ordered, to receive the water security payment AquaSure must demonstrate that the Project could have responded to an order for the supply of water.

The water usage payment is made only if water is ordered and delivered. Both the water security and the water usage payments are at risk if there is a failure to perform to the required standards.

## **Desalination Technology**

The plant will use reverse osmosis technology – the same as that being used for all of the major plants in Australia and the predominant desalination technology used worldwide. It will be constructed in three 50 GL modules, which will provide significant flexibility for the supply needs of Melbourne, Geelong and the surrounding regions. Degrémont, a member of the successful consortium, delivered (on time and within budget) and is operating the Western Australian Desalination Plant using similar technology.

## **Plant Architecture and Landscaping**

Visual amenity has always been an active concern of the community. With the assistance of the Office of the Victorian Government Architect and a range of state government architectural and landscape specialists, the Project objective of ensuring the plant integrated into the coastal landscape was set. AquaSure's world class, state of the art design achieves this objective and includes a novel expansive ecological restoration program of the plant site land. This will result in one of the largest ecological restoration programs, with millions of plants and around 150,000 trees planted on the site. The plant building will also include a green roof, composed of living native species, ensuring integration into the coastal landscape.

## **Intake and Outlet Tunnels**

Long tunnels under the sand dunes, beach and marine sensitive areas, will be constructed to protect the environment. These tunnels are around 1.1 kilometres long for the intake (4m diameter), and around 1.4 kilometres long for the outlet (4m diameter). The design and operation of the intake and outlet tunnels must meet the contractual Performance

Requirements of the State. These were set following the completion of the Environment Effects Statement (**EES**), commentary from the public, a range of government regulators and other stakeholders, the EES Inquiry Panel and the EES Independent expert.

The Environment Protection Authority (**EPA**) has also set requirements as part of its Works Approval, granted for the Project on 3 March 2009. Ultimately, AquaSure must obtain a Discharge License from the EPA before the plant will be able to operate.

### **Power Supply**

The power supply will be an underground high voltage alternating current transmission line (**HVAC Transmission Line**), largely co-located (within the one easement) with the Transfer Pipeline except where it diverges towards the Cranbourne terminal station (along an existing high voltage overhead power line easement at Pound Road, Clyde North). Where co-located, the Transfer Pipeline and Power Supply will be generally within a single 20 metre easement, which is within the width shown in the EES for the pipeline alone (15 to 20m).

The design of the HVAC Transmission Line will require some power load compensator equipment, which will be co-located with the booster pump station in Cardinia, and located separately at a point approximately mid-way along the length of the HVAC Transmission Line. Each of these installations will occupy a small area.

The power supply is being sized to suit the requirements of the plant at 200 GL capacity, and will be dedicated to supplying the plant only.

The HVAC Transmission Line will be easier to construct than other underground solutions. There are multiple suppliers capable of delivering this technology, which was considered lower cost and able to be constructed in a shorter timeframe than other solutions. HVAC technology has less energy loss than HVDC technology and does not require complex, supplier-specific converter stations. The HVAC Transmission Line is an innovative solution to the challenge of meeting community expectations for minimising visual amenity and disturbance to landowners, while meeting the power supply requirements of the project in both the short and long term.

### **Energy and Renewable Energy**

A key feature of the Project is that all power usage during the operating phase of the Project will be fully offset by power generation by renewable energy sources commissioned after 1 July 2007. The State has agreed to a minimum level of renewable energy credits each year. The energy procurement arrangement contract is load following and fixed price for the full Project Term. This means for the life of the Project only energy which is consumed is paid for and at a pre-agreed price.

### **Independent Reviewer and Environmental Auditor**

The State has required the appointment of an Independent Reviewer and Environmental Auditor (**IR&EA**). Davis Langdon has been appointed to this role, which is a joint appoint of the State and AquaSure.

The role of the IR&EA is to review the design, construction and environmental management of the project as it progresses, to seek to ensure safety is maintained and to assist in ensuring compliance with the numerous technical, environmental and social requirements of the contract documents. The environmental auditor aspect of the IR&EA role will also continue during the operation and maintenance phase of the project through to the end of the 30 year term of the contract.

## 1.2 A public private partnership

The decision to deliver the Project as a PPP was driven by a detailed assessment of the following four alternative delivery models:

- **Traditional State funded procurement** – under a design and construct contract, with public sector operation and maintenance of the plant, or separate short term operating contracts with the private sector;
- **State funded alliance** – alliance for design and construction with either public sector or a further alliance for the operation and maintenance of the plant;
- **State funded procurement under the DBOM model** – with private sector design, build, operation and maintenance of the plant; and
- **Partnerships Victoria privately funded PPP** – with private sector design, finance, construction, operation and maintenance over an extended period of time.

Following a detailed assessment, the PPP structure was considered likely to offer the optimal value for money result in delivery of and outcomes for the Project, through the following key benefits:

- **effective risk transfer:** the PPP model offered the optimum risk profile given the size and complexity of the Project, both during the construction phase and beyond into operations and maintenance, with the most efficient and effective management of risks overall. The private sector proponent is committed to delivering water and related services, and maintaining the Desalination Plant and associated infrastructure, to the State's required standards throughout the term of the Project, including meeting changing technology, water quality and environmental requirements;
- **whole of life efficiencies:** the PPP model encouraged bidders to take a whole of life approach to optimising the balance between capital costs and ongoing maintenance / lifecycle costs;
- **improved asset and service quality:** the PPP model was considered to offer greater control over the quality of infrastructure and services due to the high degree of rigour and robust review and control (including additional layers of review through third party financiers) inherent in the PPP procurement process and, on an ongoing basis, by providing for performance standards, supported by an abatement regime to ensure those standards are met;
- **design innovation:** the PPP model provided a highly competitive structure within which there was significant scope and incentive for the private sector to deliver innovative solutions to achieve the best whole of life cost and management of risk, while still meeting the performance requirements;
- **timely delivery:** the PPP model was considered most likely to facilitate the required timeframe of commencement of delivery of water by late 2011 and to be effective in mitigating the risks of delay to commissioning compared to the other options considered; and
- **operational flexibility:** the PPP model permitted the level of operational flexibility sought by the State, from water production of 0 GL to production at full capacity.

## 1.3 Tender process

The State is facilitating the delivery of the Project by having obtained all key State and Commonwealth approvals, concurrently with the bidding process. This included approvals or facilitation under the following Acts:



- the *Environment Protection Act 1970* (Vic);
- the *Environment Effects Act 1978* (Vic);
- the *Environment Protection and Biodiversity Conservation Act 1999* (Cth);
- the *Planning and Environment Act 1987* (Vic);
- the *Coastal Management Act 1995* (Vic);
- the *Aboriginal Heritage Act 2006* (Vic);
- the *Land Acquisition and Compensation Act 1986* (Vic);
- the *Heritage Act 1995* (Vic);
- the *Project Development and Construction Management Act 1994* (Vic);
- the *Flora and Fauna Guarantee Act 1988* (Vic); and
- the *Water Act 1989* (Vic).

The State conducted a competitive tender process to determine the private sector party to deliver the Project. The tender process was implemented in accordance with *Partnerships Victoria* policy and principles seeking to ensure that the State received the best value for money outcome.

The base evaluation structure used throughout the tender process was:

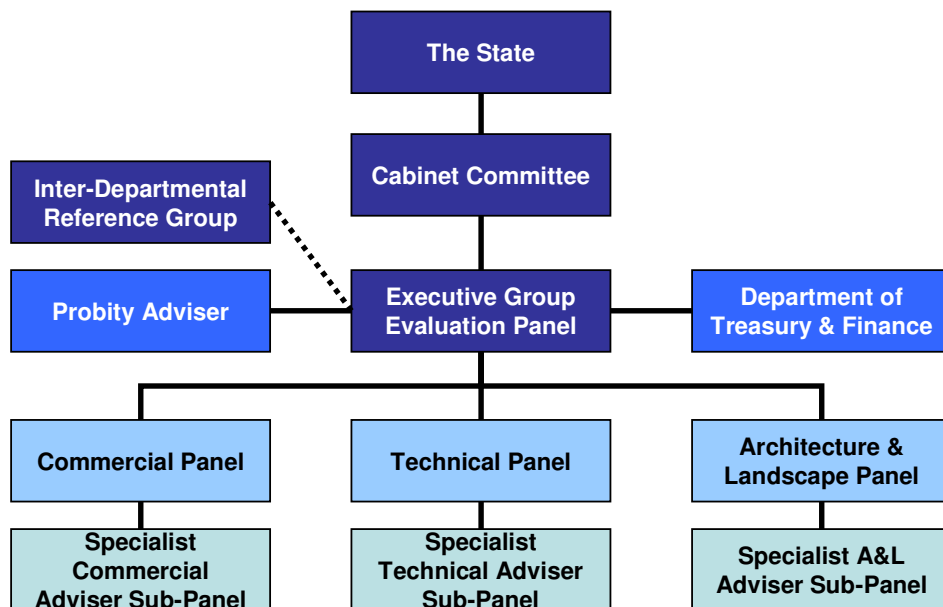


Figure 1 - Base evaluation structure

Each of the Commercial, Technical and Architecture and Landscape (A&L) Panels were structured with specific sub-panels to provide detailed advice in their areas of expertise.

This structure was utilised to provide governance to the tender process, which comprised:

- **Expressions of Interest:** evaluation of the Expressions of Interest submitted by consortia seeking to participate in the tender process;

- **Initial Proposals:** evaluation of initial proposals submitted March 2009 in response to the State's Request for Proposals (RFP);
- **Amended Proposals:** based on consultation and community feedback, the government announced its decision to prefer an underground power supply solution in April 2009. Following that decision, the State sought and then evaluated amended proposals from shortlisted bidders which encompassed and priced an underground power solution; and
- **Final Proposals:** due to the volatility in the financial markets over the tender period, the State sought final proposals from shortlisted bidders in July 2009 with firm financing commitments, to optimise the risk allocation and debt/equity solutions available for the Project.

The shortlisted bidders were evaluated in accordance with the RFP and **Appendix 3** sets out relevant evaluation criteria.

The robustness of the tender process, and the decision to adopt a 'two-to-the-wire', fully documented approach, achieved significant value for money, certainty as to the transaction evaluation by the State and competitive risk allocation for the State.

The tender process was conducted under strict probity guidelines, with a probity plan developed and approved by the Project's Probity Adviser. The probity plan identified probity principles for the Project and specific rules which were required to be followed by the Project Team in delivering the Project. The probity plan also required each shortlisted bidder to appoint a Probity Auditor to report on the performance of that shortlisted bidder in relation to specific obligations under the Probity and Process Deed. A review of these reports formed part of the evaluation.

The Premier and the Minister for Water announced that the AquaSure consortium had been awarded the contract for the Project on 30 July 2009. The AquaSure proposal offered:

- state of the art proven technology and high energy efficiency membranes and equipment, producing high quality desalinated water matching Melbourne's world class water, with a solution that provided certainty to the delivery of water by end of 2011;
- world class architecture and landscaping, integrating the plant into the coastal environment and incorporating a large network of recreational trails, wetlands and one of the largest ecological restoration programs with more than 150,000 trees and millions of plants;
- landmark financing secured in some of the toughest market conditions ever seen;
- high levels of goods and services supplied by Australian businesses;
- a low cost, reliable underground power solution which could be constructed within the State's timeframe; and
- a long term, fixed price electricity and renewable energy solution, including a major announcement by AGL Energy Ltd committing to a new wind farm at Oakland Hills (63 MW), and with Macarthur wind farm (330 MW) in final commitment phase.

## 1.4 Value for money

The *Partnerships Victoria* framework seeks to identify and implement efficient infrastructure delivery (value for money). The concept of value for money is not a simple selection of the cheapest solution. Value for money analysis requires consideration of the true value of each method of delivery whether by the State or the Private Sector. The analysis considered

quantifiable elements (i.e. items that can be quantified in dollar terms) as well as subjective or qualitative elements.

### Public Sector Comparator

The Public Sector Comparator (**PSC**) is an estimate of the risk-adjusted, whole-of-life cost of the Project if delivered by the State. The PSC is developed according to the same output specifications included in the Project Brief and assumes the most likely and efficient form of conventional (i.e. non-PPP) delivery by the State.

The PSC is expressed in terms of the net present cost to the State, calculated using discounted cash flow analysis and seeks to take full account of the costs and risks of that method of procurement. The PSC includes amounts to cover both the design and construction costs and the maintenance, operation and facilities management costs during the Project Term.

The net present cost of the service payments to be paid to AquaSure is compared with the PSC. If it is lower than the PSC, it indicates that the bid represents value for money.

**Table 1 – Public Sector Comparator**

Components of the Public Sector Comparator (PSC)	Net Present Cost \$m (150 GL output per annum)
Hypothetical, risk-adjusted estimate of the most efficient, likely and achievable form of public sector delivery.	
Capital Costs	3,272
Operating and Asset Replacement Costs (27 years)	<u>2,602</u>
<b>Raw PSC</b>	<b><u>5,874</u></b>
Transferred Risk	782
Competitive Neutrality	<u>0</u>
<b>PSC</b>	<b><u>6,656</u></b>
<p>Note the assumptions used to calculate the PSC include:</p> <ul style="list-style-type: none"> <li>all numbers are expressed in net present values as at 30 June 2009.</li> <li>discount rate of 7.3% (Real) to reflect the nature of the Project</li> <li>discounting basis: annual, period end.</li> <li>the transferred risk calculation of \$782 million refers only to the risks transferred to the private sector under the <i>Partnerships Victoria</i> arrangements (i.e. those risks that the State would otherwise assume) and excludes the State's estimates of its retained risks)</li> <li>the competitive neutrality adjustment removes any net competitive advantages that accrue to a government business by virtue of its public ownership</li> </ul>	

**Table 2 - Quantitative value for money comparison between public and private sector delivery as at Financial Close**

Public Sector Comparator (Net Present Cost)	AquaSure's Winning Bid (Net Present Cost)	Saving
\$6,656 million	\$5,720 million	14.1%

The \$5,720million includes design and construction costs, asset replacement, all maintenance and operating costs such as power, 100% renewable energy credits and chemicals (over the 30 year and 1 month contract). This cost takes into account and provides for the fact that the Project is fully privately financed, and assumes annual output of 150 GL of desalinated water per annum during the operating period and covers all components of the project ie the Plant with marine intake and outlet tunnels, the 84km Transfer Pipeline and Booster Pump station, the 87km underground power supply and other works required under the contract.

The \$5,720million NPC represents a cost of \$1.37 per kilolitre, in June 2009 dollars, on the assumption that the plant operates to produce its required capacity of 150 GL per annum for 27.75 years.

The Project Deed requires the project assets to be handed back to the State at the end of the 30 year and 1 month Project Term, for no additional payment by the State. In addition, on handover, the project assets are required to have a specified residual life in order to ensure that they are in good working condition. Many of the project assets are to have a design life longer than the Project Term, such as tunnels and pipelines which have a 100 year design life and the desalination plant building which has a 50 year design life. If the cost of running the plant and other project assets at 150 GL per annum for a 50 year period is considered (20 years after handover to the State) the real cost of water per kilolitre of \$1.37 has been estimated to reduce by around 40%.

### **Additional value for money benefits**

The net present cost of the successful AquaSure proposal is approximately 14% below the PSC, which is a key indicator that the Project delivers value for money for the State. However, this comparison does not recognise a range of other significant value for money elements provided by AquaSure's Final Proposal including:

- the certainty of the long term energy and renewable energy offsets;
- the certainty of the use of almost identical technology to that successfully deployed in other desalination plants constructed and operated by members of the AquaSure consortium;
- the design amenity delivered by the ground breaking design, with full integration of the plant into the local coastal environment including a living "green" roof on the process plant, recreational trails, wetlands and one of the largest ecological restoration programs with more than 150,000 trees and millions of plants;
- a high speed communications cable along the entire length of the Transfer Pipeline, which will facilitate broadband access to the region; and
- the benefit of the underground power solution delivering visual amenity to properties crossed by the power supply.

## **1.5 Public interest considerations**

The *Partnerships Victoria* guidelines require that the public interest be considered from the early stages of the options appraisal process. The Project business case (prepared in September 2008), provided a detailed analysis of public interest issues, and the test was revisited in the context of the Final Proposals received from the shortlisted bidders in July 2009.

Based on the assessment of the public interest element and the procurement of the Project, it was concluded that the Project can adequately protect the public interest. **Appendix 4** provides further detail on the final Public Interest Test.

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## 1.6 Project milestones

The following table outlines the major milestones for the Project.

*Table 3 - Key date summary*

<b>Key Event</b>	<b>Date</b>
Contract Close	30 July 2009
Financial Close	02 September 2009
Commercial Acceptance (water delivery)	19 December 2011
Reliability Testing	January – June 2012
Contract expiry date	30 September 2039

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## Part Two: Key commercial features

Part Two of the project summary outlines the contractual relationships between the parties involved in the Project, including the allocation of risk and the obligations of both AquaSure and the State. In some areas, it provides more detail on the issues and topics that have been discussed more generally in Part One.

### 2.1 Parties to the contract

On 30 July 2009, the Premier and the Minister for Water announced that the AquaSure consortium had been awarded the contract for the Project. AquaSure Pty Ltd and related entities were specifically incorporated for the Project and entered into Project Documents with the State for the Project.

AquaSure has subcontracted its design and construction obligations to its D&C Contractor and its operation and maintenance obligations to its O&M Contractor.

The key parties to the contracts are summarised below:

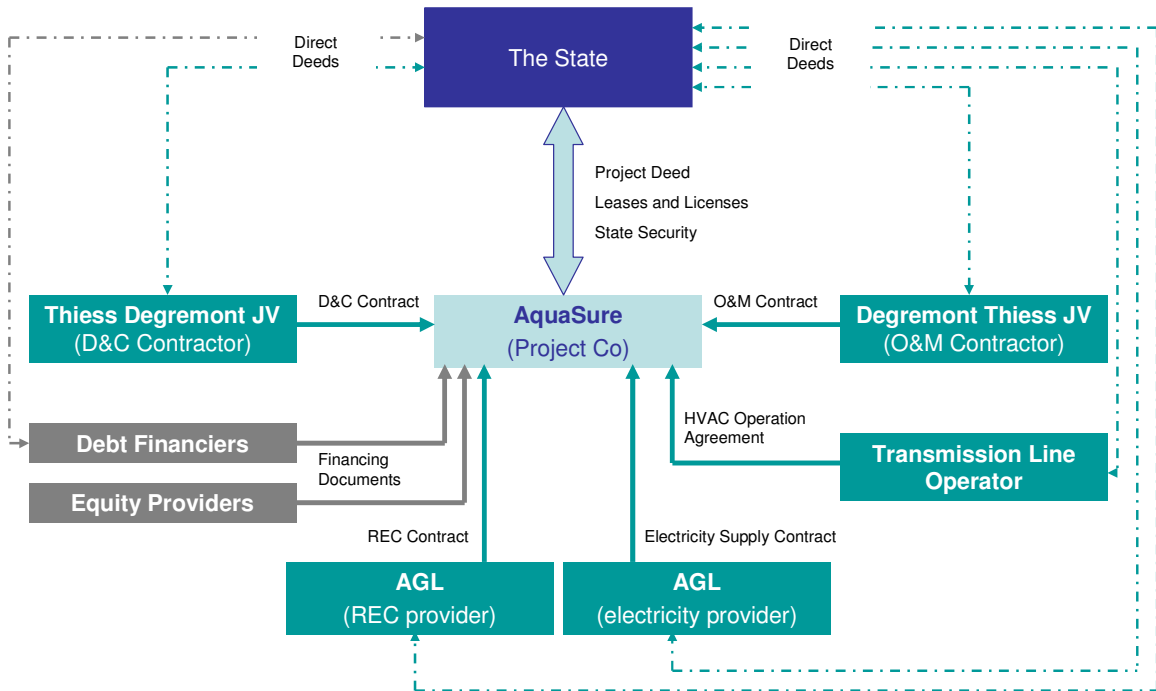
- **The State** - The State is the contracting entity for the Project and is a signatory to the Project Deed and other ancillary documents. The Minister for Water is the person empowered that executed these contracts on behalf of the State.
- **The Department of Sustainability and Environment (DSE)** - The DSE Secretary is the facilitating agency under the Nomination Order made under section 6 the *Project Development and Construction Management Act 1994 (Vic)* and published in the Victorian Government Gazette, and in that capacity has acquired the Desalination Plant site and certain other land, and using powers delegated by Melbourne Water under the Water Act, has acquired the pipeline and power easements, for the purposes of the Project and will grant rights to AquaSure in relation to that land and for other purposes. The Capital Projects Division of DSE is managing and facilitating the Project on behalf of the Secretary.
- **AquaSure** - AquaSure is the entity contracted to deliver the Project and is a signatory to the Project Deed and other ancillary documents with the State.
- **Equity providers** - Equity for the Project has been sourced from both domestic and international equity providers.
- **Financiers** - AquaSure has arranged for commercial debt to be provided by a large group of banks.
- **D&C Contractor** - AquaSure has engaged a Thiess Degrémont joint venture to design and construct the Desalination Plant and associated infrastructure.
- **O&M Contractor** - AquaSure has engaged a Degrémont Thiess Services joint venture to operate and maintain the Desalination Plant and associated infrastructure.
- **Transmission Line Operator** - The State proposes to engage a third party to operate and maintain the HVAC Transmission Line during the O&M Phase of the Project.
- **Electricity and REC provider** - AquaSure has engaged AGL to supply the electricity and renewable energy requirements of the Desalination Plant and associated infrastructure during the O&M Phase of the Project.

## 2.2 Contractual relationships

The State has contracted with a single entity, AquaSure, to deliver all aspects of the Project. The relationship between the State, AquaSure and other related parties is detailed in the Project Deed and associated documentation.

The following diagram sets out the structure and principal agreements required for the delivery of the Project:

**Figure 2 - Contractual Structure**



## 2.3 Risk transfer

The following risk summary outlines the risk allocation under the Project Documents.

**Table 4 - Risk Summary**

Type of Risk	Description	State	AquaSure
<b>Site Risks</b>			
Land acquisition	Risks associated with acquiring interests in land required for Project Co's design accepted by the State (as identified at Contractual Close).	✓	
Key Approvals	The risk of delay in obtaining, or delay to the Project resulting from legal action, revocation or amendment of, specified Key Approvals for the Project.	✓	
Other approvals	All risks of obtaining any other necessary approvals, consents, permits, licences, etc for the Project, including any additional cost or delay to the Project in obtaining those approvals, or if those approvals are subject to unanticipated and onerous conditions, or are challenged.		✓
Site conditions	Risks of geotechnical, marine and other site conditions.		✓

Type of Risk	Description	State	AquaSure
Environmental contamination	Risk of contamination on Project sites.		✓
Native Title claims and artefacts	Risk of cost and delay if native title claims are made or native title is found to exist, or if work must be suspended due to the discovery of artefacts on the site.	✓	
<b>Scope Risks</b>			
Output specification / Project Requirements	Risk that the State's output specification (as set out in the Project Requirements) does not meet the State's requirements, including if the capacity of the Project is not adequate to meet Victoria's needs.	✓	
<b>Design, Construction and Commissioning Risks</b>			
Design and construction risk	Risk that the design, construction and commissioning of the Project cannot be completed on time or to budget (other than as specified below), or that the Project (as built) does not meet the State's output specification resulting in delayed or reduced service to the State.		✓
Force Majeure Events and Extension Events	Risk of delay to completion and increased construction costs caused by force majeure events or specified extension events (State risk items) such as State breach, court decisions preventing the Project and change in law.	✓	✓
Power supply infrastructure	Risk that sufficient power supply infrastructure is available to supply electricity during the construction phase.		✓
Water supply system connection risk	Risk that there is a delay to completion of the Project and commencement of delivery of water attributable to a delay in Melbourne Water completing the preparatory works at the main delivery point near Cardinia Reservoir.	✓	
<b>Operational Risks</b>			
Operation, maintenance and repair	Risk that the requirements for operation, maintenance and repair to meet the State's specification are different or cost more than anticipated (subject to the risks identified below).		✓
Design risks	Risk that the design and technology are incapable of delivering Project services at required service levels.		✓
Input seawater characteristics	Risk associated with the characteristics of input seawater.		✓
Output volume and quality risk	Risk that the quantity and quality of desalinated water supplied to the Delivery Points does not meet the State's requirements.		✓
Discharge risk	Risk associated with EPA or any other requirements existing at Contractual Close		✓



Type of Risk	Description	State	AquaSure
	concerning the quality and rate of environmental discharge, including diffusion of concentrate or sludge discharge.		
Power supply risk	Risk that sufficient power supply is available to supply electricity during the operation phase.	✓	✓
Electricity and renewable energy credits consumption and costs	Risk that the cost and consumption of electricity and renewable energy credits required for the Project differs to that anticipated.		✓
Water supply system	Risk that the State's water supply system is unavailable for a prolonged or unanticipated period of time to receive desalinated water from the Project.	✓	
Water supply system damage	Risks of damage to the State's water supply system caused by the Project.		✓
Force majeure	Risk that force majeure events affect the Project during the operating phase.	✓	✓
<b>Industrial Relations</b>			
Industrial action	Risks of all strikes or industrial action, except as identified below.		✓
	Risks of strikes or industrial action directed at the Project during the construction or operating phase, if it can be reasonably demonstrated that the action results from a wrongful act or omission of the State directly in connection with the Project.	✓	
<b>Asset Risk</b>			
Asset ownership, maintenance and life span	Risks associated with the maintenance and ownership of assets – including the requirement to maintain assets in order to deliver the Project services, and that Project assets do not have the required asset lives.		✓
Upgrades due to technological innovation	Risks associated with implementing Project upgrades consistent with market practice.		✓
Handover risk	Risks associated with satisfying the State's requirements regarding asset condition and residual design life at the end of the Project Term.		✓
<b>Change in Law</b>			
Specified changes in law	Specified changes in law, including changes to Part IVAA of the <i>Wrongs Act 1958</i> (Vic), changes to reference documents set out in the State's Project Requirements, implementation of the carbon pollution reduction scheme, enactment of the draft Environmental Protection Regulations for Industrial or Prescribed Waste or the <i>Fair Work Bill 2008</i> , changes in tax law, or other changes		✓

Type of Risk	Description	State	AquaSure
	reasonably foreseeable when the contracts were entered into.		
Other changes in law	Risk of other changes in law.	✓	✓
<b>Sponsor and Finance risk</b>			
Interest rate and foreign exchange risk prior to Financial Close	Risk of movements in interest or foreign exchange rates between bid submission and Financial Close.	✓	
Interest rate and foreign exchange risk after Financial Close	Risk of movements in interest or foreign exchange rates after Financial Close.	✓	✓
Cost movements prior to Financial Close	Risk of movements in the cost between bid submission and Financial Close.		✓
Construction phase insurances	Risk of changes to pricing of construction phase insurance.		✓
Operations phase insurances	Risk of changes to pricing of operations phase insurance.	✓	✓

## 2.4 General obligations of the contractor

In summary, AquaSure's obligations under the Project Documents are to finance, design, construct, commission, operate, maintain and handover the Desalination Plant over the Project Term.

The major obligations of AquaSure under the Project Documents include:

- to finance and/or procure financing for the Project;
- to design, construct and commission the Desalination Plant, Transfer Pipeline and HVAC Transmission Line;
- to operate, maintain and repair the Desalination Plant and Transfer Pipeline for the Project Term, and handover that infrastructure to the State at the end of the Project Term;
- to handover the HVAC Transmission Line to the State upon completion of reliability testing; and
- to offset 100% of the Project's energy usage during the O&M Phase with renewable energy.

## 2.5 General obligations of the State

The State's obligations under the Project Deed include obligations to:

- deliver the land required for the Project;
- establish and facilitate a community liaison group to seek to ensure stakeholder and community involvement in the Project;

- notify AquaSure of the volume of desalinated water to be delivered in the following year;
- make payments to AquaSure in accordance with the Project Deed (subject to any applicable abatements);
- procure that Melbourne Water construct the preparatory works at the main Delivery Point and that Melbourne Water and other Water Authorities whose systems are connected to the Project comply with operational protocols agreed between the State, AquaSure and those Water Authorities regarding the delivery of water at Delivery Points; and
- to repay the HVAC Supported Facility. The HVAC Transmission Line will be handed over to the State (or its nominee if the State elects to sell the HVAC Transmission Line to a third party operator) and the State will provide consideration for the asset by repaying the facility drawn down to fund construction costs.

## 2.6 Government service payments

The Project Deed sets out the basis on which the State is required to make payments to AquaSure. The State only pays for water it receives, up to the amount of water ordered by the State.

Service payments from the State commence once Preliminary Commercial Acceptance (PCA) is reached, and then step up as Commercial Acceptance is reached, and reliability testing of the Desalination Plant is completed. Payments then continue on a monthly basis throughout the Project Term.

Monthly service payments are made up of two key elements:

- a security element that is paid to the extent the Project delivers water that is ordered, or is capable of delivering 150 GL per annum of desalinated water at the required quality; and
- a usage payment that relates specifically to the volume of desalinated water delivered to the State each month. The State does not pay any usage payment for any volume of desalinated water delivered that exceeds the amount ordered, nor for any desalinated water that is ordered but not received.

If performance does not meet the State's requirements, either in terms of quality of service or quantity of water delivered, the payment mechanism contains an abatement regime (discussed below) which abates the payments proportionately (including proportionate to volume produced as a percentage of volume ordered) and provides an incentive for AquaSure to remedy any poor performance as quickly as possible.

## 2.7 State contributions

### Land

The State has granted, or procured the grant of, leases and licences over the various parts of the Project area (as appropriate given the nature of the various parcels of land), including a lease over the Desalination Plant site for the Project Term and licenses for the pipeline and power easements. The Desalination Plant site was acquired in the name of the DSE Secretary, while Melbourne Water's powers under the Water Act were utilised to acquire rights over the parcels of land for the Transfer Pipeline and power easements. The State has obtained all Key Approvals and will manage all land acquisition and compensation matters for the Project under the *Land Acquisition and Compensation Act 1986 (Vic)*.

## Finance

The global financial crisis has made it very difficult for project financing in Australia and all around the world. Despite this, the Project team (in collaboration with Treasury officials and Treasury Corporation of Victoria) has developed ground breaking funding structures resulting in high volumes of committed equity and debt being secured for the Project at the time of the Final Proposals in July 2009. Debt and equity was sourced both domestically and internationally.

The Project is the largest PPP financing of the last twelve months, during the global financial crisis (**GFC**). Other major PPP projects which have closed since the GFC commenced, such as Greater Manchester Waste, M25 widening, A2 Poland, and Liefkenshoek Rail Tunnel, have all contained a mixture of State co-funding, guarantees and other forms of government liquidity support.

The funding solution for this Project included State support for syndication in the form of a guarantee, under which the State would effectively act as a lender of last resort if the debt which was to be syndicated (slightly under half the senior debt) was not completely sold down (**State Syndication Guarantee Facility**). The syndication process is now complete and that debt was successfully sold down, so the State Syndication Guarantee Facility was not called upon and there is no residual risk for the State in respect of syndication of the debt or under that guarantee.

Given the HVAC Transmission Line will be financed, designed and constructed by AquaSure, and then handed back to the State on completion of construction and reliability testing, the State provided a repayment guarantee for the dedicated debt facility for construction of the HVAC Transmission Line. This can only be drawn down as that infrastructure is actually constructed, subject to a cost-to-complete test (**HVAC Supported Facility**). It is intended that the HVAC Supported Facility will be paid out by the proceeds of the sale by the State of the HVAC assets, which may be accomplished through a separate tender process by the State, to be completed before 2011.

## 2.8 Performance measures and abatement

If the Project does not meet the State's requirements for water quality, availability of desalinated water and a number of other defined key performance indicators (including non-water related performance indicators, such as noise levels), the service payments otherwise payable to Project Co will be abated.

The abatements proportionately increase with the severity or repetition (or both) of failures to meet the key performance indicators.

### Non Availability or Partial Availability

The availability of the Project to deliver desalinated water will be judged on:

- its actual performance in delivering the volume of desalinated water ordered by the State; and
- direct testing of the potential future ability of the Project to deliver the guaranteed supply capacity (150 GL) if requested by the State.

An abatement will be made if AquaSure fails to deliver the ordered amount of desalinated water for a supply period (in which case the quantum of the abatement will be proportional to the amount of the shortfall) or if the Project is not capable of producing 150 GL per annum (in which case an abatement fixed at a predetermined (indexed) amount will be applied).

## Poor Performance

Abatements will also be made to the monthly service payments payable to AquaSure (comprising both the water security payment and water usage payments discussed above) for failing to meet the State's required performance standards in relation to water quality, environmental management, general operation, social and community requirements and other Project Deed obligations.

Abatements for failure to meet the specified performance standards will be calculated as a monetary amount per incidence of failure with increases in the quantum of the deduction depending on the frequency and size of the failure.

In the case of failures in water quality, additional parameters have been defined on which the State may refuse to accept and pay for desalinated water. In this situation, no variable (usage) payment will be made by the State and water will not count towards the volume of water ordered.

## 2.9 Default and termination regime

The State has rights to terminate the Project Deed, subject to certain conditions and notice requirements:

- for default by AquaSure, if an event of default is not remedied within applicable cure periods, if AquaSure is not diligently pursuing a cure of an event of default, or if completion is not achieved by the applicable date specified in the Project Deed (in each case, subject to debt and equity cure periods, as provided for in the Finance Direct Deed);
- if there is a subsisting force majeure event; or
- at any time, on 60 Business Days notice to AquaSure (regardless of whether or not there has been any default or breach of a Project Document by AquaSure).

AquaSure may terminate the Project Deed, subject to certain conditions and notice requirements, if there is a subsisting force majeure event (but not in any other circumstances).

Upon termination, the State will pay AquaSure a termination amount. The basis for calculation of the amount varies depending on the cause of the termination. For example, if the Project is terminated for AquaSure default, the State will only pay the market value of the Project at that time as reduced in value by AquaSure's default.

In addition, if AquaSure breaches an obligation under the State Project Documents, the State may exercise its step-in rights to remedy the breach.

## 2.10 Finance and security arrangements

### Funding package

The funding package for the Project included:

- senior commercial debt in the form of nominal bank debt;
- mezzanine debt in the form of nominal bank debt;
- State supported debt in the form of the State Syndication Guarantee Facility [(now no longer provided)] and the HVAC Supported Facility; and

- a mix of sponsor and third party equity investment.

The State has security over all of AquaSure's rights and interests in the Project, in order to secure AquaSure's obligations to the State under the contract, including the right to step in. The security enables the State to appoint a receiver over all or part of the secured assets.

The Project's financiers hold, via a Security Trustee, a suite of securities in relation to the Project including a fixed and floating charge over the assets of AquaSure. The rights and priorities as between the State and the Security Trustee are reconciled in the Financier Direct Deed

### **Global Financial Crisis**

The State has provided limited and specific support for the Project to address the prospect of there being significant adverse developments in the financial markets in the future which affect the debt funding of the Project.

This support takes three forms:

- the State will share the risk of refinancing losses equally with AquaSure. However, the State will also share to a significant extent in refinancing gains;
- the State will share the risk of the funding costs due to market disruption of more than a specified percentage of the senior debt increasing above market rates, with the State having the right to recover extra costs through future refinancing gains;
- if the financial markets will not support a refinancing of the initial debt at the time that debt is scheduled to expire, because of significant market dislocation, then the State will provide support through adopting one of a number of options, including:
  - procuring alternative funding;
  - procuring a State-supported guarantee for the debt funding;
  - termination of the Project Deed and payment of the relevant termination payment;
  - pay out of the balance of any unrefinanced debt; and
  - any other agreed arrangement.

### **2.11 State rights at expiry of contract**

At end of the Project term, AquaSure is required to hand over the Desalination Plant and associated infrastructure to the State, at no cost.

The State may require AquaSure to carry out joint inspections with the State up to three years prior to the end of the Project Term (and at 6 monthly intervals until the end of the term).

The State and AquaSure will agree (or seek independent determination of), a schedule of maintenance and repairs (if any) needed to ensure the Desalination Plant and associated infrastructure meets the required handover conditions (including residual design lives for particular assets), the cost of any such maintenance and repairs, and a program for carrying out any works required. To provide the State with certainty that it will receive a properly maintained Desalination Plant and associated infrastructure at handover (or the funds to bring the Project up to the required standard if there are any deficiencies), AquaSure must either deposit funds into an escrow account or provide the State with a bond, to the value of the estimated cost of maintenance and repairs.

## **2.12 Process for Government modification of services / facility**

The Project Deed provides for modifications, which may be initiated at any time by either the State or AquaSure.

If the State proposes a modification, AquaSure must provide a notice setting out details of the effect of implementing the modification, including the cost of the modification, any approvals required and the effect on timing of completion or delivery of water. A full list of the matters that must be detailed in such a notice is set out in the Project Deed. The State will then elect whether or not to proceed with implementation of the modification. The State will pay for the modification (unless otherwise agreed with AquaSure) either by way of a lump sum or adjustment to the payments to be made under schedule 1. The State will receive 100% of the benefit of any costs savings resulting from the modification.

If AquaSure proposes a modification, the modification can only be implemented with the State's approval. Any savings resulting from the modification are shared equally between AquaSure and the State. This provides an incentive to AquaSure to identify and propose variations which reduce the overall cost of the Project.

## **2.13 Future Technology Improvement**

The Project has adopted leading edge technology and practices for membrane efficiency and energy efficiency.

Over time, there will be advances in the technology used in desalination plants (for example, new, more efficient membrane models). Significant benefits may be achieved by upgrading the Desalination Plant and associated infrastructure to utilise new technology (both in terms of cost savings and efficiency or environmental benefits), however there will also be an associated cost of implementing that technology. The Project Deed balances these considerations to achieve the best value for money outcome, while retaining flexibility for Project Co and the State to weigh the costs and benefits of new technology on a case-by-case basis.

AquaSure must maintain a level of technology in the Desalination Plant and associated infrastructure that is consistent with O&M best practice and ensures the system is able to operate effectively and efficiently with the Victorian water and electricity networks. If AquaSure implements new technology, AquaSure and the State will share any resulting cost savings. Alternatively, the State may at any time direct AquaSure to implement new technology, in which case the State will retain the whole of the benefit of any resulting cost savings.

## Glossary

Term	Definition
<b>AquaSure</b>	The AquaSure consortium consisting of Macquarie Group, Degrémont SA, Suez Environnement and Thiess Pty Ltd.
<b>Commercial Acceptance</b>	The date on which the Desalination Plant and associated infrastructure satisfies the required commissioning tests and commences delivery of water at a rate of 150 GL per annum.
<b>Desalination Plant</b>	The Process Plant together with the Intake and Outlet Structures.
<b>D&amp;C Contractor</b>	The design and construction contractor, being Thiess Pty Ltd and Degrémont Pty Ltd (jointly and severally).
<b>EPA</b>	The Environment Protection Authority Victoria.
<b>Final Proposals</b>	Proposals received on 20 July 2009 in response to the RFP
<b>GL</b>	Gigalitre. One thousand megalitres or one billion litres.
<b>HVAC Supported Facility</b>	HVAC supported facility provided for the construction of the HVAC transmission line.
<b>HVAC Transmission Line</b>	The underground high voltage, alternating current (HVAC) electricity transmission line connecting the Desalination Plant to the National electricity grid at Cranbourne terminal station.
<b>Intake and Outlet Structures</b>	The seawater intake and concentrate outlet pipes which extend underground from the Process Plant (and associated onshore works); and the risers and other associated marine structures that connect to the seawater intake and concentrate outlet pipes.
<b>Key Approvals</b>	Certain approvals or facilitation under the <i>Environment Protection Act 1970</i> (Vic), the <i>Environment Effects Act 1978</i> (Vic), the <i>Environment Protection and Biodiversity Conservation Act 1999</i> (Cth), the <i>Planning and Environment Act 1987</i> (Vic), the <i>Coastal Management Act 1995</i> (Vic) and the <i>Aboriginal Heritage Act 2006</i> (Vic).
<b>Melbourne Water</b>	Melbourne Water Corporation, an entity owned by the government and responsible for managing Melbourne's water resources in a sustainable manner and secure supplies for a range of uses.
<b>O&amp;M Contractor</b>	Operations and maintenance contractor, being Thiess Services Pty Ltd and Degrémont Pty Ltd (jointly and severally).
<b>O&amp;M Phase</b>	Refers to the period from completion of reliability testing of the Desalination Plant (RT Finalisation) until the end of the Project Term (whether by expiry or early termination).
<b>Partnerships Victoria</b>	The State's <i>Partnerships Victoria</i> policy. Further information can be obtained on the website <a href="http://www.partnerships.vic.gov.au">www.partnerships.vic.gov.au</a> .
<b>Preliminary Commercial Acceptance</b>	The date on which the Desalination Plant and associated infrastructure satisfies the required commissioning tests to demonstrate an output capacity of 50 GL per annum. Upon achievement of this milestone, AquaSure can commence delivering water to the State and receive payment for that water.
<b>Probity Auditor</b>	An auditor appointed to audit and report on the fairness of the tender process.



Term	Definition
<b>Probity Adviser</b>	Pitcher Partners, engaged to advise the DSE project team on, and monitor, the procedural integrity and fairness of the tender process.
<b>Probity Plan</b>	A plan identifying the probity principles for the Project and specific rules which were required to be followed by the Project Team in delivering the Project.
<b>Process Plant</b>	The pre-treatment, reverse osmosis treatment and post-treatment processes which combine to produce desalinated water suitable for drinking.
<b>Project</b>	<p>The Victorian Desalination Project, comprising:</p> <ul style="list-style-type: none"> <li>▪ financing, design, construction, commissioning, operation, maintenance and handover of the Desalination Plant and associated infrastructure; and</li> <li>▪ financing, design, construction, commissioning and handover of the HVAC Transmission Line,</li> </ul> <p>in accordance with the State Project Documents.</p>
<b>Project Deed</b>	The agreement between the State and Project Co dated 30 July 2009 (as amended from time to time) which establishes the rights and obligations of the Project Co to finance, design, construct, commission, operate, repair, maintain and handover the Project.
<b>Project Documents</b>	<ul style="list-style-type: none"> <li>▪ The Project Deed;</li> <li>▪ the lease over the Process Plant site;</li> <li>▪ the licences for construction works and operation over the Transfer Pipeline land and land for the associated booster pump station;</li> <li>▪ the licences over Crown land where the Intake and Outlet structures are located;</li> <li>▪ the Independent Reviewer &amp; Environmental Auditor Deed of Appointment;</li> <li>▪ the State Security Deed (under which AquaSure grants the State security over its assets) and the Finance Direct Deed (governing the interface between the State and the Financiers for the Project, who also hold security over AquaSure's assets);</li> <li>▪ each Direct Deed (being tripartite arrangements between the State, AquaSure and key subcontractors of AquaSure);</li> <li>▪ the Financial Close Adjustment Protocol, which identifies the process for updating the documents at Financial Close; and</li> <li>▪ any other document the State and Project Co agree is a State Project Document.</li> </ul>
<b>Project Term</b>	The period commencing on the date of Financial Close and concluding on expiry (after 30 years and one month) or early termination of the Project Deed.
<b>Public Interest Test</b>	The Project is required under <i>Partnerships Victoria</i> policy to have considered the elements of the public interest test and satisfy the public interest assessment.

Term	Definition
<b>Public Sector Comparator</b>	The PSC is the estimated, hypothetical, risk-adjusted cost if the Project were to be financed and implemented by the State. The PSC is consistent with the requirements of the output specifications, project requirements and the proposed risk allocation contained in the State Project Documents.
<b>PPP</b>	Public Private Partnership.
<b>RFP</b>	The request for proposals issued by the State in September 2008, as updated from time to time.
<b>South Gippsland Water</b>	Water provider that provides water services in Eastern Victoria for towns and coastal resorts.
<b>State</b>	The State Government of Victoria.
<b>State Syndication Facility</b>	A syndication facility supported through a government guarantee to allow for the syndication of state debt to commercial parties.
<b>Transmission Line Operator</b>	The contractor which will be appointed to operate the HVAC Transmission Line.
<b>Transfer Pipeline</b>	The transfer pipeline to connect the Process Plant to the existing Melbourne Water supply system near Cardinia Reservoir.
<b>Victorian Government Purchasing Board Probity Policy</b>	Policy from the Victorian Government Purchasing Board which provides guidance to Victorian government employees to help them establish and maintain high standards of probity in tendering activities.
<b>Water Act</b>	<i>Water Act 1989 (Vic)</i>
<b>Water Plan</b>	The 'Our Water Our Future –The Next Stage of the Government's Water Plan', which is the next stage of the Government's Our Water Our Future water plan, the government's long term water plan which balances traditional water sources with new rainfall-independent sources of water such as desalination.
<b>Westernport Water</b>	Water authority which provides water services to the Westernport district.
<b>WorkSafe Victoria</b>	The manager of Victoria's workplace safety system.

## Appendix 1: Useful References

- Project documentation, including the Project Deed, is available at [www.contracts.vic.gov.au](http://www.contracts.vic.gov.au)
- Partnerships Victoria policy guidance and project information is available at [www.partnerships.vic.gov.au](http://www.partnerships.vic.gov.au)
- Details in relation to the 'Our Water Our Future -The Next Stage of the Government's Water Plan' can be found at <http://www.ourwater.vic.gov.au>

## Appendix 2: Key Contact Details

### ***Department of Sustainability and Environment***

Website: [www.dse.vic.gov.au](http://www.dse.vic.gov.au)  
Address: Level 15, 55 Collins Street  
Melbourne VIC 3000  
Email: [desalination.project@dse.vic.gov.au](mailto:desalination.project@dse.vic.gov.au)

### ***AquaSure Pty Ltd***

Website: [www.aquasure.com.au](http://www.aquasure.com.au)  
Address: Level 7, 492 St Kilda Road  
Melbourne VIC 3004  
Email: [contactus@aquasure.com.au](mailto:contactus@aquasure.com.au)

### ***Partnerships Victoria***

Website: [www.partnerships.vic.gov.au](http://www.partnerships.vic.gov.au)  
Address: Department of Treasury and Finance  
Commercial Division, 1 Treasury Place  
Melbourne VIC 3002

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## Appendix 3: Evaluation Criteria

The following matters were advised to the shortlisted bidders as potentially being relevant to evaluation.

### A. Technical

The State may evaluate:

- The technical solution including fitness for purpose.
- The design and construction methodology including the extent to which the Proposal:
  - provides certainty of delivery of the Desalination Plant, the Transfer Pipeline and the power supply in terms of time, cost and quality.
  - addresses safety and industrial relations.
- The operation and maintenance methodology.
- The response in respect of the Proof Engineer, Design Reviewer and Rehabilitation Consultant (being the specialist consultants who will verify compliance with the key aspects of the Project Requirements).
- The response in respect of the Independent Reviewer & Environmental Auditor.

### B. Industrial Relations and Occupational Health and Safety

The State may evaluate the shortlisted bidders' proposed approach to workplace and occupational health and safety issues (including occupational health and safety) throughout the design, construction and operation and maintenance phases.

Shortlisted bidders are to demonstrate what steps they would take to support all workplaces in connection to the Project to be fair, cooperative and innovative workplaces, including information on opportunities which will be available for the promotion of training and skills formation in relation to the Project.

Shortlisted bidders are required to set out the provision and skills for establishing and maintaining the highest levels of health and safety throughout the delivery and operation of the Project; in particular, the steps which the shortlisted bidder will take to ensure that any occupational health and safety issue that arises in connection with the Project is resolved fairly and efficiently.

A shortlisted bidder should also identify how it will ensure that any employee working in connection with the Project who suffers illness or injury as a result has access to effective rehabilitation, including mechanisms to ensure employee consultation and representation in occupational health and safety throughout the Project.

Shortlisted bidders are required to set out specifically the experience and capacity of shortlisted bidders to manage industrial relations and occupational health and safety.

Shortlisted bidders are also required to explain in detail how they plan to identify and manage industrial relations.

### **C. Community involvement and stakeholder management**

The State may evaluate the shortlisted bidder's proposed community involvement and stakeholder management methodologies including the extent to which the Proposal addresses community and stakeholder issues throughout the design, construction and operation and maintenance phases.

Shortlisted bidders are required to provide the outline Community Involvement Plan. Shortlisted bidders are required to provide a list of stakeholders identifying the key issues and propose strategies to deal with those issues.

Shortlisted bidders are required to provide detailed information in relation to the approach of a shortlisted bidder to engaging with local and regional industries and services and to providing opportunities to engage suitably trained local and regional human services.

### **D. Environmental management**

The State may evaluate:

- the proposed environmental management methodology including the extent to which the Proposal addresses environmental requirements throughout the design, construction and operation and maintenance phases; and
- the proposed design in terms of the extent to which the Proposal addresses the environmental requirements throughout the design, construction, operational and maintenance phases.

### **E. Commercial**

The State may evaluate:

- the commercial solution including the nature of the legal and commercial relationships between the:
  - Project sponsors, equity and debt providers; and
  - Project Co, the D&C Contractor, the O&M Contractor and any other contractors, such as the provider(s) of technology, power supply and RECs (as appropriate); and
- the nature and extent of the proposed commercial departures from the State's preferred position as set out in the draft State Project Documents including the extent to which these departures impact the ability to achieve Contract Close and Financial Close within the State's preferred timeframes.

### **F. Financial**

The State may evaluate:

- the appropriateness, competitiveness and flexibility of the funding structure;
- the certainty of the funding structure as evidenced by the level of commitment demonstrated, the approvals obtained by all providers of debt, equity and other forms of finance and the absence of circumstances in which funding may be repriced or commitments may lapse, whether for Project specific or financial market reasons, and regardless of financial market practice in relation to such matters;
- the financial strength of the party(s) that would contract with the State (or party(s) providing financial support for the party that would contract with the State) for the Project; and

- the robustness of the financial projections for the Project. This will include, but not be limited to, a review of the assumptions relating to construction costs, ongoing life cycle maintenance, operational costs, working capital, accounting treatment, taxation and availability of capital allowances.

#### **G. Risk adjusted cost**

The State proposes to evaluate the whole of life, risk-adjusted cost of a Proposal taking into account the financial and risk consequences for the State.

#### **H. Conformity with the RFP**

The State will consider the extent to which the proposal schedules have been adequately completed, and the extent to which each proposal complies with the RFP.

#### **I. Compliance with the Victorian Industry Participation Policy**

The Victorian Industry Participation Policy (VIPP) Statement completed by each shortlisted bidder will be assessed and used in accordance with the guidelines issued under the prevailing policy.

#### **J. Probity investigations**

The State may take into account any matters revealed as a result of its probity and security investigations in evaluating proposals.

#### **K. Conflicts of interest**

The State proposes to evaluate the nature of any actual or perceived conflicts of interest and how effectively the shortlisted bidder has managed any such conflicts.

## Appendix 4: Public Interest Test

### Public Interest Issues

Protecting the public interest entails an assessment of the impact of the Project on the following eight elements of public interest:

- Effectiveness
- Accountability and transparency
- Affected individuals and communities
- Equity
- Consumer rights
- Public access
- Security
- Privacy

### Summary of the Public Interest Test

The determination of whether the public interest can be adequately protected under either or all of the procurement options requires a judgement of:

- whether the failure to adequately protect any individual public interest element is a significant concern; and
- whether it outweighs, on its own or together with other failures, the benefits to the public interest arising from the potential project being delivered under the recommended procurement option.

### Assessment

Set out below are some aspects of the detailed public interest test assessment.

Public interest element	Standard	Assessment
<p><b>Effectiveness</b></p> <p>Is the project effective in meeting government objectives?</p>	<p>Relevant policies and strategies include:</p> <ul style="list-style-type: none"> <li>▪ <i>'Our Water Our Future -The Next Stage of the Government's Water Plan'</i>.</li> </ul> <p>Key Element:</p> <ul style="list-style-type: none"> <li>▪ Development of a non-rainfall dependent source of water to meet Victoria's future water requirements.</li> </ul> <p>Other relevant policies:</p> <ul style="list-style-type: none"> <li>▪ Melbourne 2030; and</li> </ul>	<p>The Project is consistent with the overarching objective of the <i>'Our Water Our Future -The Next Stage of the Government's Water Plan'</i> to provide water security for Victoria's growing population and economy in the face of drought and the challenge of climate change.</p> <p>The Project is a key element of the water plan which includes:</p> <ul style="list-style-type: none"> <li>▪ Diversifying and boosting water supplies in Melbourne, including</li> </ul>



Public interest element	Standard	Assessment
	<ul style="list-style-type: none"> <li>▪ Growing Victoria Together.</li> </ul> <p>Note that the overarching Project Objectives have, where relevant, been informed by broader government objectives.</p>	<p>through desalination;</p> <ul style="list-style-type: none"> <li>▪ Networking the State's water resources in a Victorian Water Grid; and</li> <li>▪ Enabling a rapid and flexible response to changing future water needs.</li> </ul> <p>The State's tender evaluation process has had regard to the overarching Project objectives.</p>
<p><b>Accountability and transparency</b></p> <p>Do the proposed procurement arrangements ensure that:</p> <ul style="list-style-type: none"> <li>▪ The community can be well-informed about the obligations of Government and the private sector partner; and</li> <li>▪ These can be overseen by the Auditor-General.</li> </ul>	<p>Policies and responsibilities relevant to accountability and transparency include:</p> <ul style="list-style-type: none"> <li>▪ <i>Partnerships Victoria</i>;</li> <li>▪ Victorian Government Purchasing Board Probity Policy;</li> <li>▪ <i>Freedom of Information Act 1982</i>;</li> <li>▪ <i>Financial Management (Financial Responsibility) Act 2000</i>; and</li> <li>▪ Auditor General Victoria.</li> </ul>	<p>Pitcher Partners has been engaged as an independent probity auditor to oversee the procurement of the Project.</p> <p>The FOI Act will apply. Participants in the Project recognise the disclosure requirements under the FOI Act.</p> <p>The procurement processes for the Project were designed to be fair and transparent providing equal opportunities to private sector contractors whilst ensuring the best outcome for the Project and the State.</p> <p>A Project Summary document required under the <i>Partnerships Victoria</i> Public Disclosure Policy has been released within 3 months of Financial Close.</p>
<p><b>Affected individuals and communities</b></p> <p>Have those affected been able to contribute effectively at the planning stages, and are their rights protected through fair appeals processes and other conflict resolution mechanisms?</p>	<p>The Victorian Government is committed to open and effective community engagement. Engagement strategies have been established at many levels, including with local councils.</p> <p>The Project has also undergone assessment under the Environment Effects Act and approval under the EPBC Act. These processes have enabled affected individuals and communities to contribute effectively.</p>	<p>The following are key stakeholders in the Project (note that this is not an exhaustive list):</p> <ul style="list-style-type: none"> <li>▪ Victorian water users</li> <li>▪ Local residents, community groups and organisations</li> <li>▪ Affected land owners</li> <li>▪ Government departments (Department of Sustainability and Environment, Department of Premier and Cabinet and Department of Treasury and Finance);</li> <li>▪ Members of parliament, both state and federal.</li> </ul>

Public interest element	Standard	Assessment
		<p>The Project Team consulted directly with landowners whose properties are within the Project Site and Transfer Pipeline and electricity grid connection route alignments to arrange land acquisition and compensation in accordance with State Government laws.</p> <p>The State has followed the requirements of the <i>Land Acquisition and Compensation Act 1986</i>. This Act was established to ensure landowners are fairly compensated for expenses associated with the acquisition or access to land.</p> <p>Under the Act, the State is required to pay reasonable costs to an affected landowner for valuation and legal representation, and compensation for any loss incurred as a result of any Project construction on their land.</p> <p>The State has completed extensive public consultations as part of the environmental approvals processes.</p>
<p><b>Equity</b></p> <p>Are there adequate arrangements to ensure that disadvantaged groups can effectively use the infrastructure or access the related service?</p>	<p>The Project objectives are focused on creating a non-rainfall independent source of water to assist in meeting Victoria's water requirements.</p>	<p>Given that water produced by the Project will be pumped in to Melbourne's existing water supply system to Cardinia Reservoir (which services users in Melbourne) and towns in the Westernport and South Gippsland region, access or use restrictions meet the public interest.</p>
<p><b>Public access</b></p> <p>Are there safeguards that ensure ongoing public access to essential infrastructure?</p>	<p>Project does not impact on access to essential infrastructure.</p>	<p>Public access to the Project site at Wonthaggi during construction and operations will be restricted to ensure the facility remains secure.</p> <p>Access to the adjacent coastal reserve will be unaffected by the Project during both construction and operations.</p>

Public interest element	Standard	Assessment
<p><b>Consumer rights</b></p> <p>Does the project provide sufficient safeguards for service recipients, particularly those for whom Government has a high level of duty of care, and/or the most vulnerable?</p>	<p>This Project is different to an accommodation based project where Government may have a duty of care in the delivery of certain core services.</p>	<p>The Project's service recipients are the general public and commercial water users. Monitoring processes and quality reviews will be in place to ensure that water quality is safeguarded at all Delivery Points along the transfer pipeline.</p>
<p><b>Security</b></p> <p>Does the project provide assurance that community health and safety will be secured?</p>	<p>Relevant standards and policies in relation to the Project include:</p> <ul style="list-style-type: none"> <li>▪ <i>Occupational Health and Safety Act 2004</i> (Vic)</li> <li>▪ Numerous environmental standards</li> <li>▪ Environmental Management Plan</li> <li>▪ World Health Organisation Water Quality Standards</li> <li>▪ <i>Water Act 1989</i> (Vic)</li> <li>▪ <i>Water Industry Act 1994</i> (Vic)</li> <li>▪ <i>Safe Drinking Water Act 2003</i> (Vic)</li> <li>▪ State's duty of care to the public</li> <li>▪ Minimum performance requirements consistent with output specification obligations and contracts will be required of the service provider.</li> </ul>	<p>The Project will be required to comply with health and safety and water quality specific legislation.</p> <p>The contract includes performance standards required of the Project Co.</p>
<p><b>Privacy</b></p> <p>Does the project provide adequate protection of users' rights to privacy?</p>	<ul style="list-style-type: none"> <li>▪ <i>Freedom of Information Act 1982</i> (Vic)</li> <li>▪ <i>Information Privacy Act 2000</i> (Vic)</li> <li>▪ <i>Health Records Act 2002</i></li> <li>▪ <i>Federal Privacy Act 1982</i></li> </ul>	<p>The FOI Act gives people a right of access to information held by the State Government.</p>

## Conclusion

The conclusions reached from the assessment of the public interest test are:

- the Project implements a number of State objectives and policies, including those specifically related to the government's Water Plan and the identified need to develop a non-rainfall dependant source of water for Victoria;
- the contractual arrangements are transparent and ensure that the community will be well informed about the responsibilities of the parties. In particular, Victorian Government Purchasing Board Probity Policy and Best Practice Probity Advice guidelines have been applied, including the appointment of a Probity Auditor and a Probity Advisor during the procurement process. The Project documents to which the State is a party have been published in accordance with *Partnerships Victoria* policy, subject to confidentiality provisions of the *Freedom of Information Act 1982* (Vic). The Auditor-General will have access to information relating to the Project;
- key stakeholders (including affected land owners and occupiers) have been sought to be consulted throughout the procurement process, and a communications strategy is in place for the implementation phase;
- all parties to the Project will be required to comply with the relevant equity laws;
- the Project does not affect access to essential infrastructure nor does it impact on consumer rights;
- AquaSure must comply with Victorian legislation, aspects of which will be enforced by WorkSafe Victoria and the EPA, to seek to ensure that community health and safety are secured;
- users' rights to privacy (including commercially sensitive information) are protected; and
- the value for money and public interest disclosure requirements under the *Partnerships Victoria* Disclosure Policy (released in March 2007) and *Partnerships Victoria Requirements* (February 2009) are met.



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Published: November 2009

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