



**NEW SOUTH WALES
GOVERNMENT**

***WATER INDUSTRY COMPETITION ACT 2006
(NSW)***

NETWORK OPERATOR'S LICENCE

Sydney Desalination Plant Pty Ltd

(ACN 125 935 177)



New South Wales

Water Industry Competition Act 2006 (NSW)
Section 15

Notice of Decision

Variation of network operator's licence
Licence no. 10_010

I, The Hon. Don Harwin, MLC, Minister for Energy and Utilities, under section 15 of the Water Industry Competition Act 2006, have considered and accepted the recommendations made by the Independent Pricing and Regulatory Tribunal of New South Wales (IPART) in its report to me on the five-yearly review of the network operator's licence granted to Sydney Desalination Plant Pty Ltd (ACN 125 935 177) (licence no. 10_010), to vary the existing conditions of the licence and impose new conditions on the licence. I attach a copy of IPART's report (**Attachment A**).

In addition, I have considered and accepted advice from the Department of Planning and Environment to vary the licence conditions with regard to the requirement to operate. I have also had regard to the licensing principles set out in section 7 of the Act in considering whether to vary the existing conditions of the licence or impose new conditions on the licence.

For the reasons set out above, I have therefore determined to vary the conditions of, and impose new conditions on the network operator's licence, no. 10_010 as follows:

- (i) Delete Schedule A and replace with new Schedule A (attached to this notice).
- (ii) Delete Schedule B and replace with new Schedule B (attached to this notice).

I hereby attach a copy of the licence, as varied (**Attachment B**).

The Hon. Don Harwin, MLC
Minister for Energy and Utilities

Dated this

3rd

day of November 2017

SCHEDULE A - SPECIAL MINISTERIALLY IMPOSED LICENCE CONDITIONS FOR SYDNEY DESALINATION PLANT PTY LTD'S NETWORK OPERATOR'S LICENCE

This schedule sets out the conditions which the Minister imposes pursuant to section 13(1)(b) of the Act. In addition to these special Ministerially-imposed conditions, the Licensee is subject to obligations imposed by the Act, the Regulation and the standard Ministerially-imposed licence conditions set out in Schedule B. The Minister may vary the conditions in this schedule or impose new conditions, provided there is no inconsistency with the conditions imposed on the Licensee by the Act or the Regulation.

A1 Activities authorised

This Licence authorises the Licence Holder and the persons specified in Table 1 to construct, operate and maintain the water industry infrastructure specified in Table 2 for the purposes as specified in Table 3 within the area specified in Table 4, subject to the conditions imposed by or under the Act, the Regulation and this Licence.

Table 1 Authorised persons

Veolia Water Australia Pty Ltd (ACN 061 161 279)
--

Table 2 Specified water industry infrastructure

Infrastructure used for the production, treatment, filtration, storage, conveyance or reticulation of drinking water.

Table 3 Authorised purposes

Drinking water and other purposes for which drinking water could be used safely.
--

Table 4 Specified area of operations

- | |
|--|
| (a) Lot 2 in DP 1077972 and Lot 1 in DP 1088703, Kurnell;
(b) the offshore discharge and inlet structures located in the Tasman Sea and associated inlet and outlet tunnels; and
(c) the area of the Pipeline. |
|--|

A2 Requirement to maintain and operate

A2.1 In order to ensure the sustainability of water resources in accordance with Principle 7 (1)(c) of the *Water Industry Competition Act 2006* (NSW) the Licensee must:

- a) maintain the Water Industry Infrastructure in accordance with Good Industry Practice; and
- b) when it operates the Water Industry Infrastructure, do so in accordance with Good Industry Practice.

A2.2 When the Available Storage falls below 60%, the Licensee must, until the Available Storage rises to 70% operate and maintain the Water Industry Infrastructure with the objective of maximising the production of drinking water for the exclusive supply into the Sydney Water Corporation's area of operations (as defined in Sydney Water's Operating Licence).

A2.3 The Licensee is not required to comply with paragraph A2.2:

- a) when the Water Industry Infrastructure is in a Restart phase of production; or
- b) during the time and to the extent that such compliance is prevented wholly or in part by an event outside the reasonable control of the Licensee.

INTERPRETATION AND DEFINITIONS

Interpretation

In this Schedule A, unless the context requires otherwise:

- (i) the singular includes the plural and vice versa;
- (ii) headings are used for convenience only and do not affect the interpretation of this Schedule A;
- (iii) a reference to a document includes the document as modified from time to time and any document replacing it;
- (iv) a reference to a person includes a natural person and any body or entity whether incorporated or not;
- (v) a reference to a clause is to a clause in this Schedule A;
- (vi) a reference to a schedule is to a schedule to this Licence;
- (vii) a reference to a law or statute includes regulations, rules, codes and other instruments under it, and consolidations, amendments, re-enactments or replacements of them; and
- (viii) explanatory notes do not form part of this Licence, but in the case of uncertainty may be relied on for interpretation purposes.

Definitions

Expressions used in this Schedule A that are defined in the Act or the Regulation have the meanings set out in the Act or the Regulation.

In this Schedule A:

Act	means the <i>Water Industry Competition Act 2006</i> (NSW).
Authorised Purpose	means an authorised purpose listed in Table 3 of Schedule A.
Available Storage	means the available storage in Sydney's water supply reservoirs as published on a weekly basis on the website of WaterNSW. If for any reason WaterNSW is unable to calculate or publish the available storage, the available storage is the amount of water as calculated and notified from time to time by such other authority as is nominated by the Minister.
Capacity of the Water Infrastructure	means: (a) in respect of the desalination plant, 250 megalitres per day for the desalination plant existing at the date of issue of this licence or between 250 megalitres per day and 500 megalitres per day for an expanded desalination plant, in both cases measured as a rolling average over 365 days; and (b) in respect of the Pipeline, an annual daily average of up to 500 megalitres per day.
Good Industry Practice	means the exercise of that degree of skill, diligence, prudence and foresight that reasonably would be expected

from a prudent desalination plant operator acting in accordance with good industry practice and applicable Australian and internationally recognised standards having regard to the Capacity of the Water Infrastructure, its duty, age and technological status.

Licence	means this network operator's licence granted under section 10 of the Act.
Licensee	means the person to whom this Licence is granted under section 10 of the Act.
Minister	means the Minister responsible for Part 2 the Act.
Pipeline	means the pipeline system running from Lot 2 in DP 1077972 in the suburb of Kurnell up to, but not including, the connection valve at Shaft 11C on the City Tunnel at Bridge Street in Lot A in DP 365407 in the suburb of Erskineville and consisting of the following infrastructure: (a) an overland pipeline running from the drinking water pumping station at the desalination plant to Silver Beach; (b) a marine pipeline running from Silver Beach to a point 800 metres offshore from Silver Beach; (c) twin marine pipelines running from 800 metres offshore of Silver Beach to Cook Park, Kyeemagh; and (d) an overland pipeline running from Cook Park, Kyeemagh up to the connection valve at Shaft 11C on the City Tunnel at Bridge Street, Erskineville.
Regulation	means the <i>Water Industry Competition (General) Regulation 2008</i> (NSW).
Restart	has the same meaning as the definition in the Desalination Project Operation and Maintenance Contract between the Licensee and Veolia Water Australia Pty Ltd. That is, 'the recommencement of production of drinking water at the plant'.
Sydney Water's Operating Licence	means the operating licence of Sydney Water Corporation as renewed, updated, replaced or varied from time to time.
Water Industry Infrastructure	means the water industry infrastructure described in Schedule A.

SCHEDULE B - STANDARD MINISTERIALLY-IMPOSED LICENCE CONDITIONS FOR ALL LICENSED NETWORK OPERATORS UNDER THE ACT

This schedule sets out the standard conditions which the Minister imposes on the Licensee and all other licensed network operators pursuant to section 13(1)(b) of the Act. In addition to these standard Ministerially-imposed conditions, the Licensee is subject to obligations imposed by the Act, the Regulation and the special Ministerially-imposed licence conditions set out in Schedule A. The Minister may vary the conditions in this schedule or impose new conditions, provided there is no inconsistency with the conditions imposed on the Licensee by the Act or the Regulation.

B1 Ongoing capacity to operate

- B1.1 The Licensee must have the technical, financial and organisational capacity to carry out the activities authorised by this Licence. If the Licensee ceases to have this capacity, it must report this to IPART immediately in accordance with the Reporting Manual.

B2 Obtaining appropriate insurance

- B2.1 *[Not applicable]*

- B2.2 The Licensee must:

- a) before commencing to commercially operate the Specified Water Industry Infrastructure under this Licence:
 - i) obtain insurance that is appropriate for the size and nature of the activities authorised under this Licence; and
 - ii) provide a copy of each certificate of currency of the insurance obtained to IPART; and
- within 6 months of the date on which this Licence is granted or by a later date specified by IPART (if any), demonstrate that the insurance obtained is appropriate for the size and nature of the activities authorised under this Licence by providing a report to IPART from an Insurance Expert that:
- i) certifies that in the Insurance Expert's opinion, the type and level of the insurance obtained by the Licensee is appropriate for the size and nature of the activities authorised under the Licence; and
 - ii) is in the form prescribed by the Reporting Manual.

B3 Maintaining appropriate insurance

- B3.1 The Licensee must maintain insurance that is appropriate for the size and nature of the activities authorised under this Licence.
- B3.2 The Licensee must provide a copy of each certificate of currency of the insurance maintained by the Licensee to IPART in accordance with the Reporting Manual.
- B3.3 If there is, or is to be a change in:
- a) the insurer or underwriting panel in respect of an insurance policy held by the Licensee; or
 - b) the type, scope or limit on the amount of insurance held by the Licensee,
- in relation to the activities authorised under this Licence, the Licensee must provide a report to IPART in accordance with the Reporting Manual.
- B3.4 From time to time when requested in writing by IPART, the Licensee must provide a report to IPART, in the manner, form and time specified by IPART, from an

Insurance Expert certifying that in the Insurance Expert's opinion the type, scope or limit on the amount of the insurance held by the Licensee is appropriate for the size and nature of the activities authorised under this Licence.

[Note: The circumstances in which IPART may request a report under clause B3.4 include (but are not limited to) the following:

- where IPART has reason to believe that there may be a change in the type, scope or limit on the amount of insurance held by the Licensee in relation to activities authorised under this Licence;*
- where there is a change in the type or extent of activities authorised under this Licence; or*
- where IPART or an approved auditor has reason to believe that the type, scope or limit on the amount of insurance held by the Licensee may not be appropriate for the size and nature of the activities authorised under this Licence.]*

B3.5 *[Not applicable]*

B4 Complying with NSW Health requirements

- B4.1 The Licensee must carry out the activities authorised by this Licence in compliance with any requirements of NSW Health that:
- a) IPART has agreed to; and
- are notified from time to time to the Licensee by IPART in writing.

B5 Complying with Audit Guidelines from IPART

- B5.1 The Licensee must comply with any Audit Guidelines issued by IPART.

B6 Reporting in accordance with the Reporting Manual

- B6.1 The Licensee must prepare and submit reports in accordance with the Reporting Manual.

B7 Reporting information in relation to the Register of Licences

- B7.1 Within 14 days of any change in relation to the following, the Licensee must notify IPART, and provide IPART with details, of the change in accordance with the Reporting Manual:
- a) any source from which the water handled by the Specified Water Industry Infrastructure is derived;
 - b) the Authorised Purposes of the water handled by the Specified Water Industry Infrastructure;
 - c) the identity of each licensed retail supplier or public water utility that has access to the infrastructure services provided by the Specified Water Industry Infrastructure for the purpose of supplying water to its customers;
 - d) any other water infrastructure to which the Specified Water Industry Infrastructure is connected; or
 - e) *[Not applicable]*
 - f) *[Not applicable]*
 - g) the arrangements for the disposal of waste from the Specified Water Industry Infrastructure.

B8 Monitoring

- B8.1 The Licensee must undertake any monitoring that is required for the purposes of this Licence, any Plan, the Act or the Regulation in accordance with this clause B8.
- B8.2 The Licensee must keep the following records of any samples taken for monitoring purposes specified in the Water Quality Plan:
- a) the date on which the sample was taken;
 - b) the time at which the sample was collected;
 - c) the point or location at which the sample was taken; and
 - d) the chain of custody of the sample (if applicable).
- B8.3 The Licensee must ensure that analyses of all samples taken for the purposes of Verification Monitoring are carried out by a laboratory accredited for the specified tests by an independent body that is acceptable to NSW Health, such as the National Association of Testing Authorities or an equivalent body.

B9 Provision of copy of Plan

- B9.1 Whenever the Licensee makes a significant amendment to a Plan, the Licensee must provide a copy of the amended Plan to IPART at the same time that it provides a copy to the approved auditor engaged to prepare a report as to the adequacy of the amended Plan, as required under the Regulation.

B10 Delineating responsibilities – interconnections

- B10.1 If a code of conduct has not been established under clause 25 of the Regulation, the Licensee must establish a code of conduct (**Licensee's Code of Conduct**) in accordance with this clause B10.
- B10.2 The Licensee's Code of Conduct must set out the respective responsibilities of:
- a) the Licensee; and
- each licensed network operator, licensed retail supplier and/or public water utility that:
- (i) supplies water or provides sewerage services by means of; or
 - (ii) constructs, maintains or operates,
- any water industry infrastructure that is connected to the Specified Water Industry Infrastructure, by, at a minimum, providing for:
- who is responsible for repairing, replacing or maintaining any pipes, pumps, valves, storages or other infrastructure connecting the Specified Water Industry Infrastructure to the other water industry infrastructure;
 - who is responsible for water quality;
 - who is liable in the event of the unavailability of water;
 - who is liable in the event of failure of the Specified Water Industry Infrastructure;
 - the fees and charges payable in respect of the use of the Specified Water Industry Infrastructure; and
 - who is responsible for handling customer complaints.
- B10.3 *[Not applicable]*

- B10.4 Within 6 months of the date on which this Licence is granted or by a later date specified by IPART (if any), the Licensee's Code of Conduct must be agreed in writing between the Licensee and the other licensed network operators, licensed retail suppliers and/or public water utilities referred to in clause B10.2.
- B10.5 The Licensee must not contravene the Licensee's Code of Conduct to the extent that it makes the Licensee responsible or liable for the matters set out in it.

B11 Notification of changes to end-use

- B11.1 If the Licensee proposes to operate the Specified Water Industry Infrastructure to supply water for an end-use which is not set out in the most recent Water Quality Plan provided to IPART, the Licensee must notify IPART in writing at least 3 months before commencing such operation.

B12 Notification of changes to Authorised Person

- B12.1 If an Authorised Person ceases, proposes to cease, or receives notification to cease providing any of the services relating to the activities authorised by this Licence, the Licensee must provide IPART with written notice as soon as practicable but no later than 28 days before the date of cessation of the services. The written notice must include details of how the services previously undertaken by the Authorised Person will continue to be undertaken.

B13 [Not Applicable]

INTERPRETATION AND DEFINITIONS

Interpretation

In this Schedule B, unless the context requires otherwise:

- (i) the singular includes the plural and vice versa;
- (ii) headings are used for convenience only and do not affect the interpretation of this Schedule B;
- (iii) a reference to a document includes the document as modified from time to time and any document replacing it;
- (iv) a reference to a "person" includes a natural person and any body or entity whether incorporated or not;
- (v) a reference to a clause is to a clause in this Schedule B;
- (vi) a reference to a schedule is to a schedule to this Licence;
- (vii) a reference to a law or statute includes regulations, rules, codes and other instruments under it, and consolidations, amendments, re-enactments or replacements of them; and
- (viii) explanatory notes do not form part of this Licence, but in the case of uncertainty may be relied on for interpretation purposes.

Definitions

Expressions used in this Schedule B that are defined in the Act or the Regulation have the meanings set out in the Act or the Regulation.

In this Schedule B:

Act	means the <i>Water Industry Competition Act 2006</i> (NSW).
Audit Guidelines	means the document entitled "Audit Guideline – Water Industry Competition Act 2006" which is prepared by IPART and is available on IPART's website at www.ipart.nsw.gov.au and any other guidelines issued by IPART in relation to audits under the Act.
Authorised Person	means the authorised persons specified in, as applicable: <ul style="list-style-type: none"> (i) Schedule A, clause A1, Table 1.1; (ii) Schedule A, clause A2, Table 2.1; and (iii) Schedule A, clause A3, Table 3.1.
Authorised Purposes	means the authorised purposes specified in, as applicable: <ul style="list-style-type: none"> (i) Schedule A, clause A1, Table 1.3; (ii) Schedule A, clause A2, Table 2.3; and (iii) Schedule A, clause A3, Table 3.3.
Insurance Expert	means an insurance broker which holds an Australian financial services licence under Part 7.6 of the <i>Corporations Act 2001</i> (Cth) that authorises the broker to provide financial product advice for, and deal in, contracts of insurance within the meaning of Chapter 7 of that Act.
IPART	means the Independent Pricing and Regulatory Tribunal of New South Wales established under the <i>Independent Pricing and Regulatory Tribunal Act 1992</i> (NSW).
Licence	means this network operator's licence granted under section 10 of the Act.
Licensee	means a person to whom this Licence is granted under section 10 of the Act.
Licensee's Code of Conduct	has the meaning given in clause B10.1.
Minister	means the Minister responsible for Part 2 of the Act.
NSW Health	means the Water Unit of NSW Ministry of Health and any of the local health districts as defined by the NSW Ministry of Health.
Plan	means any infrastructure operating plan, Water Quality Plan or sewage management plan that the Licensee is required to prepare under the Regulation.
Regulation	means the <i>Water Industry Competition (General) Regulation 2008</i> (NSW).
Reporting Manual	means the document entitled "Network Operator's Reporting Manual", which is prepared by IPART and is available on IPART's website at www.ipart.nsw.gov.au .
Specified Area of Operations	means the area of operations specified in, as applicable: <ul style="list-style-type: none"> (i) Schedule A, clause A1, Table 1.4; (ii) Schedule A, clause A2, Table 2.4; and (iii) Schedule A, clause A3, Table 3.4.
Specified Water	means the water industry infrastructure specified in, as applicable:

Industry Infrastructure	<ul style="list-style-type: none"> (i) Schedule A, clause A1, Table 1.2; (ii) Schedule A, clause A2, Table 2.2; and (iii) Schedule A, clause A3, Table 3.2.
Verification Monitoring	means verification monitoring as described in the document entitled "Australian Drinking Water Guidelines" or the document entitled "Australian Guidelines for Water Recycling" as the case may be.
Water Quality Plan	means the water quality plan that the Licensee is required to prepare under the Regulation.

Superseded