



**NEW SOUTH WALES  
GOVERNMENT**

***WATER INDUSTRY COMPETITION ACT 2006***

**NETWORK OPERATOR'S LICENCE**

**Sydney Desalination Plant Pty Ltd (ACN  
125 935 177)**



New South Wales

## **WATER INDUSTRY COMPETITION ACT 2006**

### **Section 10(1)**

#### **Determination of Application for a Network Operator's licence from Sydney Desalination Plant Pty Ltd**

I, Phillip Costa MP, Minister for Water, in pursuance of section 10(1) of the *Water Industry Competition Act 2006* (the Act), having considered the advice and recommendations made by IPART in its report on the licence application for a Network Operator's licence made by Sydney Desalination Plant Pty Limited (ACN 125 935 177) of Level 15, 1 Smith Street, Parramatta 2150 (the Applicant), advice received from the NSW Office of Water and the licensing principles set out in section 7 of the Act, determine to grant the application for a Network Operator's Licence to the Applicant on the terms and subject to the conditions set out in that Licence. I hereby attach a copy of IPART's report (Attachment A).

Based on my consideration of IPART's report:

- (a) I am satisfied that the Applicant is not a disqualified corporation as required under section 10(3) of the Act;
- (b) I am satisfied as to each of the criteria set out in section 10(4) of the Act and clause 11 of the *Water Industry (General) Regulation* and
- (c) I have had regard to the licensing principles set out in section 7 of the Act in determining whether or not to grant a licence and what conditions should be imposed on any such licence granted.

I have therefore determined to grant the application for the Network Operator's Licence to the Applicant subject to the conditions set out in Licence 10-010. I hereby attach a copy of Licence 10-010 (Attachment B). The reasons for my decision are set out in Schedule 1 of this Notice.

Minister for Water

Dated this

9<sup>th</sup>

day of

2010



**New South Wales**  
**Water Industry Competition Act 2006**

**Grant of Network Operator's Licence**  
**Licence No. 10\_010**

I, Phillip Costa MP, Minister for Water, under section 10 of the *Water Industry Competition Act 2006*, grant a network operator's licence to:

Sydney Desalination Plant Pty Ltd (ACN 125 935 177)

to construct, maintain and operate water industry infrastructure.

Subject to:

- a) the conditions imposed by the *Water Industry Competition Act 2006*,
- b) the conditions imposed under clause 9(a) and set out in Parts 1 and 2 of Schedule 1 of the *Water Industry Competition (General) Regulation 2008*,
- c) the conditions imposed by the Minister in the attached Schedule A, and
- d) the standard conditions imposed by the Minister in the attached Schedule B being standard Ministerially-imposed licence conditions for network operators in the water industry.

Minister for Water

Dated this

9<sup>th</sup>

day of

2010

## **Schedule 1**

### **Reasons for decision – section 10(5)**

Having regard to IPART's report and the advice of the NSW Office of Water I am satisfied the Applicant has met all of the criteria in section 10 of the Act.

Having regard to IPART's report and the advice of the NSW Office of Water I am satisfied that regard has been had to the principles in section 7 of the Act. In particular, I am satisfied that:

1. The granting of the Network Operator's Licence will introduce a new provider of bulk drinking water in the Sydney metropolitan market. It may encourage competition in the market to develop in the future where desalination may be offered as a direct competitor to other supplies of water and therefore is consistent with the principle in section 7(1) (b) of the Act.
2. The scheme the subject of the licence application is the only source of drinking water which is independent of rainfall for the Sydney Metropolitan area. Therefore the granting of the licence to the applicant should facilitate a more reliable and sustainable drinking water supply in the Sydney metropolitan area and is consistent with the principles in section 7(1) (a) and (c) of the Act.

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

This schedule sets out the conditions which the Minister has determined to impose pursuant to section 13(1)(b) of the *Water Industry Competition Act 2006*. In addition to these Ministerially-imposed conditions, licensees are subject to obligations imposed by the Act, the Regulation and the standard Ministerially-imposed licence conditions set out in Schedule B. Licensees are encouraged to obtain independent advice as to the conditions and obligations of their licence.

### **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

**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**

Lot 2 in DP 1077972 and Lot 1 in DP 1088703, Kurnell and the offshore discharge and inlet structures located in the Tasman Sea and associated inlet and outlet tunnels.

### **A2 Requirement to maintain and operate**

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

- (a) the Licence Holder must:
  - (i) maintain the Water Industry Infrastructure in accordance with Good Industry Practice; and
  - (ii) when it operates the Water Industry Infrastructure do so in accordance with Good Industry Practice

- (b) When the Available Storage falls below 70%, the Licence Holder must, until the Available Storage rises to 80% operate and maintain the Water Industry Infrastructure with the objective of maximising the production of drinking water.
- (c) The Licence Holder is not required to comply with paragraph (b):
  - (i) when the Water Industry Infrastructure is in a Restart phase of production; or
  - (ii) 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 Licence Holder.

## INTERPRETATION AND DEFINITIONS

### Interpretation

In these Licence conditions, unless the context requires otherwise:

- (a) the singular includes the plural and vice versa;
- (b) headings are used for convenience only and do not affect the interpretation of these Licence conditions;
- (c) a reference to a document includes the document as modified from time to time and any document replacing it;
- (d) the word "person" includes a natural person and any body or entity whether incorporated or not;
- (e) references to clauses are references to clauses in these Licence conditions.

### Definitions

Expressions used in these Licence conditions that are defined in the Act or the Regulation have the meanings set out in the Act or the Regulation.

In these Licence conditions:

Act	means the <i>Water Industry Competition Act 2006</i>
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 the Sydney Catchment Authority. If for any reason the Sydney Catchment Authority 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.
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.

Capacity of the  
Water Infrastructure

means 250 megalitres per day for the desalination plant existing as at the date of issue of this licence or 500 megalitres per day for an expanded desalination plant, in both cases measured as a daily output averaged over a 3 month period.

Licence Holder

means the person who is the holder of this Licence

Minister

means the Minister responsible for Part 2 of the Act

Regulation

means the *Water Industry Competition (General) Regulation 2008*

Restart

has the same meaning as the definition in the Desalination Project Operation and Maintenance Contract between Sydney Desalination Plant Pty Ltd and Veolia Water Australia Pty Ltd. That is, 'the recommencement of production of drinking water at the plant'.

Water Industry  
Infrastructure

means the water industry infrastructure described in Schedule A

## **SCHEDULE B - STANDARD MINISTERIALLY-IMPOSED LICENCE CONDITIONS FOR SYDNEY DESALINATION PLANT PTY LTD NETWORK OPERATOR'S LICENCE**

This schedule provides a comprehensive list of standard conditions which the Minister has determined to impose pursuant to section 13(1)(b) of the Water Industry Competition Act 2006. In addition to these standard Ministerially-imposed conditions, Licence Holders are subject to obligations imposed by the Act, the Regulation and the Ministerially-imposed licence conditions set out in Schedule A. Licence Holders are encouraged to obtain independent advice as to the conditions and obligations of their licence. The Minister may vary the conditions in this schedule or impose new conditions, provided there is no inconsistency with the Act or the Regulation.

### **B1 Ongoing capacity to operate**

The Licence Holder must have the technical, financial and organisational capacity to carry out the activities authorised by this Licence. If the Licence Holder ceases to have this capacity, it must report this to IPART immediately.

### **B2 Obtaining appropriate insurance**

#### **B2.1 The Licence Holder must:**

- (a) obtain appropriate insurance sufficient for the size and nature of the activities authorised under this Licence;
- (b) provide a copy of each certificate of currency of insurance obtained to IPART; and
- (c) within six months of being granted this Licence, demonstrate that the insurance obtained is appropriate by providing a report to IPART from an Insurance Expert certifying that in the Insurance Expert's opinion the type and level of insurance obtained by the Licence Holder is appropriate for the size and nature of the activities authorised under this Licence.

#### **B2.2 The report from the Insurance Expert must:**

- (a) identify the key risks of undertaking the activities authorised under this Licence,
- (b) set out the types and levels of insurance obtained by the Licence Holder in the relation to the activities being undertaken,
- (c) provide reasons as to why the types and levels of insurance are appropriate for the size and nature of the activities being undertaken, and
- (d) if any risks arising from undertaking the activities remain uninsured, provide reasons as to why.

### **B3 Maintaining appropriate insurance**

**B3.1** The Licence Holder must maintain appropriate insurance sufficient for the size and nature of the activities authorised under this Licence.

**B3.2** From time to time when requested in writing by IPART, the Licence Holder 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 and level of insurance obtained by the Licence Holder is appropriate for the size and nature of the activities authorised under this Licence.

**B3.3** Whenever there is a change in the type, level or period of insurance held by the Licence Holder in relation to the activities authorised under this Licence, the Licence



Holder must provide a copy of the certificate of currency to IPART within 10 days of the change being made.

#### **B4 Complying with NSW Health requirements**

The Licence Holder must carry out the activities authorised by this Licence in compliance with any requirements of NSW Health that IPART has agreed to and are notified from time to time to the Licence Holder by IPART in writing.

#### **B5 Reporting in accordance with the Reporting Manual**

The Licence Holder must prepare and submit reports in accordance with the applicable Reporting Manual.

#### **B6 Reporting information in relation to the Register of Licences**

Whenever any of the following information changes, the Licence Holder must provide the updated information to IPART within 14 days of the change:

- (a) each source from which the water handled by the water industry infrastructure is derived,
- (b) the identity of each licensed retail supplier or public water utility that has access to the infrastructure services provided by the water industry infrastructure for the purpose of supplying water to its customers,
- (c) a description of any other water infrastructure to which the water industry infrastructure is connected.

#### **B7 Monitoring**

B7.1 Any monitoring required to be undertaken by the Licence Holder for the purposes of this Licence or any Plans must be undertaken in accordance with the requirements set out below.

B7.2 The following records must be kept of any samples collected:

- (a) The date(s) on which the sample was taken,
- (b) The time(s) at which the sample was collected,
- (c) The point or location at which the sample was taken, and
- (d) The name of the person who collected the sample.

B7.3 A laboratory accredited for the specified tests by an independent body acceptable to NSW Health, such as the National Association of Testing Authorities (NATA) or equivalent, shall carry out all analyses of samples.

#### **B8 Provision of copy of Plans**

B8.1 Whenever the Licence Holder makes any change to its Plans, the Licence Holder must provide a copy of the amended Plan to IPART.

B8.2 Whenever the Licence Holder makes a significant change to its Plans, the Licence Holder must provide a copy of the amended Plan to IPART at the same time it provides a copy to the approved auditor engaged to provide a report as to the adequacy of the changed Plan as required under the Regulation.

## **B9 Delineating responsibilities – interconnections**

**B9.1** Where a water industry code of conduct under clause 25 of the Regulation has not been established by order published in the Gazette and the water industry infrastructure specified in Schedule A, clause 1, Table 2 of this Licence is connected to any other water industry infrastructure, the Licence Holder must establish a code of conduct in relation to the respective responsibilities of the Licence Holder and each licensed network operator, licensed retail supplier and/or public water utility that is responsible for the other water industry infrastructure.

**B9.2** The arrangements are to be agreed in writing between the Licence Holder and the other licensed network operators, licensed retail suppliers and/or public water utilities.

**B9.3** The arrangements must address the following matters:

- (a) responsibility for the repair, replacement or maintenance of any pipes, pumps, valves, storages or other infrastructure connecting the water industry infrastructure specified in Schedule A, clause 1, Table 2 of this Licence to any other water industry infrastructure,
- (b) responsibility for water quality,
- (c) liability in the event of the unavailability of water,
- (d) liability in the event of infrastructure failure,
- (e) responsibility for handling customer complaints.

## **B10 Notification of changes to Authorised Person**

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 Licence Holder must provide IPART with written notice as soon as practicable and in any event no later than 28 days prior to the date of cessation of the services. Such written notice must include details of how the services previously undertaken by the Authorised Person will continue to be undertaken.

## **INTERPRETATION AND DEFINITIONS**

### **Interpretation**

In these Licence conditions, unless the context requires otherwise:

- (a) the singular includes the plural and vice versa;
- (b) headings are used for convenience only and do not affect the interpretation of these Licence conditions;
- (c) a reference to a document includes the document as modified from time to time and any document replacing it;
- (d) the word "person" includes a natural person and any body or entity whether incorporated or not;
- (e) references to clauses are references to clauses in these Licence conditions.

### **Definitions**

Expressions used in these Licence conditions that are defined in the Act or the Regulation have the meanings set out in the Act or the Regulation.

In these Licence conditions:

Act	means the <i>Water Industry Competition Act 2006</i>
Authorised Person	means an authorised person listed in Schedule A, clause 1, Table 1
Gazette	means the NSW Government Gazette
IPART	means the Independent Pricing and Regulatory Tribunal of New South Wales established under the <i>Independent Pricing and Regulatory Tribunal Act 1992</i>
Insurance Expert	means an independent reputable insurer registered with the Australian Prudential Regulation Authority
Licence	means the network operator's licence / retail supplier's licence authorising the Licence Holder to construct, maintain and operate water industry infrastructure / supply water or provide sewerage services by means of water industry infrastructure in accordance with section 10 of the Act
Licence Holder	means a person who is the holder of a Licence
Minister	means the Minister responsible for Part 2 of the Act
NSW Health	means the NSW Department of Health
Plans	means any infrastructure operating plan, water quality plan or sewage management plan required to be prepared by a Licence Holder under the Regulation
Regulation	means the <i>Water Industry Competition (General) Regulation 2008</i>
Reporting Manual	means the applicable Network Operator's Reporting Manual or Retail Supplier's Reporting Manual as produced by IPART and available on IPART's website <a href="http://www.ipart.nsw.gov.au">www.ipart.nsw.gov.au</a>