



New South Wales

Water Industry Competition Act 2006 (NSW)

Section 15

Notice of Decision - Variation of Network Operator's Licence No. 10_010

I, the Hon. Kevin Anderson, MP, Minister for Lands and Water, have decided to amend Sydney Desalination Plant Pty Ltd's (ACN 125 935 177) licence number 10_010 (**Licence**) under section 15 of the *Water Industry Competition Act 2006* (NSW) (**Act**). The reasons for my decision are set out below.

I have considered the Independent Pricing and Regulatory Tribunal (**IPART**)'s advice and recommendations in its report to me on the 5-year review of the licence. I have also considered further advice provided by my Department.

I have also had regard to the licensing principles set out in section 7 of the Act in deciding to vary the conditions of the Licence.

Under section 17 of the Act, the Licensee must be notified of proposed changes to its licence conditions and any submissions it makes in response must be considered. After notifying the Licensee of the proposed changes, IPART has provided me with copies of the Licensee's submissions, which I considered in reaching this decision.

I attach the Licence, as varied.

The Hon. Kevin Anderson, MP
Minister for Lands and Water

Dated this

19

day of

September 2022



NEW SOUTH WALES GOVERNMENT

Water Industry Competition Act 2006 (NSW)

Network operator's licence

Licence no. 10_010

Sydney Desalination Plant Pty Ltd

(ACN 125 935 177)

PRELIMINARY

1. Summary

- 1.1. This Licence is granted under section 10(1) of the Act.
- 1.2. The Act prohibits a person from constructing, maintaining or operating any water industry infrastructure otherwise than under the authority of a licence. This Licence authorises the Licensee and other Authorised Persons to carry out such activities that would otherwise be prohibited under the Act.

2. Outline

- 2.1. This Licence is divided into the following sections and schedules:

<p>Section 1 authorises the construction, maintenance and operation of water infrastructure for non-potable water (if applicable).</p>
<p>Section 2 authorises the construction, maintenance and operation of water infrastructure for drinking water (if applicable).</p>
<p>Section 3 authorises the construction, maintenance and operation of sewerage infrastructure (if applicable).</p>
<p>Schedule A sets out special Ministerially-imposed licence conditions that are specific to this Licence.</p>
<p>Schedule B sets out Ministerially-imposed licence conditions that generally apply to network operator's licences granted under the Act.</p>
<p>Schedule C sets out definitions and interpretation provisions.</p>

- 2.2. In addition to the conditions in Schedules A and B to this Licence, the Act and Regulation also contain conditions that apply to this Licence. Nothing in Schedules A or B modifies or affects the conditions imposed on this Licence by the Act or Regulation.

SECTION 1 – ACTIVITIES AUTHORISED: NON-POTABLE WATER

[Not applicable]

Table 1.1 Authorised Persons

[Not applicable]

Table 1.2 Water industry infrastructure and purposes for water industry infrastructure

[Not applicable]

Table 1.3 Area of operations

[Not applicable]

Table 1.4 Authorised purposes for non-potable water

[Not applicable]

SECTION 2 – ACTIVITIES AUTHORISED: DRINKING WATER

Subject to the conditions imposed by the Act, the Regulation and Schedules A and B to this Licence, this Licence authorises the Licensee and any Authorised Persons specified in Table 2.1 to construct, maintain and operate the water industry infrastructure specified in Table 2.2:

- a) for one or more of the purposes for water industry infrastructure specified in Table 2.2; and
- b) within the area of operations specified in Table 2.3.

Table 2.1 Authorised Persons

Veolia Water Australia Pty Ltd (ACN 061 161 279)

Table 2.2 Water industry infrastructure and purposes for water industry infrastructure

Infrastructure used for the production, treatment, filtration, storage, conveyance or reticulation of drinking water (being water that may be used for all purposes for which drinking water could be used safely).

Table 2.3 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.

SECTION 3 – ACTIVITIES AUTHORISED: SEWERAGE SERVICES

[Not applicable]

Table 3.1 Authorised Persons

[Not applicable]

Table 3.2 Water industry infrastructure and purposes for water industry infrastructure

[Not applicable]

Table 3.3 Area of operations

[Not applicable]

SCHEDULE A – SPECIAL MINISTERIALLY-IMPOSED LICENCE CONDITIONS

1. Requirement to maintain and operate

1.1. 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.

1.2. The Licensee must comply with any Annual Production Request made by the Sydney Water Corporation under the Decision Framework, provided that the request is consistent with the Decision Framework, and;

- a) the Licensee will not be in breach of this obligation if the Licensee produces in the relevant financial year an amount of water that is between 90% and 110% of the Annual Production Request;
- b) the Licensee will not be in breach of this obligation if:
 - i) the breach arises from the Licensee endeavouring to comply with any request, other than an Annual Production Request, made by the Sydney Water Corporation under the Decision Framework; and
 - ii) it would not be possible for the Licensee to comply with both the Annual Production Request and the other request.

[Note: For example, if the Annual Production request is for 90,000 ML but a few months into the year the Sydney Water Corporation requests the Licensee under the Decision Framework to reduce production by 80% due to heavy rainfall, the Licensee would not be in breach of clause 1.2 due to endeavouring to reduce production.]

- c) despite clause 1.2(a), if Sydney Water Corporation varies an Annual Production Request during a financial year then the Licensee will not be in breach of this obligation for that financial year unless:
 - i) as of the day before the varied Annual Production Request taking effect, had the Licensee produced an amount of water equal to the Capacity of the Water Infrastructure for the plant during every day remaining in the financial year, the Licensee would have produced less than 90% of the amount of water required to be produced by the Annual Production Request before it was varied, or
 - ii) the Licensee produces, during the period between (and including) the day upon which the varied Annual Production Request takes effect and the last day of the financial year, an amount of water which is less than 90%, or more than 110%, of the amount of water required to be produced during that period under the varied Annual Production Request.

[Note: As an example of the intended operation of clause 1.2(c)(i), consider a hypothetical scenario where the Capacity of the Water Infrastructure for the plant is 250ML per day and there are 366 days in a financial year. If Sydney Water's initial Annual Production Request for that financial year was for 90,000ML, but it made a varied Annual Production Request for a lower amount of water with effect from the 184th day of the financial year, the Licensee would be in breach of clause 1.2 if it had only produced 10,000ML during the first 183 days of the financial year. That is because, even if the Licensee produced 250ML per day of water during each of the remaining 183 days of the financial year, it would have produced less than 90% of the amount of water required under the initial Annual Production Request.]

[Note: As an example of the intended operation of clause 1.2(c)(ii), consider a hypothetical scenario where the Capacity of the Water Infrastructure for the plant is 250ML per day and there are 366 days in a financial year. Assume that:

- *the Sydney Water Corporation's initial Annual Production Request was for 20,000ML;*
- *in the first half of the financial year the Licensee produced 10,000ML; and*
- *with effect from the 184th day of the financial year, the Sydney Water Corporation made a varied Annual Production Request, specifying that the Licensee is to produce 50,000ML for the entire financial year, including 40,000ML in the period between (and including) the 184th day of the financial year and the end of the financial year.*

In that scenario, the Licensee would not be in breach of clause 1.2 if it produced between 36,000ML and 44,000ML of water in the period between (and including) the 184th day of the financial year and the end of the financial year.]

- 1.3. The Licensee must use its best endeavours to comply with any request, other than an Annual Production Request, made by the Sydney Water Corporation under the Decision Framework, provided that the request is consistent with the Decision Framework

[Note: Clause 1.3 applies to requests such as monthly production requests and 7-day production requests.]

- 1.4. The Licensee is not required to comply with clauses 1.2 and 1.3 during the time and to the extent that such compliance is prevented wholly or predominantly by an event outside the reasonable control of the Licensee.
- 1.5. For the avoidance of any doubt, the Licensee will not be in breach of clause 1.2 or 1.3 solely because it complies with a request made by the Sydney Water Corporation that is not consistent with the Decision Framework.
- 1.6. Until the Clause 1 Commencement Day:
- a) clauses 1.1-1.5 have no effect; and
 - b) clause A2 in Schedule A of the Previous Licence continues to have effect, as though it were a condition of this Licence.

- 1.7. For the avoidance of any doubt, while clause A2 in Schedule A of the Previous Licence continues to have effect under clause 1.6, terms in clause A2 that were defined in the Previous Licence continue to have the meanings given to them in the Previous Licence.

SCHEDULE B – GENERAL MINISTERIALLY-IMPOSED LICENCE CONDITIONS

1. Ongoing capacity to operate

- 1.1. 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 in accordance with the Reporting Manual.

2. Maintaining appropriate insurance

- 2.1. The Licensee must hold insurance that is appropriate for the size and nature of the activities that the Licensee is carrying out under this Licence.
- 2.2. 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.
- 2.3. *[Not applicable]*
- 2.4. *[Not applicable]*
- 2.5. If, in relation to the activities authorised by this Licence, there is, or is to be, a change in either of the following, the Licensee must provide a report to IPART in accordance with the Reporting Manual:
- 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.
- 2.6. From time to time when requested in writing by IPART, the Licensee must provide a report to IPART, in the manner and form and within the timeframes specified by IPART, from an Insurance Expert certifying that in the Insurance Expert's opinion the type, scope and limit on the amount of insurance held by the Licensee is appropriate for the size and nature of the activities that the Licensee is carrying out under this Licence.

[Note: The circumstances in which IPART may request a report under clause 2.6 include (but are not limited to) the following:

- *where IPART considers 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 that the Licensee is carrying out under this Licence;*
- *where there is a change in the type or extent of activities authorised by this Licence; or*

- *where IPART or an approved auditor considers 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 that the Licensee is carrying out under this Licence.]*

2.7. *[Not applicable]*

3. Complying with NSW Health requirements

- 3.1. 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
 - b) are notified from time to time to the Licensee by IPART in writing.

4. Complying with Audit Guidelines

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

5. Reporting in accordance with the Reporting Manual

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

6. Reporting information in relation to the register of licences

- 6.1. The Licensee must notify IPART, and provide IPART with details, of any change in relation to the following, in accordance with the Reporting Manual, within 14 days of the change:
- a) any source from which the water handled by the Specified 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 Specified Water Industry Infrastructure for the purpose of supplying water to its customers;
 - c) any other water infrastructure to which the Specified Water Industry Infrastructure is connected;
 - d) *[Not applicable]*
 - e) *[Not applicable]*
 - f) *[Not applicable]*
 - g) *[Not applicable]*

7. Monitoring

- 7.1. 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 7.
- 7.2. 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).
- 7.3. 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.

8. Delineating responsibilities

- 8.1. If a code of conduct has not been established under section 46 of the Regulation, the Licensee must, by a date specified by IPART, establish a code of conduct (**Licensee's Code of Conduct**) in accordance with this clause 8.
- 8.2. *[Not applicable]*
- 8.3. The Licensee's Code of Conduct must be agreed in writing between:
- a) the Licensee; and
 - b) each licensed network operator, licensed retail supplier and/or public water utility that:
 - i) supplies water or provides sewerage services by means of any water industry infrastructure that is connected to the Specified Water Industry Infrastructure; or
 - ii) constructs, maintains or operates any water industry infrastructure that is connected to the Specified Water Industry Infrastructure.
- 8.4. The Licensee's Code of Conduct must set out the respective responsibilities of the entities specified in clause 8.3 by, at a minimum, providing for:
- a) 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;
 - b) who is responsible for water quality;
 - c) who is liable in the event of the unavailability of water;
 - d) who is liable in the event of failure of any water industry infrastructure;

- e) the fees and charges payable in respect of the use of the water industry infrastructure; and
- f) who is responsible for handling customer complaints.

8.5. 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.

9. Notification of changes to end-use

9.1. *[Not applicable]*

10. Notification of commercial operation

10.1. Each time the Licensee has brought any new Specified Water Industry Infrastructure into commercial operation, the Licensee must:

- a) notify IPART in accordance with the Reporting Manual that it has brought the relevant Specified Water Industry Infrastructure into commercial operation; and
- b) provide such notification within 10 days after it has brought the relevant Specified Water Industry Infrastructure into commercial operation.

11. Notification of non-compliant Plumbing

11.1. *[Not applicable]*

SCHEDULE C – INTERPRETATION AND DEFINITIONS

1. Interpretation

1.1. In this Licence, 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 this Licence;
- c) a reference to a document includes the document as modified from time to time and any document replacing it;
- d) a reference to a “person” includes a natural person and any body or entity whether incorporated or not;
- e) a reference to a clause is to a clause in this Licence;
- f) a reference to a section is to a section in this Licence;
- g) a reference to a schedule is to a schedule to this Licence;
- h) 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
- i) explanatory notes do not form part of this Licence, but in the case of uncertainty may be relied on for interpretation purposes.

2. Definitions

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

2.2. In this Licence:

Act means the *Water Industry Competition Act 2006* (NSW).

Annual Production Request means a request made by the Sydney Water Corporation by 1 May each year for the supply of water from the Licensee over the following financial year, of the type referred to in section 4.2.2 of the Decision Framework, and includes a six monthly modification of such a request and any other request agreed between the Licensee and Sydney Water Corporation from time to time, provided that the modification:

- a) complies with the Decision Framework; and
- b) is notified by the Sydney Water Corporation to IPART and the Licensee, in writing, before it takes effect.

Audit Guidelines means the document titled “*Audit Guideline – under the 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 each person specified in, as applicable:

- a) Section 1, Table 1.1;
- b) Section 2, Table 2.1; and
- c) Section 3, Table 3.1.

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.

Clause 1 means either:

Commencement Day

- a) the day upon which IPART’s June 2017 determination titled “Prices for Sydney Desalination Plant Pty Ltd’s Water Supply Services” is replaced; or
- b) if a different date is specified to the Licensee by IPART in writing before that determination is replaced – that date.

Decision Framework means a framework for the Sydney Water Corporation to determine the quantities of drinking water to be supplied from Sydney Desalination Plant, which the Minister, from time to time:

- a) consults the Licensee about;
- b) endorses;
- c) publishes; and
- d) brings to the attention of the Licensee and IPART, in writing.

[Note: The intention behind paragraphs (a)-(d) of this definition is that, if a framework is remade or amended from time to time, it will not take effect for the purposes of this Licence, until the requirements of those paragraphs are met.]

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.
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 Sydney Desalination Plant Pty Ltd (ACN 125 935 177).
Licensee's Code of Conduct	has the meaning given in Schedule B, clause 8.1.
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.

Pipeline	<p>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:</p> <p>(a) an overland pipeline running from the drinking water pumping station at the desalination plant to Silver Beach;</p> <p>(b) a marine pipeline running from Silver Beach to a point 800 metres offshore from Silver Beach;</p> <p>(c) twin marine pipelines running from 800 metres offshore of Silver Beach to Cook Park, Kyeemagh; and</p> <p>(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.</p>
Previous Licence	<p>means the version of this Licence that came into effect on 3 November 2017.</p>
Principle 7(1)(c)	<p>means the principle set out in section 7(1)(c) of the Act.</p>
Regulation	<p>means the <i>Water Industry Competition (General) Regulation 2021</i> (NSW).</p>
Reporting Manual	<p>means the document titled “Network Operator’s Reporting Manual and Retail Supplier’s Reporting Manual under <i>Water Industry Competition Act 2006</i>”, which is prepared by IPART and is available on IPART’s website at www.ipart.nsw.gov.au.</p>
Specified Water Industry Infrastructure	<p>means the water industry infrastructure specified in, as applicable:</p> <ul style="list-style-type: none"> a) Section 1, Table 1.2; b) Section 2, Table 2.2; and c) Section 3, Table 3.2.
Verification Monitoring	<p>means verification monitoring as described in the document titled “<i>Australian Drinking Water Guidelines</i>” or the document titled “<i>Australian Guidelines for Water Recycling</i>” as the case may be.</p>
Water Quality Plan	<p>means the water quality plan that the Licensee is required to prepare under the Regulation.</p>

