



NEW SOUTH WALES GOVERNMENT

Water Industry Competition Act 2006 (NSW)

Retail supplier's licence

Licence no. 09_004R

Aquacell Pty Ltd

(ACN 072 487 015)



New South Wales

Water Industry Competition Act 2006 (NSW)

Section 15

**Notice of Decision -
Variation of Retail Supplier's
Licence No. 09_004R**

I, the Hon. Melinda Pavey, MP, Minister for Water, Property and Housing, have decided to amend Aquacell Pty Ltd's (ACN 072 487 015) licence number 09_004R (**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 and accepted 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 attach IPART's report (**Attachment A**).

I have also had regard to the licensing principles set out in section 7 of the Act in considering whether or not to amend the licence conditions and what conditions should be imposed on the Licence.

I attach the Licence, as varied (**Attachment B**).

The Hon. Melinda Pavey, MP
Minister for Water, Property and Housing

Dated this 1 day of 11 2020

PRELIMINARY

1. Summary

- 1.1. This Licence is granted under section 10(1) of the Act.
- 1.2. The Act prohibits a person from supplying water, or providing a sewerage service, by means of 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:

Section 1 authorises the supply of non-potable water (if applicable).
Section 2 authorises the supply of drinking water (if applicable).
Section 3 authorises the supply of sewerage services (if applicable).
Schedule A sets out special Ministerially-imposed licence conditions that are specific to this Licence.
Schedule B sets out Ministerially-imposed licence conditions that generally apply to retail suppliers' licences granted under the Act.
Schedule C sets out definitions and interpretation provisions.

- 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 – AUTHORISATION TO SUPPLY NON-POTABLE WATER

Subject to the conditions imposed by the Act, the Regulation and Schedules A and B of this Licence, this Licence authorises the Licensee and any Authorised Persons specified in Table 1.1 to supply non-potable water:

- a) to the persons or classes of persons specified in Table 1.2; and
- b) within the area of operations specified in Table 1.3;

The non-potable water supplied by means of the water industry infrastructure may only be used for the authorised purposes for non-potable water specified in Table 1.4.

Table 1.1 Authorised Persons

None

Table 1.2 Person or classes of persons

Persons within the areas of operations specified in Table 1.3 below.

Table 1.3 Area of operations

Area of operations 1:

The Area of Operations specified in Section 1, Table 1.3 of the Bligh Street Network Operator's Licence as it stood as at the date this clause was inserted into this licence.

Area of operations 2:

- (a) The area known as Workplace 6 (Lot 1012 in DP 11458), Metcalf Park (Lot 102 in DP1130308) and Pymont Park (Lot 7 in DP 876763 and Lot 101 in DP 1091132); and
- (b) The connection to the Sydney Water rising main from the stop valve in the valve pit on the southern side of the intersection of Pirrama Road and Jones Bay Road / Darling Island Road to the treatment plant located on Lot 1012 in DP 11458.

Table 1.4 Authorised purposes for non-potable water

In area of operations 1:

Cooling tower make-up

Toilet flushing

In area of operations 2:

Toilet flushing

Sub-surface irrigation

SECTION 2 – AUTHORISATION TO SUPPLY DRINKING WATER

[Not applicable]

Table 2.1 Authorised Persons

[Not applicable]

Table 2.2 Person or classes of persons

[Not applicable]

Table 2.3 Area of operations

[Not applicable]

SECTION 3 – AUTHORISATION TO PROVIDE SEWERAGE SERVICES

Subject to the conditions imposed by the Act, the Regulation and Schedules A and B of this Licence, this Licence authorises the Licensee and any Authorised Persons specified in Table 3.1 to provide sewerage services:

- a) to the persons or classes of persons specified in Table 3.2; and
- b) within the area of operations specified in Table 3.3.

Table 3.1 Authorised Persons

None

Table 3.2 Person or classes of persons

Persons within the area of operations specified in Table 3.3 below.

Table 3.3 Area of operations

The Area of Operations specified in Section 3, Table 3.3 of the Kurrajong Network Operator's Licence as it stood as at the date this clause was inserted into this licence.

SCHEDULE A – SPECIAL MINISTERIALLY-IMPOSED LICENCE CONDITIONS

1. Notification of changes to Authorised Person

- 1.1. 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, or a later date approved by IPART in writing. The written notice must include details of how the services previously undertaken by the Authorised Person will continue to be undertaken.

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. The Licensee must, within 6 months of the date that this Licence is granted or by a later date specified by IPART (if any), demonstrate that the insurance held is appropriate for the size and nature of the activities that the Licensee is carrying out under this Licence, by providing a report to IPART from an Insurance Expert that:
- a) certifies that in the Insurance Expert's opinion, the type, scope and limit of the insurance held by the Licensee is appropriate for the size and nature of the activities that the Licensee is carrying out under this Licence; and
 - b) is in the form prescribed by the Reporting Manual.
- 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.]*

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 licensed network operator or public water utility from whose water industry infrastructure the Licensee supplies water to its customers;
 - b) any source from which the water handled by the water industry infrastructure referred to in clause 6.1a) is derived;
 - c) whether or not any of the Licensee's customers are Small Retail Customers;
 - d) any order under section 54 of the Act by which the Licensee is declared to be a retailer of last resort; and
 - e) any licensed network operator or public water utility by means of whose sewerage infrastructure the Licensee provides sewerage services to its customers.

7. Delineating responsibilities

- 7.1. If a code of conduct has not been established under clause 25 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 7.
- 7.2. *[Not applicable]*
- 7.3. 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:
- 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 Licensed Water Industry Infrastructure; or
 - ii) constructs, maintains or operates any water industry infrastructure that is connected to the Licensed Water Industry Infrastructure.

- 7.4. The Licensee's Code of Conduct must set out the respective responsibilities of the entities specified in clause 7.3 by, at a minimum, providing for:
- a) who is responsible for repairing, replacing or maintaining any pipes, pumps, valves or storages or other infrastructure connecting the Licensed 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.
- 7.5. 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.

8. Infrastructure to be used

- 8.1. The Licensee must only source and supply water by means of water industry infrastructure, if that water industry infrastructure is maintained and operated by a licensed network operator or public water utility.
- 8.2. The Licensee must only provide sewerage services by means of water industry infrastructure, if that water industry infrastructure is maintained and operated by a licensed network operator or public water utility.

9. Notification of supply of water or provision of sewerage services

- 9.1. *[Not applicable]*
- 9.2. *[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).

Audit Guidelines means the document titled “*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 each person specified in, as applicable: <ul style="list-style-type: none"> a) section 1, Table 1.1; b) section 2, Table 2.1; and c) section 3, Table 3.1.
Bligh Street Network Operator's Licence	means network operator's licence no. 09_003 granted to Aquacell Pty Ltd (ACN 072 487 015) (as varied by the Minister from time to time).
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).
Kurrajong Network Operator's Licence	means network operator's licence no. 15_032 granted to Aquacell Pty Ltd (ACN 072 487 015) (as varied by the Minister from time to time).
Licence	means this retail supplier's licence granted under section 10 of the Act.
Licensed Water Industry Infrastructure	means the water industry infrastructure by means of which the non-potable water, drinking water and/or sewerage services (as applicable) under this Licence are supplied.
Licensee	means Aquacell Pty Ltd (CAN 072 487 015).
Licensee's Code of Conduct	has the meaning given in Schedule B, clause 7.1.
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.
Regulation	means the <i>Water Industry Competition (General) Regulation 2008</i> (NSW).
Reporting Manual	means the document titled “Retail Supplier’s Reporting Manual”, which is prepared by IPART and is available on IPART’s website at www.ipart.nsw.gov.au .
Small Retail Customer	has the meaning given to that term in the Regulation.