



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 10

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

I, The Hon. Donald Harwin MLC, Minister for Energy and Utilities, have decided to grant Aquacell Pty Ltd (**Applicant**)'s (ACN 072 487 015) application (**Application**) to vary retail supplier's licence number 09_004R (**Licence**) under section 10(1) 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 Application. I attach IPART's report (**Attachment A**).

Based on my consideration and acceptance of IPART's report:

- (a) I am satisfied that the Applicant is not a disqualified corporation for the purposes of section 10(3)(a) of the Act;
- (b) I am satisfied that the Applicant is not a corporation that is a related entity (within the meaning of the *Corporations Act 2001* (Cth)) of a disqualified corporation that would have a direct or indirect interest in, or influence on, the carrying out of the activities that the Licence, if varied in accordance with the Application, would authorise, for the purposes of section 10(3)(b) of the Act; and
- (c) I am satisfied as to each of the criteria set out in section 10(4) of the Act.

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

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

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

Dated this **31st** day of **January** 2018

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 provision 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 modify or affect 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;
- b) within the area of operations specified in Table 1.3; and
- c) for one or more of 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:

1 Bligh Street, Sydney, NSW

Area of operations 2:

- (a) The area known as Workplace 6 (Lot 1012 in DP 11458), Metcalf Park (Lot 102 in DP1130308) and Pyrmont 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.

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

Lot 2 in DP 6655.
Lots 1-4, 6-9, 11-14 and 16 to 21 in DP270827.
Lots 11 and 13 in DP1036297.
Lots 101 and 102 in DP 1134543.
Lot 300 in DP1184237.
The part of Vincent Road adjacent to Lot 2 in DP 6655 and Lots 11 and 13 in DP 1036297 between:
(a) where Vincent Road intersects with Old Bells Line of Road; and
(b) where Vincent Road meets Lot 101 in DP 1134543.

SCHEDULE A – SPECIAL MINISTERIALLY-IMPOSED LICENCE CONDITIONS

No special Ministerially-imposed licence conditions apply to this 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. Before commencing any of the activities authorised under this Licence, the Licensee must demonstrate that the insurance held is appropriate for the size and nature of the activities, 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; and
 - b) is in the form prescribed by the Reporting Manual.
- 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.]*

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. Before commencing to supply water or provide sewerage services by means of the Licensed Water Industry Infrastructure under this Licence 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.
- 7.3. [Not applicable.]
- 7.4. The Licensee's Code of Conduct must set out the respective responsibilities of the entities specified in clause 7.2 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. Each time the Licensee commences to supply water under this Licence, the Licensee must:
 - a) notify IPART in accordance with the Reporting Manual that it has commenced to supply water to customers by means of the relevant Licensed Water Industry Infrastructure; and
 - b) provide such notification within 10 days after such commencement.
- 9.2. Each time the Licensee commences to provide sewerage services under this Licence, the Licensee must:
 - a) notify IPART in accordance with the Reporting Manual that it has commenced to provide sewerage services to customers by means of the relevant Licensed Water Industry Infrastructure; and
 - b) provide such notification within 10 days after such commencement.

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. |
| 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 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 (ACN 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.